

# **SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

## **Present:**

Mr. Justice Asif Saeed Khan Khosa, ACJ  
Mr. Justice Gulzar Ahmed  
Mr. Justice Sh. Azmat Saeed  
Mr. Justice Mushir Alam  
Mr. Justice Umar Ata Bandial

## **Intra Court Appeals No.1 to 5 of 2007 in S.M.C.No.1 of 2007**

[On appeal against order dated 01.11.2007, passed by this Court in S.M.C.No.1 of 2007]

Ch. Iftikhar Ahmed, I.G, Islamabad and another	(in ICA No.1)
Rukhsar Mehdi (Inspector) and another	(in ICA No.2)
Jamil Hashmi, DSP, Islamabad	(in ICA No.3)
Muhammad Ali, D.C, Islamabad	(in ICA No.4)
Khalid Pervaiz, Chief Commissioner, Islamabad	(in ICA No.5)
	<b>Petitioner(s)</b>

## **VERSUS**

The State	(in all cases)
	<b>Respondent(s)</b>

For Appellant No.1 (in ICAs No.1-2)	: Dr. Khalid Ranjha, Sr. ASC Mr. Mehr Khan Malik, AOR
For Appellant No.2 (in ICA No.1)	: Mr. Abdul Shakoor Paracha, ASC
For Appellant No.2 (in ICA No.2)	: Mian Liaqat Ali, ASC
For the Appellant (s) (in ICA No.3)	: Raja Muhammad Ibrahim Satti, Sr. ASC Mr. Mehr Khan Malik, AOR
For the Appellant (s) (in ICAs No.4-5)	: Sardar Muhammad Aslam, ASC
For the State	: Mr. Sajid Ilyas Bhatti, Additional Attorney General
Date of Hearing	: 15.05.2018

## **JUDGMENT**

**GULZAR AHMED, J.**— By these five Intra Court Appeals, the appellants have challenged the common order dated 01.11.2007 passed by this Court in Suo Motu Case No.1 of 2007, by which appellants Ch. Iftikhar Ahmed and Capt. ® Zafar Iqbal in ICA No.1 of 2007 were found guilty of commission of Contempt of Court and awarded sentence under Article 204 of the Constitution of the Islamic Republic of Pakistan, 1973 (**the Constitution**)



read with Section 5 of the Contempt of Court Ordinance, 2003 for 15 days simple imprisonment. Appellants Rukhsar Mehdi and Siraj Ahmed in ICA No.2 of 2007 and appellant Jamil Hashmi in ICA No.3 of 2007 were found guilty of commission of Contempt of Court, under similar provisions, and awarded sentence of one month's simple imprisonment. Appellant Muhammad Ali in ICA No.4 of 2007 and appellant Khalid Pervaiz in ICA No.5 of 2007 were found guilty of commission of Contempt of Court, under same provisions, and awarded sentence till rising of the Court.

2. The necessary facts of the matter relevant for the decision of these appeals are that on 09.03.2007 the President of Pakistan had sent a Reference under Article 209 of the Constitution to the Supreme Judicial Council (**the Council**) against Mr. Justice Iftikhar Muhammad Chaudhry, the then Chief Justice of Pakistan. The Council met same day and fixed the matter on 13.03.2007 for appearance of the Hon'ble Chief Justice of Pakistan. In the meanwhile, it came to be reported in print and electronic media that on filing of Reference, the official vehicles in use of the Hon'ble Chief Justice of Pakistan had been withdrawn from his residence. On 13.03.2007, the Hon'ble Chief Justice of Pakistan, as a mark of protest did not use the official vehicle made available for taking him to the Supreme Court Building for appearance before the Council, walked out of his residence alongwith his lady wife. At this point, when the Hon'ble Chief Justice of Pakistan started walking on foot, the police personnel in the presence of appellants tried to prevent the Hon'ble Chief Justice of Pakistan from proceeding on foot and in doing so a very unfortunate and ugly incident took place when some police personnel proceeded to physically stop the Hon'ble Chief Justice of Pakistan and tried to push him into an official car. This incident was reported in daily "Express" dated 14.03.2007 on which Hon'ble Mr. Justice Javed Iqbal, the then Acting Chief Justice, took suo motu notice



