

IN THE SUPREME COURT OF PAKISTAN  
(REVIEW JURISDICTION)

**PRESENT:**

MR. JUSTICE GULZAR AHMED, HCJ

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**CIVIL REVIEW PETITION NO. 526 OF 2020 IN**  
**CIVIL PETITION NO. 923 OF 2020**

*(To review this Court's order dated 21.10.2020 passed in Civil  
Petition No. 923/2020)*

Abid Hussain

... Petitioner

**VERSUS**

Secretary, Ministry of Defence, Government of Pakistan through Chief  
of Air Staff, Islamabad

... Respondent

For the Petitioner: Mr. Manzoor Ahmed Rehmani, ASC  
Ch. Akhtar Ali, AOR

On Court's Call: Mr. Sajid Ilyas Bhatti, Addl. Attorney Gen

Date of Hearing: 16.02.2021

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Through this petition under Article 188 of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner seeks review of the order of this Court dated 21.10.2020 whereby Civil Petition No. 923/2020 filed by him was dismissed.

2. Briefly stated the facts of the matter are that the petitioner while serving as Corporal Technician in the Pakistan Air Force in Administrative Wing at Faisal Base, Karachi, was charged on two counts i.e. under Sections 65 & 71 of Pakistan Air Force Act, 1953 for an act prejudicial to good order and Air Force discipline and for getting firearms training while violating the norms of a disciplinary force at Bhimber, Azad Kashmir in the months of April/May, 2003. However, he was found guilty of charge under Section 71 of the Pakistan Air Force Act, 1953 by the Field General Court Martial vide order dated 07.10.2004 and while dismissing him from service, he was further burdened with rigorous imprisonment for a term of 9 years and 8 months. This order was challenged before the Court of Appeals i.e. Appellate forum, which also concurred with the findings

*of the Field General Court Martial vide order dated 19.03.2005. Being aggrieved by the orders passed by the Field General Court Martial and the Court of Appeals, the petitioner filed Constitutional Petition before the Lahore High Court, Rawalpindi Bench, which was partially allowed vide judgment dated 26.04.2010 wherein the sentence of 9 years 8 months was reduced to 1 year and 6 months SI. The learned High Court while deciding the said petition mainly held that the petitioner has been convicted and sentenced on the basis of solitary statement of one Ghulam Murtaza who was also saddled with similar charge and since his case is at par with Ghulam Murtaza, therefore, the petitioner also deserves the same punishment as recorded against the said Ghulam Murtaza. The petitioner challenged the judgment of the High Court before this Court after ten years by filing Civil Petition No. 923/2020, which was dismissed vide order dated 21.10.2020, hence, the instant petition with prayer to review the said order.*

3. *Learned counsel for the petitioner inter alia contended that the petitioner was charged for committing a civil offence, which under the Pakistan Air Force Act, 1953, does not confer jurisdiction to Field General Court Martial to try the petitioner; that according to the definition clause of the aforesaid Act, "civil offence" means an offence which is triable by an ordinary criminal court; that in this view of the matter, the petitioner ought to have been handed over to a criminal court of ordinary jurisdiction to proceed against him; that as the Field General Court Martial has wrongly assumed jurisdiction, the conviction and sentence awarded to the petitioner has lost its sanctity and the same may be set aside; that this point was raised before the High Court and before this Court in the memo of petition, but this Court in the judgment under review did not consider this point. Lastly, it is contended that the question of limitation is out of the purview as the jurisdictional question was specifically raised but it was not decided.*

4. *On the other hand, learned Additional Attorney General has defended the order under review. He contended that being member of a disciplined force i.e. Pakistan Air Force, the petitioner was supposed to be dealt with under the Pakistan Air Force Act, 1953, and was rightly tried and punished under the relevant law by the Field General Court Martial.*

5. We have heard learned counsel for the petitioner as well as learned Law Officer at length and have also perused the relevant record with their able assistance. It would be in fitness of things to decide the question of venue of trial. The crux of the arguments advanced by the learned counsel for the petitioner is that under the Pakistan Air Force Act, 1953, the Field General Court Martial had no jurisdiction to try the petitioner, rather the same was within the domain of the ordinary criminal court. To resolve this argument, it would be advantageous to reproduce Section 4(xi) & (xvi) of the Pakistan Air Force Act, 1953, which define "civil offence" and "criminal court" in the following language:-

