

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR.

JUDICIAL DEPARTMENT

J U D G M E N T

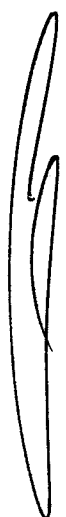
Quashment Petition No. 50-P of 2022.

Date of hearing: 28.11.2022.
Announced on: 05.12.2022.
Appellant: (Naveed) By Mr. Ali Zaman,
Advocate.

Respondent: (State), By Mr. Muhammad
Ashfaq Daudzai, AAG.

(Mst. Sidra Farhad complainant) By Dr. Ameer Ajam Khattak &
Mr. Shahid Qayyum Khattak,
Advocates.

ISHTIAQ IBRAHIM, J.- This single judgment



shall dispose of the present Quashment Petition No.50-P/2022 filed by petitioner namely Naveed Ahmad son of Muhammad Shah under section-561-A Cr. PC read with section-439 Cr. PC for quashment of order / judgment dated 08.06.2022 passed by the learned Additional Sessions Judge-IX, Peshawar, vide which the appeal filed by the petitioner was partially allowed and modified / reduced the sentence of petitioner from three years R.I to

two years RI, **Quashment Petition No.51-P/2022 & Criminal Revision No.124-P/2022** filed by Mst. Sidra Farhad daughter of Farhad Hussain, against Naveed Ahmad, respondent No.1 (Petitioner in Q.P No.50-P/2022) for setting aside / quashment of order dated 08.06.2022 passed by learned Additional Sessions Judge-IX, Peshawar, and enhancement of sentences awarded to the respondent Naveed Ahmad, and **Quashment Petition No.62-P/2022** filed by the State against respondent Naveed Ahmad whereby impugned the judgment and order dated 08.06.2022 passed by the learned Additional Sessions Judge-IX, Peshawar, seeking enhancement of the sentence awarded to Naveed Ahmad, respondent No.1, as all the three Quashment Petitions cited above stem from one and the same impugned judgment dated 08.06.2022 rendered by the learned Additional Sessions Judge-IX, Peshawar, in case FIR No.49/2021 dated 23.09.2021 under sections- 21/24 PECA, 2016 registered at Police Station FIA Cyber Crime Reporting Centre, Peshawar.

2. The case of the prosecution, in a nutshell, is that complainant Mst. Sidra Farhad daughter of Farhad Hussain

submitted a written complaint (EX PW 2/1) against the petitioner Naveed Ahmad, wherein it is mentioned that petitioner-accused has shared her objectionable picture through his WhatsApp number +92 332 1929159 with her father namely Farhad Hussain (WhatsApp number +92 3396176448), the complaint was registered and inquiry was initiated in the matter; that during the course of inquiry statement of complainant was recorded, statement of Farhad Hussain, father of the complainant, was also recorded, who supported the version of complainant and produced all the relevant evidence including the mobile phone on which the objectionable pictures were received and were taken into possession vide memo (EX PW 3/2). The complainant further stated that the petitioner-accused has extended threats through face book ID accessible through link [facebook.com/profile.Php?id=100010367388107](https://www.facebook.com/profile.php?id=100010367388107) for sharing the objectionable pictures on social media. The motive advanced by the complainant that sister of the appellant was charged for the murder of granddaughter of the complainant and the accused-petitioner was compelling them for compromise.

The ownership of the SIM number +92 332 1929159 was received from the Telecom company; that accused was directed to attend the FIA office; that on 23.09.2021 accused-petitioner attended the office of FIA CCRC, Peshawar, and on his pointation mobile phone Samsung SM-G610F bearing serial No.RZ9K10Z19BW was recovered from the motorcar bearing registration No.ARV-320, Chassis No.NZE120-6025310. The mobile phone of accused, SIM number +92 332 1929159 and WhatsApp account number +92 332 1929159 used in the offence were found active in the mobile phone of accused. The objectionable pictures were also found in the mobile phone of accused-petitioner and in this respect Technical Analysis report (EX PW 3/3) was also prepared. Consequently, the accused-petitioner was arrested and the case FIR was registered against him.

3. After completion of investigation, complete challan was submitted before the Court. Formal charge against the accused-petitioner was framed to which he did not plead guilty and claimed trial.