of manhandling of the Hon'ble Chief Justice of Pakistan, who ordered action on judicial side with notice to all concerned whereupon Suo Motu Case No.1 of 2007 was registered and notices were issued and the matter was fixed on 19.03.2007 before a Bench of this Court. Pursuant to notices issued by this Court, appellant Ch. Iftikhar Ahmed, Shahid Nadeem Baloch, appellant Capt. ® Zafar Iqbal and appellant Jamil Hashmi of Islamabad Police attended the Court when notice to the learned Attorney General for Pakistan was issued and matter was fixed on 20.03.2007. On 20.03.2007 again appellant Ch. Iftikhar Ahmed, Shahid Nadeem Baloch, appellant Capt. ® Zafar Iqbal and appellant Jamil Hashmi appeared in Court. Raja Muhammad Irshad, learned Deputy Attorney General, was also in attendance. On this date the Court ordered that a full-fledged inquiry be conducted by Mr. Justice Ejaz Afzal Khan, the then Hon'ble Judge of the Peshawar High Court, regarding manhandling of the Hon'ble Chief Justice of Pakistan by the police. On 29.03.2007 Mr. Justice Ejaz Afzal Khan submitted his report with findings of the inquiry. On 02.04.2007 the matter was again taken up by the Court when appellants Ch. Iftikhar Ahmed (then I.G.), Capt. ® Zafar Iqbal (then S.S.P.), Khalid Pervaiz (then Chief Commissioner) and Muhammad Ali (then Deputy Commissioner) were in attendance. This Court after going through the inquiry report, *prima facie*, viewed the case to be of Contempt of Court against officers present in Court so also against appellants Jamil Hashmi (then D.S.P.), Rukhsar Mehdi (then Inspector) and Siraj Ahmed (then Sub-Inspector) and thus fixed the matter on 04.04.2007 for framing of charge. On 04.04.2007 the matter was again taken up by the Court in the presence of all the appellants when the charge was framed by the Court and reference to Section 4 of the Contempt of Court Act, 1976 read with Article 204 of the Constitution was made. On 11.04.2007, in presence of all the appellants the charge earlier framed on 04.04.2007 was amended to the extent that



reference to provision of Section 4 of the Contempt of Court Act, 1976 was omitted and in its place Sections 3 and 5 of the Contempt of Court Ordinance (V of 2003) were substituted. In the order of the Court of the same day i.e. 11.04.2007 the appellants were called upon to state whether they would like to furnish any other explanation in addition to the explanation furnished in office in response to the charge framed on 04.04.2007 and thereafter the matter was adjourned to 25.04.2007 for consideration of explanations/replies to the amended charge and further proceeding. It appears from the record that on 10.04.2007 appellants Ch. Iftikhar Ahmed, Capt. ® Zafar Iqbal, Khalid Pervaiz, Muhammad Ali, Rukhsar Mehdi and Siraj Ahmed submitted their separate written statements/unconditional apology while appellant Jamil Hashmi submitted explanation/reply to the show-cause notice. Pursuant to the order of the Court dated 11.04.2007 the appellants Ch. Iftikhar Ahmed, Capt. ® Zafar Iqbal, Khalid Pervaiz, Muhammad Ali, Rukhsar Mehdi and Siraj Ahmed individually submitted their second unconditional apology on 24.04.2007 while appellant Jamil Hashmi submitted his unconditional apology on 23.04.2007. So far the unconditional apology of appellant Jamil Hashmi is concerned, the Court had passed order dated 25.04.2007 which is as follows:-

"Raja Muhammad Ibrahim Satti, learned ASC, after reading out the explanation of respondent No.5-Muhammad Jamil Hashmi has insisted that it may be treated as unconditional apology but on plain reading thereof we are of the considered opinion that the explanation furnished does not constitute unconditional apology. Furthermore, earlier explanation of this respondent dated 09.04.2007 justifying his act and conduct has neither been referred to nor withdrawn in the latest explanation.



Being confronted with this position, learned counsel requests for time to withdraw the earlier explanation unconditionally and to submit unconditional apology on behalf of respondent No.5.

Let needful be done in letter and spirit, if so desired, within seven days from today where-after this case may be listed for further proceedings."

