

IN THE PESHAWAR HIGH COURT PESHAWAR

Writ Petition No. 2094-P 2017



Sabz Ali

Inspector

Presently Police Lines, Peshawar

Versus

1. The Govt. of Khyber Pakhtunkhwa  
through Chief Secretary,  
Civil Secretariat, Peshawar
2. The Provincial Police Officer  
Khyber Pakhtunkhwa, Peshawar
3. The Capital City Police Officer,  
CPO, Peshawar Respondents

WRIT PETITION UNDER ARTICLE, 199 OF THE CONSTITUTION OF  
THE ISLAMIC REPUBLIC OF PAKISTAN, 1973.

Respectfully Sheweth,

Facts giving rise to the present writ petition are as under:-

1. That Petitioner is employee of the Police Department serving as Inspector. During the crucial period, he was posted as SHO Police Station Hashtnagri/SGH and was on leave 09.12.2016 vide application duly approved by the competent authority alongwith leaving Naqalmad No.28 dated 09.12.2016 (*Annex:-A*).
2. That one Mr. Siraj s/o Mateen, resident of Ijaz Abad, Gul Street, Peshawar who is a habitual offender of gambling, narcotics, theft and robberies and involved in numerous cases of identical nature as is evident from F.I.Rs. (*Annex:-B*) detailed as below:-

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Sr#	No. of F.I.R	Date	Sections of Law	Police Station
1.	989	04.11.2010	13AO	Phandu
2.	324	02.05.2014	4PO	Phandu
3.	96	08.02.2009	6GO	Phandu

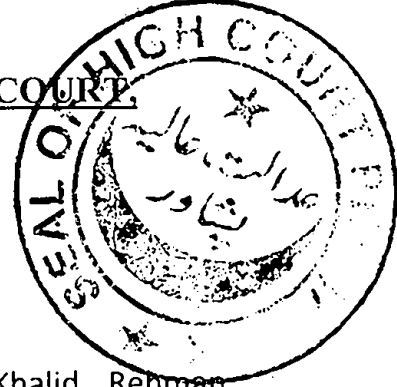
**IN THE PESHAWAR HIGH COURT**  
**PESHAWAR**

W.P.No.2094-P/2017

Date of hearing: 24.7.2017

Petitioner(s) : (Sabz Ali) by Mr. Khalid Rehman,  
 Advocate.

Respondent(s) : (The Govt. of Khyber Pakhtunkhwa,  
 Peshawar and others) by Syed Qaiser Ali Shah, AAG.



**JUDGMENT**

**ABDUL SHAKOOR, J .-** Petitioner has filed the

instant petition for issuance of an appropriate writ,

with the following prayer:-

That on acceptance of this writ petition, this Hon'ble Court may graciously be pleased to declare the impugned second show cause notice dated 05.05.2017 on the same set of allegations for which petitioner was once punished, as without lawful authority and hence of no legal effect and this august Court may further be pleased to strike down the same being against the constitutional mandate and the Khyber Pakhtunkhwa Police Rules, 1975 and

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GH

direct the respondents to act in the matter in accordance with law and to refrain from taking any disciplinary action on the basis of same.

2. Brief facts leading to the instant petition are that petitioner, at the relevant time, when one Siraj lodged a complaint against his illegal detention before the Worthy Chief Minister of Khyber Pakhtunkhwa, Peshawar, was SHO at Police Station, Hastnagri. As on the complaint of said Siraj who was in custody at police station of petitioner, in connection with case FIR No.1072 dated 08.12.2014 registered under section 382 PPC, the worthy Chief Minister Khyber Pakhtunkhwa alongwith high-up of police on 10.12.2016 came to Police Station, Kotwali and directed the DSP namely Rokhan Zeb to produce the said Siraj before him at that Police Station. Accordingly, the said DSP and petitioner produced the aforesaid accused Siraj before the worthy Chief Minister..The Worthy Chief Minister without going into deep passed a decree that the said accused was kept in unlawful custody. On account of that decree of Chief Minister petitioner was

