

**IN THE SUPREME COURT OF PAKISTAN**  
(Original Jurisdiction)

Present.

**Mr. Justice Iftikhar Muhammad Chaudhry, HCJ**  
**Mr. Justice Khilji Arif Hussain**  
**Mr. Justice Tariq Parvez**

**Const. P.77 of 2010 and HRCs No.13124-P, 40303-P,  
40220-G and 43103-B/2011 And C.M.A. 42-43/2012**

President Balochistan High  
Court Bar Association

Petitioner

**VERSUS**

Federation of Pakistan & others

Respondents

AND

**C.M.A NO.431 OF 2012 In Const. Petition No.77 of 2010**  
(Gruesome & Sensational Murder of wife and daughter  
of Mir Bakhtiar Domki at Karachi on 30.01.2012)

AND

**C.M.A NO.178-Q OF 2012 In Const. P.No.77 of 2010**  
(Appeal for missing persons cases of Balochistan)

For the petitioner (s):

Syed Ayaz Zahoor, Sr. ASC  
Mr. Hadi Shakeel Ahmed, ASC  
Mr. Kamran Murtaza, ASC  
Syed Qair Shah, ASC  
Malik Zahoor Shahwani, Adv.  
President Balochistan High  
Court Bar

Complainants:

Mr. Nasrullah Baloch,  
Voice for Baloch Missing Persons

Ms. Sumaira Baloch,  
Azam Khan and  
Ms. Rukhsana Baloch

On Court Notice: Malik Sikandar Khan, DAG

For Govt. of Balochistan: Mr. Amanullah Kanrani,  
Advocate General  
Mr. Naseebullah Bazai, Secy.  
Home Deptt.  
Rao Amin Hashim, I.G. P.  
Mr. Ahsan Mahboob, CCPO, Quetta  
Mr. Hamid Shakeel, DIG Quetta  
Qazi Abdul Wahid, DIG Operation  
Mr. Noshed Younis, AIG Crime/Focal  
Person for Missing Persons.  
Mr. Fared Barech, SP Operation  
Fayaz Bhatti, SP Investigation  
Muhammad Tariq, SP City  
Noor Muhammad, SHO  
Zafar Iqbal, Dy.Dir. Home Deptt.

For FC Maj.Gen.Obaidullah, IG

For Sindh Police: Mr. Mushtaq Mahr, DIG. CID  
Mr. Naeem Sheikh, SSP

For M/o Defence & IB: Nemo

Date of Hearing : 06-04-2012

**ORDER**

In pursuance of earlier order of this Court dated 05.04.2012, the learned Deputy Attorney General, in respect of the statement made by the Provincial Ministers namely M/s Sadiq Umrani and Ali Madad Jattak, dated 06.02.2012, on the floor of House of Provincial Assembly, whereby they involved FC Personnel in kidnapping two persons and consequently murdering them in the area of Mastung, has submitted that such statement has been contradicted by the PRO of Inspector General of FC on 07.02.2012 and this report also appeared in various Newspapers.

2. Apparently, the allegations are of very serious nature and entail independent consequences in terms of Article 63(1)(g) of the Constitution, which reads as under:-

*63(1) A person shall be disqualified from being elected or chosen as, and from being, member of the Majlis-e-Shoora (Parliament), if-*

*(a) ....*

*(b) ....*

*(c) ....*

*(d) ....*

*(e) ....*

*(f) ....*

*(g) he has been convicted by a court of competent jurisdiction for propagating any opinion, or acting in any manner, prejudicial to the ideology of Pakistan, or the sovereignty, integrity or security of Pakistan, or the integrity, or independence of the judiciary of Pakistan, or which defames or brings into ridicule the judiciary or the Armed Forces of Pakistan, unless a period of five years has lapsed since his release;*

We *prima-facie* are of the opinion that contradiction on behalf of Inspector General of FC itself is not sufficient, as compared to the statements of two chosen representatives on the floor of the House of Assembly because presumption is that a representative, who takes oath under the Constitution, is fully aware of consequences of the statement, whichever is being made.