3. Pursuant to this order, it seems that the appellant Jamil Hashmi had submitted his unconditional apology on 30.04.2007. The Court thereafter heard the submissions of the parties through their counsel and announced its order on 01.11.2007 by which these appellants were found guilty of commission of Contempt of Court and awarded them sentences, as noted above.

4. Raja Muhammad Ibrahim Satti, learned Senior ASC appearing on behalf of appellant Jamil Hashmi has contended that on 13.03.2007 there was no law of Contempt of Court in the field and the only provision on the basis of which contempt proceedings could have been initiated was the Article 204 of the Constitution. He further contended that the incident which took place on 13.03.2007 was not against the person of Hon'ble Chief Justice of Pakistan as he was not performing judicial functions and at best provisions of Pakistan Penal Code might be attracted but not the Contempt of Court law. He in support of his such submissions made reference to the case of Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan through Secretary & others [PLD 2010 Supreme Court 61]. He further contended that the photograph of the incident published in the daily "Express" dated 14.03.2007 did not show that appellant Jamil Hashmi was present at the scene. He contended that the incident had taken place near Balochistan House while appellant Jamil Hashmi was standing near Marriot Hotel. He also relied upon the clarification published by the newspaper and



the affidavits of Sajjad Ali Qureshi and Ch. Riffat Javed. Relying upon the explanation to Section 5 of the Contempt of Court Ordinance, 2003, he contended that the Court has no power to pass any order or punishment in relation to any act of contempt save in accordance with subsection (1) and further in terms of Section 18(3) truth shall be a valid defence in the case of Contempt of Court. He relied upon the cases of Abdul Hameed Dogar, Former Judge/CJP & others v. Federation of Pakistan/State [PLD 2011 Supreme Court 315] and Syed Masroor Ahsan & others v. Ardeshir Cowasjee & others [PLD 1998 Supreme Court 823]. He also relied upon Suo Motu Case No.1 of 2007 Manhandling of Hon'ble Mr. Justice Iftikhar Muhammad Chaudhry by Police [PLD 2007 Supreme Court 688], Justice Hasnat Ahmed Khan & 3 others v. Registrar, Supreme Court of Pakistan & others [PLD 2010 Supreme Court 806] and Suo Motu Case No.4 of 2010 Contempt proceedings against Syed Yousuf Raza Gillani, the Prime Minister of Pakistan regarding non-compliance of this Court's order dated 16.12.2009 [PLD 2012 Supreme Court 553].

5. We would like to deal with submissions of Raja Muhammad Ibrahim Satti, learned Senior ASC in the first place for that he has raised the arguments which counsel for the other appellants otherwise have not raised. The submission that there was no law of Contempt in the field on 13.03.2007 is based upon the fact that the Contempt of Court Ordinance, 2003 (Ordinance V of 2003) was promulgated by the President of Pakistan on 15.12.2003 and having not been laid before the Parliament under Article 89 of the Constitution, it stood repealed on expiration of 120 days. This very question was considered by this Court in the impugned order when it was noted that Article 270AA was inserted in the Constitution by Constitution 17<sup>th</sup> Amendment Act, 2003, under which the Contempt of Court Ordinance, 2003 was validated and accorded status of a permanent statute. Further



same aspect was also dealt with by this Court in the case of Justice Hasnat Ahmed Khan (supra) in which the Court held that Article 270AA of the Constitution had given protection and permanence to the Contempt of Court Ordinance, 2003. This being the legal position, the submission of the learned Senior ASC that the Contempt of Court Ordinance, 2003 was not in the field on 13.03.2007 is not at all tenable. The further submission of the learned Senior ASC that the incident was not against the Chief Justice of Pakistan, the same on its face is misconceived for that nothing was shown by the learned Senior ASC which could establish the fact that Mr. Justice Iftikhar Muhammad Chaudhry was not the Chief Justice of Pakistan on 13.03.2007. The record shows that the complaint was made to the Court about the incident of 13.03.2007 which complaint specifically mentioned that Mr. Justice Iftikhar Muhammad Chaudhry, Chief Justice of Pakistan has been severely manhandled by the police officials and the then Acting Chief Justice of Pakistan took notice of the same and commenced judicial proceeding under the Contempt of Court law. Merely that on the day i.e. 13.03.2007 Mr. Justice Iftikhar Muhammad Chaudhry was not on duty or performing functions of the Chief Justice of Pakistan itself will not take away from him his position, designation and office that he possessed i.e. Chief Justice of Pakistan. This was further reiterated by the judgment of this Court in the case of Sindh High Court Bar Association v. Federation of Pakistan [PLD 2009 SC 879] and further Article 270AA of the Constitution itself had declared the Proclamation of Emergency of Fourteenth day of October, 1999, the Provisional Constitution Order No.1 of 1999, the Oath of Office (Judges) Order, 2000, Chief Executive's Order No.12 of 2002, Chief Executive's Order No.19 of 2002, the amendment made in the Constitution through the Legal Framework Order, 2002, Legal Framework (Amendment) Order, 2002, and the Legal Framework (Second Amendment) Order 2002, as having been