"4(xi) "civil offence" means an offence which is triable by a Criminal Court;

4(xvi) "Criminal Court" means a Court of ordinary criminal justice in any part of Pakistan or established elsewhere by the authority of the Federal Government";

The words "civil offence" and "criminal court" are introduced in the laws enacted to deal with the personnel of the Armed Forces of Pakistan. The word "civil offence" has been defined in Pakistan Navy Ordinance, 1961, in the same language as has been used in the Pakistan Air Force Act, 1953. However, this expression has been outlined more clearly in the Pakistan Army Act, 1952, in the following terms:-

"8(3). "Civil offence" means an offence which, if committed in Pakistan, would be triable by a criminal court."

It is not out of context to mention that in ordinary meanings, the word "criminal court" refers to a court constituted to deal with criminal offences. It is an established rule of interpretation of the statute that any provision of law has to be given its ordinary meanings in ordinary circumstances unless and until it interprets a different connotation. This Court in the case of Dr. Zahid Javed Vs. Dr. Tahir Riaz Chaudhry (PLD 2016 SC 637) has categorically held that "when language of the statute is plain and unambiguous, then the Court must give effect to each word used in the statute and it would not be open to the Courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and

*policy of the Act." The definition of "criminal court" though confines itself to a court established to deal with the criminal acts and omissions but close scrutiny of the language used by the Legislature while defining the word "criminal court" in the three enactments dealing with Armed Forces of Pakistan i.e. Pakistan Air Force Act, 1953, Pakistan Army Act, 1952 and Pakistan Navy Ordinance, 1961, shows that it actually is a departure to give specific meanings regarding the definition of "criminal court" in which the domain of constitution of criminal court has been extended with special emphasis qua the authority of the Federal Government.*

6. *Broadly speaking the expression "civil offence" & "criminal court" are alien to Pakistan Penal Code, 1860 and Code of Criminal Procedure, 1898. Chapter II of Pakistan Penal Code, 1860, deals with "General Exceptions" wherein the word "offence" is defined at number 40 in the following terms:-*

*"40. "Offence": Except in the chapters and sections mentioned in clauses 2 and 3 of this section, the word "offence" denotes a thing made punishable by this Code."*

*However, there is an exception to the general law, which is spelled out from Section 5(2) of the Code of Criminal Procedure, 1898, which speaks about trial of offences against other laws. Section 6 of the Cr.P.C. categorizes the criminal courts into (i) High Court of a Province (in original/appellate jurisdiction), (ii) Courts of Sessions, (iii) Courts of Magistrates.*

7. *Undeniably the petitioner was Corporal Technician i.e. a junior officer, therefore, was "airman" according to Section 4(viii) of the Pakistan Air Force Act, 1953, which says "airman" means any person subject to this Act other than an officer or a warrant officer". According to Section 4(iv) "Air Force" means officers, warrant Officers and airmen.....". Therefore, there is no doubt that the petitioner was subject to the Pakistan Air Force Act, 1953. The petitioner was convicted for the charge under Section 71 of the Pakistan Air Force Act, 1953. The expression "civil offence" is brainchild of the Pakistan Air Force Act, 1953. The same is reproduced as follows:-*

*"71. Civil offences.\_\_(1) Subject to the provisions of section 72, any person subject to this Act who at any place in or beyond Pakistan commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section shall be liable to be dealt with*

*under this Act and, on conviction, be punishable as follows, that is to say :-*

- (a) if the offence is one which would be punishable under any law in force in Pakistan with death or with imprisonment for life, he shall be liable to suffer any punishment, assigned for the offence by the aforesaid law or such less punishment as is in this Act mentioned;*
- (b) in any other case, he shall be liable to suffer any punishment, assigned for the offence by any law in force in Pakistan, or to suffer short imprisonment or such less punishment as is in this Act mentioned;*

*Provided that, where the offence of which any such person is found guilty is an offence liable to hadd under any Islamic law, the sentence awarded to him shall be that provided for the offence in that law".*

*(2) The powers of a court-martial or an officer exercising authority under section 82 or section 86 to charge and to punish any person under this section shall not be affected by reason of the fact that the civil offence with which such person is charged is also an Air Force offence.*

