

IN THE SUPREME COURT OF PAKISTAN

(Original Jurisdiction)

PRESENT:

Mr. Justice Nazim Hussain Siddiqui, C.J.
Mr. Justice Javed Iqbal
Mr. Justice Abdul Hameed Dogar

CONSTITUTION PETITION NO. 55/2003

Mian Muhammad Shahbaz Sharif ... PETITIONER

VERSUS

Federation of Pakistan through Secretary, Ministry of Interior,
Government of Pakistan, Islamabad & 5 others.

... RESPONDENTS

CPLA NO.791/2004 & CMA NO. 3469/2003

[On appeal against the order dated 17.10.2003 of the Lahore
High Court, Lahore passed in W. P. No. Nil /2003]

Mian Muhammad Shahbaz Sharif ... PETITIONER

VERSUS

The State & 2 others ... RESPONDENTS

For the petitioner: (in both petitions)	Malik Muhammad Qayyum, ASC. Assisted by: Mr. Nazeer Ahmed Bhutta, ASC. Mr. Shoukat Ali Mehr, ASC.
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Mr. Manzoor Ahmed Malik, ASC.
Mr. Abdul Sattar Chughtai, ASC.
Raja Abdul Ghafoor, AOR

For respondents No. 1 & 6:
in Const.P.55/2003
(On notice)

Mr. Makhdoom Ali Khan
Attorney General for Pakistan

For respondent No. 2
in Const. P.55/03
& respondents
in CP 791/2004

Syed Shabbar Raza Rizvi,
Advocate General Punjab.
Ms Afshan Ghazanfar,
Assistant Advocate General.

Date of hearing:

7.4.2004

JUDGMENT

NAZIM HUSSAIN SIDDIQUI, C.J. - This judgment will dispose of Const. Petition No.55/2003 and Civil Petition No.791 of 2004. Mian Muhammad Shahbaz Sharif is the petitioner in both these matters.

2. According to Const. Petition No.55 of 2003 the petitioner is currently the President of Pakistan Muslim League (Nawaz Group), which won the 1997 General Elections with an unprecedented majority. The petitioner's brother Mian Muhammad Nawaz Sharif was elected as Prime Minister of Pakistan and the petitioner as Chief Minister of Punjab.

3. On 12.10.1999, the Pakistan Army took over the administration of the country and the petitioner was taken into custody and remained as such till December 2000. The petitioner was involved in airplane hijacking case, but was acquitted.

4. It is alleged that in December 2000, while the petitioner was in custody, he was forced to board an airplane along with his other family members and was deported to Saudi

Arabia. It is averred that the petitioner travelled to the United States of America for treatment and now a days he is in United Kingdom and is available at the address given in the title of the petition. It is alleged that Government of Pakistan to date continues to insist that some sort of a deal exists under which the petitioner and his family members opted to live in exile, but the same is denied by him with assertion that no such document supporting such deal has ever been produced by the government.

5. The petitioner claims that as President of Pakistan Muslim League (Nawaz Group) he has a constitutional right to participate in the political activities and perform his functions as envisaged in Article 17 of the Constitution of Islamic Republic of Pakistan, 1973. He asserts that the authorities feel threatened by his presence in Pakistan. He states that the respondents are acting in flagrant disregard of the Constitution of Pakistan, which guarantees fundamental rights, principles of natural and political justice, etc. He has alleged that just to keep him out of politics various laws relating to political process were amended and he was not allowed to contest the last general elections.

6. The petitioner claims that he has all along been trying his best to return to the country but was not allowed to do so. He stated that various high officials of the respondents have issued clear statements to the press that he shall not be allowed to come back to the country. According to him, though there are many such statements but the following three are most significant:-

- (1) Faisal Saleh Hayat, Federal Minister for Interior (The Daily Dawn dated 17.01.2002):

“Sharifs won’t be allowed to return.....”

- (2) General Pervez Musharraf (The Daily Jang dated 21.8.2002):

“If they come back, Shahbaz will have to go back to Saudi Arabia and Benazir Bhutto to jail.....”

- (3) Nisar A. Memon, Information Minister (The Daily Jang dated 9.8.2002):

“We will not let Shahbaz Sharif come back.”