made without lawful authority and had no legal effect. This being the legal position on record, the argument of the learned Senior ASC altogether falls to ground being wholly baseless and unsubstantiated by any material. Similarly, the submission of the learned Senior ASC that the incident attracted provision of Pakistan Penal Code and not that of the Contempt of Court law is also without any substance and is out-rightly liable to be rejected. The learned Senior ASC has also contended that appellant Jamil Hashmi himself was not the one who manhandled the Hon'ble Chief Justice of Pakistan is also without substance for that under the inquiry proceeding it had been established that the appellant Jamil Hashmi so also many other police personnel had manhandled the Hon'ble Chief Justice of Pakistan. The clarification and the affidavits relied upon by the learned Senior ASC are of no help to him for that these are documents of subsequent dates and apparently are procured one on which not much reliance can be placed. So far the submission of the learned Senior ASC about the truth of the matter, we may note that what the learned Senior ASC is contending is that the appellant Jamil Hashmi had conducted himself in a way a police officer was required to conduct and thus having acted so, he was protected by the provision of Section 18(3) of the Contempt of Court Ordinance, 2003 which did not make him liable for punishment under the said Ordinance. We are altogether unable to understand as to how this argument of the learned Senior ASC fits in the facts and circumstances of the case more so when it is not shown by any mandate of law that the appellant Jamil Hashmi was authorized to rough up or manhandle the Hon'ble Chief Justice of Pakistan. We may, however, note that at the time when Suo Motu Case was being proceeded and heard, none of the above submissions were made by the learned Senior ASC rather what transpired in the Suo Motu Case, the same is reflected in the impugned order which is as follows:-



"6. Six out of seven contemnors straightaway tendered written unconditional apology whereas the seventh, Mr. Jamil Hashmi, Deputy Superintendent of Police, submitted a conditional apology. He expressed his respect for the dignity of Court but denied involvement in any way in the incident. Subsequently, however, he also tendered unconditional apology withdrawing his earlier statement.

7. As the contemnors had tendered unqualified apologies and decided not to contest the charge framed against them the learned counsel, Mr. Mujeeb-ur-Rehman, Mr. Raja Muhammad Bashir and Mr. Raja Muhammad Ibrahim Satti, appearing for the contemnors prayed for total forgiveness in view of the repentance shown by them and their long unblemished public service. Alternatively they pleaded for lenient treatment. In support of their submissions, they cited the judgments of this Court Habib Wahab-ul-Khairi v. Khan Abdul Wali Khan [PLD 1978 Supreme Court 85], A.K.M.A Alwal v. The State [PLD 1959 Supreme Court 66], Fakhre Alam v. The State [PLD 1973 Supreme Court 525] and Raja Muhammad v. The State [1990 SCMR 215]. Mr. Makhdoom Ali Khan, learned Attorney General for Pakistan, quoting from Arlidge Eady on Contempt (third Edition) and referring to Yusuf Ali Khan v. The State [PLD 1970 Supreme Court 350] submitted that the Courts generally show magnanimity to contemnors who purge themselves by tendering unconditional apology and throwing themselves at the mercy of the Court."

6. It is trite law that appeal is continuation of the original proceeding but at the same time we observe that it is also established law



that a party cannot set up a new case altogether in appeal which it had not pleaded in the original proceeding. Despite this being the established legal position, the arguments of the learned Senior ASC for the appellant Jamil Hashmi have been addressed and dealt with by us. Raja Muhammad Ibrahim Satti, learned Senior ASC has also contended that the appellant Jamil Hashmi having submitted unconditional apology, the Court in its generosity, ought to have considered such unconditional apology with light heart and discharge him from the contempt proceedings.