*(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, a person who becomes subject to this Act by reason of his being accused of an offence mentioned in clause (dd) of section 2 shall be liable to be tried or otherwise dealt with under this Act for such offence as if the offence were an offence against this Act and were committed at a time when such person was subject to this Act; and the provisions of this section shall have effect accordingly."*

8. Section 71(1) clearly lays down that if any person who is subject to the Pakistan Air Force Act, 1953, commits a civil offence, he shall be deemed to be guilty of an offence against this Act and shall be liable to be dealt with under the Pakistan Air Force Act, 1953. Sub-sections 1(a) and 1(b) and its proviso prescribe punishment for different kind of offences. The words "any person subject to this Act who at any place in or beyond Pakistan commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section shall be liable to be dealt with under this Act" need no elaborative interpretation.

9. Section 72 of the Pakistan Air Force Act, 1953, is an exception to the aforesaid Section 71. It speaks about civil offences, which are not triable by courts-martial in the following manner:-

*"72. Civil offences not triable by courts-martial. A person subject to this Act who commits an offence of murder against a person not subject to Military, Naval or Air Force*

*law, or of culpable homicide not amounting to murder against such a person, or of zina or zinabiljabr in relation to such a person, shall not be deemed to be guilty of an offence under this Act and shall not be tried by a court-martial, unless he commits any of the said offences:-*

- (a) while on active service, or*
- (b) at any place outside Pakistan, or*
- (c) at a frontier post specified by the Federal Government by notification in this behalf."*

10. *In the case of Said Zaman Khan Vs. Federation of Pakistan (2017 SCMR 1249), the accused although was a civilian but was involved in launching attacks on the Pakistan Army. This Court candidly held that although he was a civilian but due to his acts, he became subject of Pakistan Army Act. It was held as under:-*

*"The offence of which the Convict was accused is obviously punishable under the ordinary law of the lands triable by a Criminal Court, hence, constituted a "civil offence" as defined by subsection (3) of section 8 and liable to be tried by the FGCM in view of the provisions of section 59 of the said Act.*

11. *In the famous case of Cox Vs. Army Council ([1963] AC 48, House of Lords), the petitioner while serving in the British Army in Germany was charged before a District Court Martial under Section 70 of the Army Act, 1955 for committing a "civil offence" i.e. driving without due care and attention contrary to Section 3(1) of the Road Traffic Act, 1960 and was sentenced to be severely reprimanded. He appealed on the ground that the charge under Section 70 of the Army Act, 1955, is not correct as it does not disclose an offence; that the charge is not a civil offence within the meaning of said Section 70, and that the act of driving without care and attention is not an act which can be committed in England. The Court of Appeals dismissed his appeal by holding as under:-*

*"This Court accordingly holds that section 70 is upon its true construction an offence-creating section, and it covers an act committed abroad by a person subject to military law which, if committed in England, would have constituted an offence under section 3(1) of the Road Traffic Act, 1960. The appellant was, therefore, rightly convicted of the civil offence with which he was charged."*

*The definition of the word "civil offence" also came under discussion. The relevant portion of the said judgment reads as follows:-*

*"Before dealing with this argument, it is desirable to analyse section 70 of the Army Act, which provides as follows: "(1) Any person subject to military law who commits a civil offence, whether in the United Kingdom or elsewhere, shall be guilty of an offence against this Section. (2) In this Act the expression 'civil offence' means any act or omission, (a) punishable by the law of England, or (b) which, if committed in England, would be punishable by that law; and in this Act the expression 'the corresponding civil offence' means the civil offence the commission of which constitutes the offence against this section." The letters (a) and (b) have been introduced by this court to facilitate reference hereafter. "Civil offence" means, of course, a civil as opposed to a purely military offence."*  
***(Underlined to lay emphasis)***

The appeal before the House of Lords was also dismissed and in doing so, the House of Lords further elaborated the meaning of word "civil offence" as under:-

*"I have made no mention of a point which may deserve consideration in some future case. It will have been observed that "civil offence" is defined by Section 70(2) as meaning not only any "act" but also any "omission" which, if committed in England would be punishable by the law of England."*  
***(Underlined to lay emphasis)***