7. On the strength of above statements, the petitioner claims that he has sound reasons to believe that he would not be allowed to enter Pakistan. He has emphatically stated that, being a citizen of Pakistan, he has every right to return to the country and the respondents have no lawful authority to refuse or interfere with his return to Pakistan. Further, he claims that he apprehends that he would not be allowed to board a plane for Pakistan and in case he manages to do so, the plane would not be allowed to land in Pakistan. According to him, clear instructions to this effect have already been widely publicized in the print media including Daily "Insaf" dated 23.8.2003: -

“No member of the Sharif family be allowed to land at any airport: Interior Ministry issues written instructions.”

It is also averred that the apprehension of the petitioner is strengthened by the fact that a few months back his wife and daughters came to Lahore but were not allowed to stay and sent back to Saudi Arabia against their wishes.

8. According to Civil Petition No.791 of 2004, on 29.3.2001, a criminal case bearing FIR No.114/2001 was registered at police station Sabzazar, Lahore under Sections 302,365-A, 452, 148, 149, 109 PPC and Section 6/7 of Anti Terrorism Act, 1997 on the written complaint of one Syed Uddin son of Razi Uddin, showing the petitioner and 12 others, namely, Babar Ashraf, Zulfiqar Ahmed, Noorul Hassan, Abid Hussain, Shamshad Ahmed, Munir Ahmed, Muhammad Riaz, Manzoor Ahmed, Lala Roshan, Hakim Ali, Col. (Retd) Muhammad Asghar and son of Col. Muhammad Asghar, as accused of this case. Charge sheet in this case was submitted before Anti Terrorism Court No.III, Lahore and the petitioner was summoned for 10.6.2003. The summon, however, was returned by the process server with an endorsement that the petitioner was in Saudi

Arabia and not in Pakistan. Thereafter, on aforesaid date non-bailable warrant was issued against him and the same was also returned by repeating the above endorsement. Learned trial Court on 17.6.2003 issued a proclamation under Section 87 Cr.P.C. against him. After completion of formalities, perpetual warrant was issued against him by trial Court. The petitioner claimed that he was totally unaware of above criminal proceeding and only came to know about it through newspapers. He sent a fax message to learned trial Court from United States and requested for recalling the order of proclamation. He maintained that his absence was not voluntary and the Court was informed that he was ready to surrender before it and that an appropriate order be passed to enable him to appear, etc. Instead, his request was turned down by learned trial Court vide order dated 2.8.2003. Thereafter a petition was filed before High Court for recalling the order, whereby he was declared proclaimed offender and perpetual warrant of his arrest was issued, which was dismissed on 21.8.2003.

9. Giving further details about the aforesaid case, petitioner stated that the order passed by Anti Terrorism Court No.III, Lahore, was challenged before Lahore High Court and the office raised an objection that the petitioner was an absconder, therefore, the writ petition was not competent, unless he surrendered himself. It is stated that learned counsel for the petitioner in reply to said objection wrote at the reverse of objection proforma that the office objection was not sustainable in law as it amounted to disposal of the writ petition and that the petition be fixed before the Court. It is mentioned that the office repeated the objection that the petitioner is booked in a murder case in which he has been declared proclaimed offender and proceedings for procuring his attendance are pending, as such, under the law he could not seek relief without surrendering himself before the Court. After great insistence of the learned counsel for the petitioner, the matter was put up before learned Single Judge as an 'objection case', but the learned Judge upheld and sustained the office objection, vide order dated 17.10.2003. Hence these petitions.

10. Federation of Pakistan in its reply/comments states that no case is made out for invoking the original jurisdiction under clause (3) of Article 184 of the Constitution of Pakistan and no question of public importance with reference to the enforcement of fundamental rights conferred by Chapter 1 of Part-II of the Constitution has been raised. It is asserted that the case of the petitioner is based on mere apprehension, which does not warrant invoking the extra-ordinary jurisdiction of this Court. Further, it is stated that, at best, the case of the petitioner is in the nature of grievances of personal nature, which do not warrant exercise of jurisdiction of this Court under aforesaid Article of the Constitution. A plea has also been taken that nomination papers of the petitioner were rejected according to law and that these issues could not be reopened in these proceedings. It is urged that legality of said FIR could not be assailed before this Court under above referred Article of the Constitution.

