

Yahya Afridi, J. – I have had the privilege of going through the detailed opinion of Justice Qazi Faez Isa, the Chief Justice, as well as the additional notes of Justice Syed Mansoor Ali Shah and Justice Syed Hasan Azhar Rizvi, in furtherance to the unanimous short opinion of this Court dated 06.03.2024 (**“Short Opinion”**).

2. I find myself in agreement with the observation of Justice Syed Mansoor Ali Shah that certain portions of the detailed opinion of the Chief Justice verge on reappraisal of evidence in a case that has already been finally decided by this Court in its adjudicatory jurisdiction, and thus, the same exceed the scope of the inquiry delineated in the Short Opinion that **‘[i]n its advisory jurisdiction under Article 186 of the Constitution, this Court cannot reappraise the evidence and undo the decision of the case’**.

3. As to the question of law, whether the requirements of due process and fair trial were complied with in the murder trial of Mr. Zulfiqar Ali Bhutto, the former Prime Minister of Pakistan, by the trial court (the Lahore High Court) and the appellate court (the Supreme Court), I fully concur with the observations given in paragraphs no. 23 to 25, 31, 58 to 64 and 67 to 76 of the detailed opinion rendered by the Chief Justice, as well as paragraph no. 8 of the note authored by Justice Syed Mansoor Ali Shah, which highlight the violations of procedural due process and fair trial requirements.

4. I also record my concurrence, for the reasons given therein, with the view of Justice Syed Hasan Azhar Rizvi that the observation of the Chief Justice – that Article 185(2)(b) of the

Constitution and sections 411-A and 526 of the Code of Criminal Procedure, 1898 do not permit the High Court to conduct a murder trial – is untenable, as it is founded on a misconception of these provisions. I further agree with the opinion of Justice Syed Hasan Azhar Rizvi that Chapter XXVII of the Code of Criminal Procedure, 1898 does not extend to death sentences passed by the High Court in the exercise of its original criminal jurisdiction. Consequently, I respectfully differ from the view of the Chief Justice that these provisions necessitate confirmation of such sentences or lead to the forfeiture of the right of appeal, as such an interpretation is contrary to the established legal framework.

5. It is, however, very pertinent to note that the present reference was avowedly filed against the backdrop of the restoration of the judiciary and the proactive role of the restored judiciary in addressing the matters of public importance. In this context, the reference drew attention, *inter alia*, to the 'admission' of former Chief Justice of Pakistan, late Justice Nasim Hasan Shah, regarding external pressures in the decision of the appeal of Mr. Zulfiqar Ali Bhutto, which the reference described as a regrettable chapter in judicial history of our nation.

6. In consideration of the above, I am of the view that this reference might never have come before us but for the events recounted and the facts disclosed in the interview and autobiography of Justice Nasim Hasan Shah. Accordingly, it is both relevant and necessary to address certain aspects of that interview and

autobiography, which raise significant concerns regarding the due process and fairness of the trial of Mr. Zulfiqar Ali Bhutto, as discussed in the following paragraphs.

7. In the Supreme Court judgement, Justice Nasim Hasan Shah rejected the contention that the trial of Mr. Zulfiqar Ali Bhutto was vitiated by bias on the part of Justice Maulvi Mushtaq Hussain, who presided over the Lahore High Court Bench that conducted the trial. However, this stance stands in direct contradiction to his later remarks in an interview with Iftikhar Ahmad for the program *Jawab Deyh*. In the aforesaid interview, Justice Nasim Hasan Shah described Justice Maulvi Mushtaq Hussain as an overt enemy of Mr. Zulfiqar Ali Bhutto, expressing that he should not have been part of the Lahore High Court Bench. In fact, the presence of Justice Maulvi Mushtaq Hussain on the Lahore High Court Bench was referred to as "*Ziadati*", a term that, within the context of the trial, could only be interpreted as bias. This clear contradiction in the views of Justice Nasim Hasan Shah raises concerns about the evaluation, in the appeal, of the question of bias on the part of Justice Maulvi Mushtaq Hussain.

8. Justice Nasim Hasan Shah revealed certain facts in his autobiography *Memoirs and Reflections*, which suggest that his inclusion in the Bench for the purpose of hearing the appeal of Mr. Bhutto was orchestrated by the Attorney General Sharifuddin Pirzada and Justice Maulvi Mushtaq Hussain. Such manipulation of the Bench composition undermines judicial impartiality and raises

serious concerns about the fairness of the proceedings. It also shows that Justice Maulvi Mushtaq Hussain pursued the matter zealously even after the High Court had decided the case and the appeal was pending before the Supreme Court, despite his role having concluded with the decision of the High Court. This unwarranted involvement after conviction blurred the boundaries of judicial propriety and further eroded confidence in the impartiality of the appellate process.

9. The above account of events effectively undermines the duly expected impartiality of judicial decision-making in the trial of Mr. Zulfiqar Ali Bhutto. Such events, if left unaddressed, risk eroding public confidence in the fairness of the judicial process.

10. The extraordinary political climate of the time and the pressures inherent in such an environment appear to have influenced the course of justice in a manner inconsistent with the ideals of judicial independence. It is a sobering reminder of how deviations from constitutional governance can exert undue influence on judicial proceedings in politically charged cases, undermining the ideals of impartiality and due process in such exceptional circumstances. This also accentuates the importance of recognizing the courageous dissents of Justice Dorab Patel, Justice Muhammad Haleem and Justice G. Safdar Shah who stood their ground despite the prevailing atmosphere. Their dissents, even if unsuccessful in altering the outcome, remain a testament to the enduring principles of judicial integrity and impartiality, underscoring the value of an independent judiciary committed to the rule of law.

Opinion

11. In light of the foregoing discussion, I am of the considered opinion that the requirements of due process and fair trial were not complied with in the murder trial of Mr. Zulfiqar Ali Bhutto by the trial court and the appellate court.

Judge

Islamabad.

17th December, 2024.

Approved for reporting.