4. The prosecution in support of its case examined as many as five witnesses. After closure of prosecution evidence statement of accused under section-342 Cr. PC was recorded, wherein he professed and false implication. He neither wished to be examined on oath within the meaning of section-340(2) Cr.PC nor opted to produce defence evidence. After hearing arguments of learned counsel for the parties, the learned trial Court vide judgment and order dated 18.04.2022 convicted and sentenced the accused-petitioner for a period of three years R.I with a fine of Rs.200,000/- or in default, accused shall further undergo simple imprisonment for a period of six months. The accused-petitioner was also convicted under section-24 PECA of 2016 to undergo rigorous imprisonment for a period of one year with a fine of Rs.20,000/- or in default accused shall further undergo simple imprisonment for a period of three months and all the sentences were ordered to run concurrently. Benefit of section-382-B Cr. PC was extended to the accused-petitioner.

5. Being dissatisfied from the judgment and order of the learned trial Court mentioned above, Naveed Ahmad, the petitioner, filed Criminal Appeal No.01 of 2022 against his conviction and sentence, Mst. Sidra Farhad, the complainant, and State filed Criminal Revisions No.08 & 09 of 2022 respectively for enhancement of sentences awarded to the accused-petitioner Farhad before the learned Additional Sessions Judge-IX, Peshawar (Appellate Court) and after hearing arguments of learned counsel for the parties, the Appellate Court vide impugned judgment and order dated 08.06.2022 modified the sentence and the appellant was convicted with sentence for a term of Rigorous Imprisonment of two years with fine of Rs.200,000/- under section-21 of PECA, 2016 or in default of fine he shall further undergo simple imprisonment for six months and maintained the conviction of the accused-petitioner u/s-24 of PECA, 2016 while the Criminal Revisions No.08 & 09 filed by the complainant and State were dismissed. Hence, the accused-petitioner Naveed Ahmad, complainant Mst. Sidra Farhad and the State have impugned the judgment and order of the learned Appellate

Court by filing respective Quashment Petitions mentioned in the opening paragraph of the judgment before this Court. Petition No.50-P/2022 has been filed by the petitioner-accused under section-561-A read with Section-439 Cr.PC and Criminal Revision No.124-P/2022 filed by Mst. Sidra Farhad for enhancement of sentence. Once Revisional powers has been exercised by the Revisional Court i.e learned Appellate Court, therefore, second revision is not competent. Hence, this Quashment Petition No.50-P/2022 is treated only under section-561-A Cr. PC, while Cr. Revision No.124-P/2022 is dismissed being not maintainable.

6. Arguments of learned counsel for the parties were heard and available record gone through.

7. Spying is an infringement of privacy rights. The Holy Quran, therefore, expressly forbids it. Surah Al-Hujurat Ayah 12 (Translation by A. Yusuf Ali) reads;

يَا أَيُّهَا الَّذِينَ ءَامَنُوا اجْتَنِبُوا كَثِيرًا مِّنَ الظَّنِّ إِنَّ بَعْضَ الظَّنِّ إِثْمٌ وَلَا تَجَسَّسُوا
وَلَا يَغْتَبِ بَّعْضُكُم بَعْضًا ؕ أَيُحِبُّ أَحَدُكُمْ أَن يَأْكُلَ لَحْمَ أَخِيهِ مَيْتًا فَكَرِهْتُمُوهُ
وَاتَّقُوا اللَّهَ ؕ إِنَّ اللَّهَ تَوَّابٌ رَّحِيمٌ

O ye who believe! Avoid suspicion as much (as possible): for suspicion in some cases is a sin: and spy not on each other nor speak ill of each other behind their backs. Would any of you like to eat the flesh of his dead brother? Nay ye would abhor it...but fear Allah: for Allah is Oft-Returning Most Merciful.

Again, in Islam, the prohibition on spying is all-pervasive and reaches every conceivable sphere of human activity. In *Al-Jaami As-Saghir* by Imam *Suyuti*, tradition is reported from the Holy Prophet;

"One who looks into the letter of his brother without his permission is like looking into the fire of Hell."