3. We had directed the learned Attorney General for Pakistan to appear before this Court in the instant case, particularly, in the context of said statements to provide assistance that how the controversy can be

resolved because on the one hand there is a Force i.e. FC, which has been called out to assist the civil administration and on the other hand there is a statement on the floor of the Assembly made by the representatives, but he has not attended the Court and sent a request for adjournment stating that he could not reach Quetta. In view of the importance of the matter regarding law & order situation, prevailing in Balochistan Province, it was his duty to be present here because he is the person, who represents the Federation and for such reason he should have made arrangements before time to reach Quetta to attend this Court instead of giving preference to other matters at Islamabad and thereby he has not given any importance to this Court. Therefore, we record our displeasure and direct him to be careful in future to attend this Court instead of giving preference to his other professional engagements. However, we postpone this case with direction that he should collect necessary documents and provide assistance in this behalf.

4. Meanwhile, the learned Advocate General is also put to notice to look into this aspect carefully and provide assistance to pass an appropriate order in this behalf.

5. The learned Deputy Attorney General has stated that directions relating to the Federal Government shall be adequately responded to before the next date of hearing, as on account of non-availability of the learned Attorney General instructions have not been obtained from the concerned quarters.

6. Mr. Hamid Shakeel, Acting DIG (Investigation) has stated that he would submit a comprehensive report about the status/position of Hafiz Saeed-ur-Rehman S/o Allah Bakhsh, who is missing since 2003 and in view of the letter dated 06.06.2009, received from Ministry of Interior, National Crisis Management Cell, Islamabad, he is undergoing imprisonment in Gujranwala Jail. He is directed to collect a report and submit the same to the Registrar of this Court by Monday i.e. **09.04.2012** through fax for our perusal in Chambers. A copy of the same shall also be handed over to the President, Balochistan High Court of Bar Association.

7. Similarly, the Inspector General of Police and Home Secretary, Balochistan are directed to collect the names of the missing persons from the President of Balochistan High Court Bar Association, who would prepare a list on the basis of the reports received from Pakistan Human Rights Commission and make all

necessary efforts to trace out them. Needless to observe, if any one of them is found involved in the cases relating to any offence, they should be charged according to the relevant provisions of law instead of illegally detaining them by any of the agencies. We have repeated time and again that as far as the detention of such persons/missing persons is concerned, it cannot be condoned unless it is proved that they are involved in some of the cases.

8. It is also to be noted that in the list prepared by the Home Secretary about 265 persons have died in target killings on sectarian reasons and only few persons have been arrested and so far no breakthrough has been made either by the police or by the Levies, although such incidents are being repeated off and on as during the last 10 days two incidents took place and prior to it, 15; 39; 81; 118; and 10 persons have been killed in 2008; 2009; 2010; 2011; and 2012, respectively. Both the agencies are directed to probe into the matters, bring the accused persons into book so they may face trial before the Courts of law. In this behalf, they are also directed to take interest in tracing out the accused persons, who are involved in the commission of offence because *prima facie* it seems that in number of cases the accused persons have not been traced out so far and the cases are pending investigation without any progress.

9. It has been informed by the Home Secretary that 227 Personnel of Frontier Corps have been killed during this period on account of target killings. The IGP should also point out that as to whether FIRs of such cases have been registered and if so, what is the progress of the cases, and if any accused is involved therein then as to whether he has been tried by the Courts and what are the results of the trial.

10. During the course of hearing, we have noted with great concern that two persons had died in the area of Saryab and an FIR to this effect was registered against unknown persons, but the police without showing much interest except registering the case had not made any progress. Similarly, it has been reported that in the same manner two persons were found dead today in the area of Mastung, one of them has been identified as Hafiz Munawar. The Home Secretary and Inspector General of Police, Balochistan are directed to look into this case as well and trace out the culprits.