11. Malik Muhammad Qayyum, ASC for the petitioner in both the petitions raised the following contentions: -

- (1) The petitioner, being a citizen of Pakistan, has a natural and inherent right to enter and return to the country, which is guaranteed under Article 15 of the Constitution. Under Article 4 of the Constitution, he has a right to be dealt with in accordance with law and is entitled to enjoy the equal protection of law. The above fundamental rights of the petitioner are being violated by the respondents;
- (2) The respondents, through the press statements cited in the petition, have made it clear that as soon as the petitioner lands at any airport in Pakistan, he will be immediately deported. In the recent past, the family of the petitioner was not allowed to stay in Pakistan and was deported. The petitioner understands that instructions have been issued to all the airports that if any member of the Sharif family comes to Pakistan, he/she should be sent back immediately. When the petitioner comes to Pakistan, he would be immediately sent back and he will have no occasion to invoke the jurisdiction of any Court

in Pakistan; and

- (3) The order passed by the Anti-Terrorism Court in Lahore declaring the petitioner a proclaimed offender is a nullity in the eye of law as held in *N.M.V. Vellayappa Chettiar v. Alagappa Chettiar* (AIR 1942 Madras 289) wherein it is laid down that where the Court is informed that the accused is out of country, the Court cannot declare him a proclaimed offender. Here, the petitioner is willing and ready to surrender before the Court and face the cases against him, but he is not being allowed to do so.

12. Mr. Makhdoom Ali Khan, learned Attorney General for Pakistan, appeared in response to the Court's notice. In Const. Petition No. 55/2003, learned Attorney General for Pakistan raised the following contentions: -

- (1) The petition is not maintainable as it is not based on any grievance or injury suffered. It is based on speculation and apprehension. There is not a single case where the Court has exercised jurisdiction on mere apprehension;
- (2) The petition does not raise a question of public importance with reference to the enforcement of fundamental rights. Hence, jurisdiction of this Hon'ble Court under Article 184(3) cannot be invoked. If the scope of jurisdiction were enlarged, every habeas corpus petition would be filed in the Supreme Court; and
- (3) No evidentiary value is attached to a press report where a person claims a legal right on its basis. The petitioner cannot rely on the press statements for the enforcement of his fundamental rights. The cases where this Hon'ble Court has taken into consideration press reports are distinguishable.

13. Syed Shabbar Raza Rizvi, learned Advocate General Punjab adopted the arguments advanced by the learned Attorney General for Pakistan. He submitted that the jurisdiction under

Article 184(3) and Article 199 is concurrent, co-extensive and co-existent. He further submitted that in the present case, though the petition was dismissed by the High Court on technical grounds, it has not been decided on merits. If the petitioner feels that his fundamental right of access to justice has been denied, he should avail the remedy provided under Article 199 of the Constitution.

14. In rebuttal, Malik Muhammad Qayyum, learned counsel for the petitioner submitted as under: -

- (1) Pursuant to the direction of the Court comments have been filed by the respondents. They have not adverted to the allegations in the petition. Certain legal objections have been raised. Maintainability is to be decided by the Court with the petition. On merits, in paragraph 4, all allegations in the petition are denied. It has been stated that "all actions taken by the respondents are in accordance with law." This is a petition for enforcement of fundamental rights on the basis of assertions made in the petition. In Mian Muhammad Nawaz Sharif's case (PLD 1993 SC 473), the question of maintainability was decided along with the petition;
- (2) In the connected matter, the petitioner had approached the High Court. The High Court held that it would not entertain the petition unless the petitioner first surrendered himself;
- (3) Press reports, unless contradicted, are referred to in support of the respective cases. In the present case, besides other State functionaries, General Pervez Musharraf himself made press statements, which remain uncontradicted to date. The petitioner wants to defend the cases against him. The right to enter, and remain in Pakistan, is a fundamental right. The respondents may arrest him, if he is required in any case; and
- (4) The earliest case on the evidentiary value of the press statements is Islamic Republic of Pakistan v. Abdul Wali Khan (PLD 1976 SC 57). The contents of the press statements in the present case were never

denied by the respondents.

15. It is significant to note that neither in the comments nor during the course of arguments the Federal Government/ Government of Punjab has disputed the right of the petitioner being a citizen of Pakistan to come back to the country nor referred nor brought on record any agreement/document permitting the government to force the petitioner to live in exile.

16. Clause (3) of Article 184 and sub-clause (c) of clause (1) of Article 199 of the Constitution are for the enforcement of any of the fundamental rights conferred by Chapter 1 of Part II. For their proper appreciation, they are reproduced below: -

“Article 184(3): Without prejudice to the provisions of Article 199, the Supreme Court shall, if it considers that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved, have the power to make an order of the nature mentioned in the said Article.”

“Article 199(1): Subject to the Constitution, a High Court may, if it is satisfied that no other adequate remedy is provided by law, - - - -

(c) on the application of any aggrieved person, make an order giving such directions to any person or authority, including any Government exercising any power or performing any function in, or in relation to, any territory within the jurisdiction of that Court as may be appropriate for the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II.”