In his book, the dignity of man: An Islamic perspective (Second enhanced edn. Cambridge: The Islamic Texts Society, 2002.), Mohammad Hashim Kamali, has looked into the subject with a keen eye. While discussing *Satr al-aurat* as a significant theme of personal privacy, he refers to Hadith from Tirmidhi;

"Do not annoy your fellow Muslims; do not impute evil to them, and do not uncover their nakedness. For behold, anyone who exposes the nakedness of his Muslim brother, God will expose his nakedness".

As expounded by the author, privacy, as a component of human dignity, is highly valued in the moral fabric of Islam. The expanse of privacy rights is vast and

ranges from domestic sanctity to interpersonal communication. The author similarly explains that since a firm commitment to virtue serves as a foundation for human relationships, there would be zero tolerance for intrusion of any type. Surah An-Nur, Ayat 27-28 reads;

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَدْخُلُوا بُيُوتًا غَيْرَ بُيُوتِكُمْ حَتَّى تَسْتَأْذِنُوا وَتُسَلِّمُوا - ٢٧
عَلَىٰ أَهْلِهَا ذَلِكُمْ خَيْرٌ لَّكُمْ لَعَلَّكُمْ تَتَّقُونَ

27. O ye who believe! Enter not houses other than

Your own, until ye have asked permission and saluted those in them: that is best for you, in order that Ye may heed (what is seemly).

فَإِنْ لَمْ تَجِدُوا فِيهَا أَحَدًا فَلَا تَدْخُلُوهَا حَتَّىٰ يُؤْذَنَ لَكُمْ وَإِنْ قِيلَ لَكُمْ ارْجِعُوا - ٢٨
فَارْجِعُوا هُوَ أَزْكَىٰ لَكُمْ وَاللَّهُ بِمَا تَعْمَلُونَ عَلِيمٌ

28. If ye find no one in the house, enter not until permission is given to you: if ye are asked to go back, go back : That makes for greater purity for yourselves: and God knows well all that ye do.

(Translation by A.Yusuf Ali).

In, Sahih, Hadith is reported from Abu Musa;

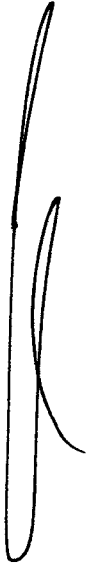
إِذَا اسْتَأْذَنَ أَحَدُكُمْ ثَلَاثًا فَلَمْ يُؤْذَنَ لَهُ فَلْيَنْصَرِفْ

(If any one of you asks for permission three times and it is not given, then let him go away.)

Doubtlessly, the teachings of Islam are for all climes and times.

These preliminaries were necessary given the devastating impact of technology in our social life and the need for impressing upon the teachings of Islam.

8. **Now to facts.**



The case of the prosecution, in a nutshell, is that complainant Mst, Sidra Farhad daughter of Farhad Hussain submitted a written complaint (EX PW 2/1) against the petitioner Naveed Ahmad, wherein it is mentioned that the petitioner-accused has shared her objectionable picture through his WhatsApp number +92 332 1929159 with her father, namely Farhad Hussain (WhatsApp number +923396176448); that complaint was registered, and inquiry was initiated in the matter; that during the course of inquiry statement of the complainant was recorded, statement of Farhad Hussain, father of the complainant. was also recorded who supported the version of the complainant and produced all the relevant evidence including the mobile phone on which the objectionable pictures were received and were taken into possession vide memo (EX PW 3/2).

9. The complainant further stated that the petitioner-accused has extended threats through Facebook ID accessible through the link facebook.com/profile.php?id=100010367388107 for sharing objectionable pictures on social media. The ownership of the SIM number +92 332 1929159 was received from the Telecom company; that accused was directed to attend the FIA office; that on 23.09.2021 accused-petitioner attended the office of FIA CCRC, Peshawar, and on his pointation mobile phone Samsung SM-G610F bearing serial No.RZ9K10Z!9BW was recovered from the motorcar bearing registration No.ARV-320, Chassis No.NZE120-6025310. The mobile phone of the accused, SIM number +92 332 1929159 and WhatsApp account number +92 3321929159 used in the offence were found active in the mobile phone of the accused. The objectionable pictures were also found in the mobile phone of the accused-petitioner and in this respect Technical Analysis report (EX PW 3/3) was also prepared. Consequently, the accused petitioner was arrested and the case FIR was registered against him.