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suspended from the service vide order dated 11.12.2016. Accordingly, an Inquiry Committee was constituted to probe as to whether or not the accused Siraj was illegally confined. The petitioner explained his position before the Inquiry Committee vide his written statement and denied the charge of illegal confinement of the above said Siraj. The Inquiry Committee in his report recommended suitable punishment to petitioner and Moharrir Police Station, Kotwali. In the light of said Inquiry Report the high-ups of the police directed the respondent No.3 the competent authority to proceed against the petitioner and the concerned DSP. Accordingly, the respondent No.3 issued a show cause notice dated 23.12.2016, which was properly replied by the petitioner and it resulted into order of respondent No.3 dated 10.1.2017 through which petitioner was awarded minor punishment of censure and reinstated him in service. The petitioner despite being punished on account of alleged illegal detention of aforesaid Siraj in term of issuance of censure vide order dated 10.1.2017 of respondent No.3 again issued a show cause notice dated

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05.05.2017 by the respondent No.3 regarding the same charge of detention of aforesaid Siraj. The petitioner being aggrieved from the issuance of show cause notice dated 05.05.2017 which amounts to double jeopardy in terms of Article-13 of the Constitution, filed the present petition.

3. The respondents have filed the parawise comments but they could not offer any justification for issuance of show cause notice dated 05.05.2017.

4. We have heard learned counsel for the petitioner as well learned AAG and have carefully gone through the record.

5. A bare look at show cause notice impugned herein and show cause notice dated 23.12.2016 shows that both are having the same charge against the petitioner. As it is an admitted fact that petitioner as a result of show cause notice dated 23.12.2016 has been awarded minor punishment by the competent authority i.e. respondent No.3 in term of censure. In this view of the matter, the respondent No.3 according to the command of Article-13 of the Constitution of Pakistan no way could issue show

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cause notice dated 05.05.2017 for proceeding against the petitioner on the basis of the charges against which he has already been punished. This act on the part of the respondent No.3 amounts to double jeopardy which is not permissible under the terms of Article-13 of the Constitution of Islamic Republic of Pakistan, 1973.

6. This court is fully in agreement with the contention of learned counsel for the petitioner that once the competent authority has awarded the punishment to the petitioner against the charge of illegal detention then whatever the case may be the respondent No.3/competent authority could not initiate fresh proceeding against the said charge of illegal detention of aforesaid Siraj and this amount to vexing twice for the same cause/charge. In this regard, he has referred to this court two cases, one of Apex Court reported in 1989 SCMR 1224 and second of Lahore High Court, reported as 2000 PLC (CS) 1373.

7. As the matter regarding the charge of illegal detention of Siraj after the punishment of the petitioner in term of censure has attained the finality,

**ATTESTED**

CLERK  
Lahore High Court

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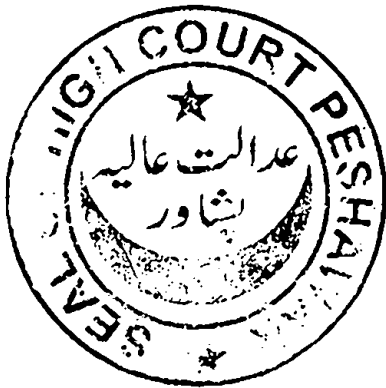
thus by no principle of law same matter could be reopened for purpose of imposing higher penalty even on the ground that discovery of fresh material had pointed to the grave misconduct of petitioner.

8. In the circumstances, referred to hereinabove, this petition is allowed and initiation of fresh proceeding against the petitioner by means of impugned show cause notice dated 05.05.2017 on the same facts and charges for which he has already been punished in terms of censure is declared as without lawful authority, of no legal effect and violation of Article-13 of the Constitution of Pakistan.

*SM Lal Din Khattak*  
*MR Abdul Shaukat*

Announced.  
24.7.2017

*[Signature]*  
*[Signature]*  
*[Signature]*



**CERTIFIED TO BE TRUE COPY**  
Examiner  
Peshawar High Court, Peshawar  
Witnessed Under Article 87 of  
The Constitution of Pakistan Order 1984  
*[Signature]*  
AUG 2017