7. Dr. Khalid Ranjha, learned Senior ASC for appellant No.1 Ch. Iftikhar Ahmed in ICA No.1 of 2007 has also made elaborate arguments where he sets out the history of contempt law and referred to the inquiry report of Mr. Justice Ejaz Afzal Khan and ultimately contended that the appellants in this appeal having submitted their unconditional apology, remorse and such apology being bonafide, the Court while looking with soft heart will show magnanimity and clemency and in such circumstance will not become vindictive. He, thus, contended that the sentence against this appellant be set aside and he be discharged from the contempt proceeding. Mr. Abdul Shakoor Paracha, learned ASC for appellant No.2 Capt. ® Zafar Iqbal in ICA No.1 of 2007 has adopted the arguments of Dr. Khalid Ranjha, learned Senior ASC. Mian Liaquat Ali, learned ASC appearing for appellant No.2 Siraj Ahmed in ICA No.2 of 2007 also adopted the arguments of Dr. Khalid Ranjha, learned Senior ASC.

8. Sardar Muhammad Aslam, learned ASC for appellant Khalid Pervaiz and Muhammad Ali in ICA Nos.4 and 5 of 2007 has contended that these appellants had not personally stopped the Hon'ble Chief Justice of Pakistan from proceeding to the Court but admitted their presence at the place of incident and sought mercy for that bonafide apologies had been submitted by them.



9. Mr. Sajid Illyas Bhatti, learned Additional Attorney General has supported the impugned order but has contended that the apologies appear to be bonafide but still the Court has the power to pass order of accepting or rejecting the same.

10. Basic thrust of the argument of the learned ASC for the appellants was that the appellants having submitted unconditional apologies at the earliest possible opportunity, thus they ought to have been shown mercy by the Court and their unconditional apologies accepted and discharged them from the contempt proceeding. We may note that the very principle of submission of unconditional apology by the alleged contemnors in Contempt of Court proceeding has been elaborately dealt with by a seven member bench of this Court in the case of Syed Masroor Ahsan (supra) where after considering the whole subject of Contempt of Court law and plethora of judgments given by the Courts of Pakistan so also of foreign jurisdiction, laid down the following principles:

"96. It is, therefore, quite apparent that if apology is tendered it would not automatically purge the contemner from the contempt and may not necessarily be accepted unless the Court from surrounding circumstances is satisfied about his bona fides. The acceptance or rejection of apology, therefore, depends upon the volume and nature of contempt allegedly committed. However, prepondered view revolves around the bona fides of the contemner and satisfaction of the Court about genuineness of the apology being tendered.

97. Some of the fundamentals for accepting the apology can be enumerated as:



- (a) The apology must be offered at the earliest stage of the contempt proceedings and may not be postponed till far-end of the proceedings.
- (b) The apology must be unconditional, unreserved and unqualified.
- (c) The apology should not only appear but must also satisfactorily represent sincere and genuine remorse and should not be half-hearted or mere formality.
- (d) The contemner should not endeavor to justify his conduct."

11. The above principles laid down in the case of Syed Masroor Ahsan (supra) is good law and is being followed by the Courts in Pakistan while dealing with the cases arising under the Contempt of Court law. In the light of the principles so laid down by this Court and quoted above, we have examined purported unconditional apologies submitted by each of the appellants in the cases. At the outset we may note that the incident which took place on 13.03.2007 and notice of it was taken by the Hon'ble Acting Chief Justice, the very next day i.e. 14.03.2007 and notices were ordered to be issued. On 19.03.2007 and 20.03.2007 appellants Ch. Iftikhar Ahmed, Capt. ® Zafar Iqbal and Jamil Hashmi did not submit any unconditional apology. The Court ordered holding of inquiry by Mr. Justice Ejaz Afzal Khan, who on 29.03.2007 submitted the inquiry report with findings. On 02.04.2007 the matter was again taken up by the Court when appellants Ch. Iftikhar Ahmed, Capt. ® Zafar Iqbal, Khalid Pervaiz and Muhammad Ali were in attendance before the Court when too no unconditional apology was submitted by these appellants and the Court on examining the inquiry report prima facie found that case for Contempt of Court against these appellants so also against appellants Jamil Hashmi, Rukhsar Mehdi and Siraj Ahmed