10. After completion of the investigation, complete challan was submitted before the Court. The formal charge against the accused-petitioner was framed to which he did not plead guilty and claimed trial.

11. The prosecution in support of its case examined as many as five witnesses. After the closure of the prosecution evidence statement of accused under section- 342 Cr. PC was recorded, wherein he professed innocence and false implication. He neither wished to be examined on oath within the meaning of section 340 (2) Cr.PC nor opted to produce defense evidence.

12. After hearing arguments of learned counsel for the parties, the learned trial Court vide judgment and order dated 18.04.2022 convicted and sentenced the accused-petitioner for a period of three years RI with a fine of Rs.200,000/- or in default, the accused shall further, undergo simple imprisonment for a period of six months. The accused-petitioner was also convicted under section- 24 PECA of 2016 to undergo rigorous imprisonment for a period of one year with a fine of Rs.20,000/- or in default

accused shall further undergo simple imprisonment for a period of three months and all the sentences were ordered to run concurrently. Benefit of section-382-B Cr, PC was extended to the accused-petitioner.

13. Being dissatisfied with the judgment and order of the learned trial Court mentioned above, Naveed Ahmad the petitioner, filed Criminal Appeal No.01 of 2022 against his conviction and sentence, Mst. Sidra Farhad, the complainant and State filed Criminal Revisions No.08 & 09 of 2022 respectively for the enhancement of sentences awarded to the accused-petitioner Farhad before the learned Additional Sessions Judge-IX, Peshawar (Appellate Court) and after hearing arguments of learned counsel for the parties, the Appellate Court vide impugned judgment and order dated 08.06.2022 modified the sentence and the appellant was convicted with the sentence for a term of Rigorous Imprisonment of two years with a fine of Rs.200,000/- under section-21 of PECA, 2016 or in default of fine, he shall further undergo simple imprisonment for six months and maintained the conviction of the accused-petitioner u/s-24 of PECA, 2016

while the Criminal Revisions No.08 & 09 filed by the complainant and State were dismissed. Hence, the accused-petitioner Naveed Ahmad, complainant Mst. Sidra Farhad and the State have impugned the judgment and order of the learned Appellate by filing Quashment Petition mentioned in the opening paragraph of the judgment before this Court.

14. During the course of the trial, the prosecution examined Farhad Hussain father of the complainant. as (PW-01) who in his examination-in-chief supported the version of the complainant by stating that on 24" March 2021, the sister of the accused facing trial Mst. Rabia Jabeen charged with the murder of his grand daughter, and produced her picture before the Court (EX PW 1/1); thereafter messages were sent he threatened him that if bail of his sister is dismissed (inadvertently written as accepted), that he will be disgraced and humiliated in the society; that the accused also sent/transmitted threatening messages and handed over the same to the FIA officials consisting of 12 pages (EX PW 1/3); that when the bail petition of Mst. Rabia Jabeen, sister of the accused, was

dismissed by PHC, Peshawar, vide order dated 20.09.2021, on the next day, the accused sent him on his WhatsApp number explicit picture's of his daughter and threatened him that if he does not enter into a compromise with them then he will make the picture viral on Social Media. Mst. Sidra Farhad, the complainant, (PW-02) reiterated the same story which she mentioned in her complaint (EX PW 2/1) and further stated that the sister of accused Naveed murdered her niece 11 months ago: that her bail application was dismissed by the august PHC, Peshawar. on 20.09.2021 and on 21.09.2021 the accused sent objectionable pictures to her father and threatened her father that if they don't compromise the matter with her sister, then he will share the objectionable pictures on social Media.

15. Muhammad Noman SI (PW-03) deposed that the inquiry in the instant case was marked to him; that after recording statement of the complainant and her father, he requested the concerned quarter regarding ownership of SIM No.0332-1929159 according to which the same SIM was registered in the name of accused facing trial, the

report whereof is (EX PW 3/1) consisting of two pages; that he seized the mobile phone of complainant/victim's father vide memo (EX PW 3/2), the Technical Analysis Report of seized mobile is (EX PW 3/3) comprising of nine sheets while that of mobile phone seized from accused is (EX PW 3/3-A); that on 23.09.2021 the accused attended the FIA office/PS; that the official recovered the mobile phone along with SIM of the accused and took the articles aforesaid into possession vide memo (EX PW 3/5), arrested the accused vide his card of arrest (EX PW 3/8); that he handed over the case property recovered from the father of the complainant and seized from the accused for Forensic Analysis through Form F-31, which are (EXPW 3/14 & EX PW 3/15) respectively and received the FSL report comprising of 28 pages (EX PW 3/17) along with CD (EX PW 3/17-A), and recorded statements of PWs and that of accused u/s-161 Cr. PC.