12. In view of the above, it can safely be concluded that the word "civil offence" though alien to Pakistan Penal Code, 1860, however, the acts and omissions similar to those offences relating to civilians are ordinarily triable by criminal courts in Pakistan. The expression "civil offence" is exclusively brainchild of the statute relating to the offences committed by members of the armed forces, hence, any person who is subject to law of the armed forces, if commits civil offence, would be dealt with under the procedure laid down in the respective enactments. However, the provision of Section 5(2) of the Code of Criminal Procedure, 1898, is an exception and that can be pressed into to avail the application of said provision for the purposes of taking cognizance to deal with the matter in the spirit of the enactment. The intent of the law makers is that any offence, which is punishable under ordinary law of Pakistan, if committed by a person who is subject to the law of armed forces including Pakistan Air Force, he would be dealt with under the respective law of the armed forces.

13. In view of what has been discussed in the preceding paragraphs, the Field General Court Martial had full jurisdiction to try the petitioner. We have noted that although the point of jurisdiction was taken in the memo of petitions before this Court and the High

*Court but it was never argued. Nonetheless, the petitioner should have taken the jurisdictional point before the court of first instance.*

14. *So far as the merits of the case are concerned, we have noted that this Court in the order under review has very elaborately dealt with the matter in paragraphs 2 & 3 of the order to which no exception can be taken. The said paragraphs read as under:-*

*"2. The petitioner was not alone as there were other persons also who received firearm training, couple of them were in the service of Air Force. One of those was Ghulam Murtaza, who appeared as witness for the prosecution. Ghulam Murtaza in his deposition had stated that he was inquisitive to know as to how the Mujahidin get training in the camps. For such purpose, he obtained one week leave on the pretext of solving domestic problems. He also deposed that the petitioner also obtained training with him. Though such exculpatory statement is not sufficient to convict a co-accused, however, in the evidence it has come on the record that the petitioner did go to the place where other persons were being imparted firearm training. The petitioner stated that he did not go inside where training was imparted; that thereafter he came back with his senior and went to his native town. In his statement, he narrated how he reached that unknown place from Sargodha by public transport and did not inquire his senior where he was going. He also stated that he did not bear the travel expenditure and only when he reached the unknown place, he came to know that it was a firearm training camp. The High Court, while keeping in view the fact that the prosecution witness who confessed his guilt was given less punishment, reduced the sentence awarded to the petitioner from nine years eight months RI to one year six months RI as was awarded to Ghulam Murtaza.*

*3. After ten years of such decision and after getting released from jail after serving his sentence, the petitioner has filed this petition in the year 2020. Keeping aside the delay on one side, we proceeded to examine the merits of the case and found that there was sufficient material on record for awarding punishment. The High Court has already taken a lenient view by reducing the sentence from nine years eight months to one year and six months. No case for interference has been made out. This petition is, therefore, dismissed and leave refused."*

15. *The proceedings carried out by the Field General Court Martial were appropriate and all the legal requirements of law were fully adhered to meet the ends of justice. The petitioner was given full opportunity to plead his case. This Court has repeatedly held that review jurisdiction vested in this Court under Article 188 of the Constitution of Islamic Republic of Pakistan, 1973, read with Order XXVI of the Supreme Court Rules, 1980, can be invoked only when there is an error apparent on the face of the record, or for ends of*



*justice or to prevent abuse of the process of the court. Such jurisdiction is not open to allowing re-hearing or re-arguing the merits of a case. Learned counsel for the petitioner could not point out any error apparent on the face of record, which could warrant interference by this Court. Besides, we have noted that the petitioner had challenged the judgment of the High Court before this Court after a lapse of more than ten years. He could not give any plausible reason for such an inordinate delay. Not challenging the order of the High Court means that the petitioner had accepted the decision. It is a well settled proposition of law that irrespective of the fact that the order is vague, without jurisdiction or illegal, one must approach the competent court of law to challenge the same within time prescribed by law. Where a right is required to be asserted, it has to be done vigilantly and no indulgence can be shown to indolent and negligent litigant.*

16. *For what has been discussed above, this review petition is dismissed.*

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the  
16<sup>th</sup> of February, 2021  
Approved For Reporting  
**Khurram**