17. Articles 199 and 184(3) regulate the jurisdiction of the Superior Courts and do not oust it. Perusal of clause (3) of Article 184 unequivocally postulates that two conditions are precedent for invoking said clause. Firstly, the petition must clearly demonstrate that the grievance relates to violation of fundamental rights. Secondly, the violation is of nature of public

importance, which has been interpreted to mean any invasion of individual freedom, liberty, fundamental rights, including effectiveness and safeguard for their implementation. Therefore, having regard to the connotation of the words “*public importance*”, the facts and circumstances of each case would have to be scrutinized on its own merits.

18. With the assistance of learned counsel for the parties, we have surveyed the relevant case law. In Manzoor Elahi's case, (PLD 1975 SC 66), Benazir Bhutto's case (PLD 1988 SC 416), Mian Muhammad Nawaz Sharif's case (PLD 1993 SC 473), Wasey Zafar's case (PLD 1994 SC 621), I.A. Sharwani's case (1991 SCMR 1041) and the Employees of Pakistan Law Commission's v. Ministry of Works (1994 SCMR 1548), questions of general public importance, which affected the people at large, were involved. In Asad Ali's case (PLD 1998 SC 161), the Supreme Court entertained petition directly for the reason that the issue affected the judicial system of the country. The finding and conclusion of the Supreme Court in Syed Zulfiqar Mehdi v. Pakistan International Airlines Corporation (1998 SCMR 793) have never been deviated from. It is advantageous to quote the relevant observation occurring at page 801 of the report, which reads as under: -

“The issues arising in a case, cannot be considered as a question of public importance, if the decision of the issues affects only the rights of an individual or a group of individuals. The issue in order to assume the character of public importance must be such that its decision affects the rights and liberties of people at large. The adjective ‘public’ necessarily implies a thing belonging to people at large, the nation, the State or a community as a whole. Therefore, if a controversy is raised in which only a particular group of people is interested and the body of the people as a whole or the entire community has no interest, it cannot be treated as a case of public importance.”

19. Same view has recently been taken in Watan Party's case (PLD 2003 SC 74). It was a 5 – member Bench judgment to which one of us (Nazim Hussain Siddiqui, now Chief Justice) was a party, wherein reliance was placed on Manzoor Elahi's case and the above view was endorsed. For facility of reference, the relevant observations in the latter case are reproduced below: -

“Now, what is meant by a question of public importance. The term ‘public’ is invariably employed in contradistinction to the terms private or individual, and connotes, as an adjective, something pertaining to, or belonging to the people, relating to a nation, State or community...”

“The learned Attorney-General is clearly right in saying that a case does not involve a question of public importance merely because it concerns the arrest and detention of an important person like a Member of Parliament. In order to acquire public importance, the case must obviously raise a question, which is of interest to, or affects the whole body of people or an entire community.”

Although the Supreme Court thereafter in a number of cases, such as Amanullah Khan v. Chairman, Medical Research Council (1995 SCMR 202) and Mrs. Shahida Zahir Abbasi v. President of Pakistan (PLD 1996 SC 632) has taken a different view, yet the cases under Article 184(3) have been brought within the parameters of the observations referred to above.

20. Learned Attorney General took us through Article 32 of the Constitution of India, which is *pari materia* with Article 184(3) of the Constitution of Pakistan. It is noted that the words ‘*question of public importance*’ are not used in Article 32 of the Constitution of India. The Constitutions of 1956 and 1962 also did not have these words. There is a conscious departure and the words ‘*question of public importance*’ in Article 184(3) have been used with a purpose. The parameters of the jurisdiction under Article 184(3) are that the petition must raise a question

of public importance. In India, where there is no such requirement, the Supreme Court of India, has held that if the scope of Article 32 of the Indian Constitution were to be enlarged, it would immensely increase the dockets of the Court. Such jurisdiction remains with the High Court.

21. Under Article 199 wider powers have been conferred upon High Court than Supreme Court and these powers cover more areas than a mere enforcement of Fundamental Rights. It is significant to note that under Article 184(3), Supreme Court only interferes in cases of violation of Fundamental Rights, which are of public importance, whereas, no such condition is provided under Article 199. Mere fact that a question of arrest or detention of an important person is involved, this by itself is not enough to invoke clause (3) of Article 184. What is essential is that the question so raised must relate to the interest of whole body of the people or an entire community. To put it in other words, the case must be such, which raises a question affecting the legal rights or liabilities of the public or the community at large, irrespective of the fact that who raised such question.