was made out. The case was posted for 04.04.2007 and on this day all seven appellants appeared before the Court but still they did not submit unconditional apology and the Court proceeded to frame charge against them and adjourn the matter to 11.04.2007. It was only on 10.04.2007, a day before the next date of hearing, all the appellants except appellant Jamil Hashmi submitted their unconditional apology while appellant Jamil Hashmi submitted explanation/reply to the show-cause notice. Appellant Jamil Hashmi submitted unconditional apology on 23.04.2007, which as noted above, has already been dealt with by the Court vide order dated 25.04.2007. The striking feature of the unconditional apologies submitted by all the appellants except appellants Muhammad Ali, Jamil Hashmi and Siraj Ahmed, is that they are stereotype and some of the words appearing in them have been mis-spelled and none of them cared or bothered to correct them and it shows there was no application of mind by these appellants which rather seem to have been submitted in posthaste after the charge has been framed against these appellants. Yet again appellant Ch. Iftikhar Ahmed, in his apology dated 10.04.2007 has tried to justify his act on the basis of security warning while appellant Rukhsar Mehdi & Siraj Ahmed have referred to their alleged unblemished service record. Appellant Muhammad Ali, in his written unconditional apology, narrated important circumstances on the basis of which he had claimed mitigation of his action of 13.03.2007. The explanation and unconditional apology submitted by the appellant Jamil Hashmi dated 10.04.2007 and 23.04.2007 respectively stood already declined by the Court vide order dated 25.04.2007. The further unconditional apology submitted by the appellant was obviously based upon after-thought when he became apprehensive of the fact that the Court would proceed against him and would take action for commission of Contempt of Court. In the first place, the appellants did not submit their unconditional



apology at the earliest stage of contempt proceeding rather they all deferred the submission of unconditional apologies till the charge was framed against them when it became clear to all appellants that the Court was taking the matter seriously and apprehension occurred to them that they might be held guilty for commission of Contempt of Court. Thus, all the unconditional apologies submitted by all the appellants are neither the one which could be considered to have been submitted at the earliest stage of contempt proceedings nor such unconditional apologies, as submitted by the appellants, appear unconditional, unreserved or unqualified nor shown sincere and genuine remorse rather they appear to be half-hearted merely to fill up formality and further in their unconditional apologies, the appellants have even tried to justify their conduct which had become cause of contempt proceeding. Obviously, such apology did not satisfy the requirement of law and the appellants could not seek their discharge for that in the very unconditional apology all the appellants had categorically admitted their conduct against the Hon'ble Chief Justice of Pakistan on 13.03.2007. The best which the appellants could have done was that on the very first day when the contempt proceedings were taken up, they should have filed unconditional, unreserved and unqualified apology showing their sincere and genuine remorse and thrown themselves at the mercy of the Court but as the facts of the case show that such did not happen. Further the gravity of the conduct of the appellants is also to be seriously taken note of in that on 13.03.2007 they had physically roughed up, manhandled, pushed, bundled and physically forced the Hon'ble Chief Justice of Pakistan, the head of the highest judicial forum of the country, to sit in a car. This in itself is a serious and grievous nature of Contempt of Court by which the holder of highest judicial office of the country was dealt with, handled, restrained physically in the eyes of the public and also in the presence of print and electronic media



could not, by any means, be considered as a minor incident which could be let off by submission of unconditional apology rather such conduct while requiring serious attention required visitation by exemplary punishments for the conduct of the appellants as it had jolted and rattled the very edifice of the judicature, as provided in the Constitution, and seriously undermined and brought the authority of the Court or administration of justice into disrespect, disrepute or interfere with or obstruct or interrupt or prejudice the process of law and due course of any judicial proceeding. Looking at the grave nature of Contempt of Court having been committed by the appellants, in our estimation, by the impugned order passed in the Suo Motu proceeding they had been dealt with quite leniently. Such being the case, we find no merit in these appeals which are dismissed. The appellants are in attendance, they, other than those sentenced to imprisonment till rising of the Court, are to be taken into custody and to be lodged in Central Prison, Rawalpindi, to serve out their respective sentences.