16. Muhammad Shoaib Khattak HC (PW-04) deposed that he is the scribe of the complaint (EX PW 2/1), marginal witness to the recovery memo (EX PW 3/2)

through which the I.O took into possession mobile phones from the complainant's father, recovery memo (EX PW 3/5 & 3/6) vide which the IO took into possession mobile phone and vehicle of the accused, vide recovery memo (EX PW 3/12) vide which I.O seized the Facebook account from the accused.

17. Muhammad Faizan Khan AD FIA (PW-05) deposed that he I.O sealed two mobile phones through Forms F-31 with the scope written on the form and the sample of pictures in the instant case; that he searched for the scope mentioned in Forms (PW 3/14 & EX PW 3/15) founded evidence related to the scope provided by the LO and after the detailed analysis, he prepared a report and the sealed mobile phones vide (EX PW 3/17), CD vide memo EX PW 3/17-A)

18. The complainant, her father, and other prosecution witnesses were cross-examined at length by the defence counsel but nothing was elicited from them which could shatter their credibility. As per the forensic analysis report, the presence of the pictures of the lady in the accused mobile phone in the folder having the file path

raw/phone/raw3/DCIM/PICS/, suggest that the pictures are present in the "PICS" folder in the gallery of the accused's mobile while the presence of the complainant's pictures on the accused mobile phone in the folder having the file path raw/phone/raw3/WhatsApp/Media/WhatsApp Images/sent/ suggest that the accused has transmitted the complainant's pictures through WhatsApp and are found in the "sent" folder of WhatsApp and the presence of the complainant's pictures in her father's mobile phone in the folder(raw/phone/raw0/storage/emulated/0/WhatsApp/Media/WhatsAppImages/: File Path) suggests that the complainant's father has received the complainant's pictures through WhatsApp which are found in the "WhatsApp Images" folder of WhatsApp.

19. The available record clearly shows the motive behind the occurrence has reasonably and plausibly been explained by the complainant and her father in their respective statements recorded during the trial.

20. It has thus been proved beyond doubt that the appellant has sent explicit content of the complainant and messages to her father Farhad Hussain. The Prevention of

Electronic Crimes Act 2016 addresses various crimes by the name of Cyber Crimes. Such crimes, though taking various forms, can be broadly classified under the scheme of the Act as either directly targeting an electronic device or using it to facilitate other crimes. The present case concerns transmission through an electronic device as well as cyber stalking used to intimidate and influence the outcome of a murder charge. The transmission of images is the means to achieve the end goal, and charges have been laid under sections 21 and 24 of the Act, which has been duly proved by the prosecution and the petitioner-accused has been rightly convicted and sentenced by the learned lower forums.

21. Finally, it may be observed that both the parties as well as State have availed the remedy of appeal and revisions and now they have filed the quashment petitions under Section-561- A Cr. PC against the judgment and order dated 08.06.2022 passed by the learned Additional Sessions Judge-IX, Peshawar.

22. The circumspection with which the powers under section Section-561- A Cr. PC are exercised is all too

manifest to require repetition. In this case, the prime question turned on the accused transmitting the messages. The courts below examined this aspect in depth, particularly the expert's testimony confirming the transmission of a message through the accused's mobile phone, which in cases involving digital evidence carries considerable weight. Factual findings by lower fora's carry significant weight and cannot be altered at the altar of every doubtful may.

For what has been discussed above, all three quashment petitions mentioned above are dismissed. The benefit of section-382-B Cr. PC has already been extended to the petitioner-accused and the substantive sentences has also been ordered to run concurrently.

Announced:
Dated.05.12.2022.

(S.B)
Hon'ble Mr. Justice Ishtiaq Ibrahim,
(Kausar Ali CS)



JUDGE