22. Learned Attorney General rightly contended that the present petition, at best, raises an individual grievance and if the scope of jurisdiction under Article 184(3) were enlarged, every habeas corpus petition would be filed in the Supreme Court. However, where a fundamental right has been breached, but the breach is of such a nature that it raises a question of public importance, then a petition can be directly filed in the Supreme Court. In National Steel Rolling Mills v. Province of West Pakistan (1968 SCMR 317), it was held that the Court would not entertain a petition, which had its basis on a premature act. This has recently been followed in two judgments by the Lahore High Court, namely, Zakariya v. Agricultural Development Bank of Pakistan (2002 CLD 953) and Liaqat Ali v. City Nazim (2003 MLD 1635). Clearly, the Court can be moved only when a violation of some legal or constitutional right actually takes place.

23. As far as evidentiary value of press reports is concerned, it is noted that one line of precedents in the jurisprudence of the country is that no evidentiary value is attached to the press

reports and no reliance can be placed on a press report where a person claims a legal right on its basis. The Courts do not decide cases on press reports. In the other line of authorities, such as Wali Khan's case, Ms Benazir Bhutto's case and Mian Muhammad Nawaz Sharif's case, the press reports are relied upon, but these cases are distinguishable. This Court in exercise of its jurisdiction under Article 184(3) does not act as a Court of appeal, but as a Court of review.

24. Basically to believe or disbelieve the press reports is a question of fact and before reaching a positive conclusion such facts need to be examined, keeping in view their intrinsic value. Many such statements are given only for political purposes, but the same cannot straight away be taken as proved nor at their own they create a legal right nor any evidentiary value can be attached to press reports, unless irrefutable evidence is brought on record for establishing their correctness.

25. The contention of learned counsel for the petitioner that already instructions have been issued to all airports that if the petitioner comes back to Pakistan he shall be immediately deported back is without any tangible evidence. No such document has been brought on record in support of this plea. It is merely an apprehension in his mind and its legal adjudication is not possible nor it can be made a basis for invoking extraordinary jurisdiction. Learned Attorney General for Pakistan, during the course of arguments, repeatedly stated that an invitation would not be sent to him for returning to the country. As regards the plea that in the recent past his family members were deported, it is significant to note that neither full particulars regarding alleged deportation have been brought on record nor this plea is to be resolved by this Court within the scope of clause (3) of Article 184 of the Constitution. A petition cannot be entertained merely on apprehension whatever its nature may be.

26. Adverting to the facts of this case, it is noted that the petitioner in Const. Petition No.55/2003 has not raised any question of public importance. It appears that he left the country on his own and

nothing material has been brought on record to substantiate the assertion that he was forced to live in exile. The petitioner has prayed for a relief, which, in fact, always remained available to him and he himself was solely responsible for not availing it earlier. Const. Petition No.55 of 2003 is not maintainable.

27. As far as the plea regarding declaration of the petitioner as proclaimed offender is concerned, it is noted that earlier the petitioner had never taken concrete steps for coming back to the country in spite of the fact that there was no order prohibiting his entry in the country. As such, it would be an exercise in futility to examine the issue. Even a proclaimed offender when arrested has a right to be tried according to law and this right cannot be taken away from him. By remaining absconder one loses certain rights but not the right of trial according to law. Learned counsel for the petitioner, during the course of arguments, submitted that the petitioner is ready to face the cases registered against him and he will not mind even if he is arrested at the airport. Under the circumstances, Civil Petition No.791 of 2004 also fails.

28. It is not denied by learned Attorney General for Pakistan and Advocate General Punjab nor so could be denied that Article 15 of the Constitution bestows a right on every citizen of Pakistan to enter or move freely throughout the country and to reside and settle in any part thereof. It is a settled proposition of law that the right to enter in the country cannot be denied but a citizen can be restrained from going out of the country. The petitioner is a citizen of Pakistan and has a constitutional right to enter and remain in the country.

29. Above are the reasons of the Short Order dated 7.4.2004, whereby above petitions were dismissed as under: -

“During the course of arguments, learned counsel for the petitioner submitted that the petitioner is ready to face the cases registered against him. He also stated that the petitioner will not mind even if he is arrested at the airport.

2. For reasons to be recorded later on, both these petition are dismissed with an observation that the petitioner may come back from abroad subject to the law of the country.”

C.J.

J.

J.

Islamabad

7.4.2004

APPROVED FOR REPORTING