11. We may point out that as far as commission of the ordinary offences is concerned, the same do take place in the society on account of different considerations between the inhabitants, but in the cases where there are target killings; kidnappings/abductions for ransom; missing persons; and dead bodies are found, the law

enforcement agencies are not taking interest otherwise we are of the opinion, as also observed in order dated 05.04.2012, that they are capable to deliver, however, it seems that interest with commitment is not being shown and such matters are taken by them lightly.

12. It is to be noted that in view of the grave situation of law and order, prevailing in the Province lot of problems are generated and as there are allegations and counter allegations against different sects and persons, therefore, the Provincial Administration as well as Federal Government must take interest and ensure that the rule of law is fully restored without any concession to any one whosoever be he, otherwise it would entail its own consequences.

13. No report has been submitted in respect of Dr. Din Muhammad, missing since long. The Inspector General of Police is directed to take all necessary steps to effect his recovery as *prima facie* there is sufficient clue available on record to trace him out and in this behalf, if need be, the IGP may hold a meeting with other law enforcement agencies like FC and secrete agencies working in the Province for the purpose and ensure that all those persons, who are missing, are traced out without further wastage of time.



14. Vide order dated 05.04.2012, directions were also issued to recover and produce the persons, who are missing with effect from 01.03.2012 from the area of New Saryab. In compliance of the order Muhammad Javed, Hazar Khan and Mazar Khan Sons of Habib Khan Murree and Malik Sher S/o Amir Khan Murree have been produced and according to the SHO, PS New Saryab FIR No.36 of 2012 dated 05.04.2012 has been registered against them under Sections 34, 365, 147, 148 & 149, PPC. It has also been stated in the report that on 22.03.2012 Muhammad Sher and Muhammad Hanif Sons of Habib Khan and Laal Muhammad S/o Doran Khan and Mir Khan S/o Amir Khan, who were also included in the missing persons, have returned to their homes. Mst. Sumaira, who is one of the relatives of the aforesaid missing persons, has confirmed that they have already come back, but so far as Amir Khan s/o Gul Bahar, Gul Mir and Mir Khan are concerned, they have not been produced. According to the report submitted by SHO, they are making efforts to effect their recoveries. The Home Secretary and IG Police are directed to effect their recovery and submit report by fax on or before 10<sup>th</sup> April, 2012 to the Registrar of this Court for our perusal in Chambers and passing appropriate orders, if need be.

15. One Adam Khan son of Haji Sher Muhammad appeared and stated that his brother Mazar Khan was

picked up by some persons in presence of Noor Muhammad, SHO and despite of his hue and cry, the SHO has not listen to him and so far his brother has not been recovered. The SHO, present in Court, in connection with some other cases, has stated that without prejudice to the plea of the applicant, he may be allowed an opportunity to recover his brother. He is allowed to do so and submit report through his IG Police to the Registrar of this Court by tomorrow i.e. **07.04.2012**, which shall be put up in Chambers for our perusal and passing appropriate orders, if need be.

16. One Ms. Rukhsana Baloch has appeared and stated that on 03.04.2012 his brother Dr. Naseer alongwith his two friends namely Akhtar Lango and Hafeez Rodaini were picked up from a Hotel near their house and that the matter has been reported to the police, but so far no action has been taken. When inquired from the IG Police, he stated that as per the version of Muhammad Tariq, SP City, Quetta, a report has been registered in the daily Roznamcha about the missing of three persons. However, when asked as to why FIR has not been registered, he stated that as the complainant Ali Muhammad Baloch has nominated the officials, therefore, FIR was not registered. The explanation offered by him is not acceptable because he should have proceeded in accordance with law. We failed

to understand that how and under what authority from an area where the police has jurisdiction, the citizens are being picked up in the manner, as it has been stated before us by various complainants. However, the IG Police ensures us that recovery of these persons shall be affected and the law shall take its own course. Intimation in this behalf shall be submitted to the Registrar of this Court by **10.04.2012** for our perusal in Chambers.

17. Mr. Sajid Tareen, Vice President of Balochistan High Court Bar Association has submitted an application wherein he stated that in the month of February, 2012 thirty (30) persons were picked up in presence of Azam Bazai, Tehsildar from the area of Tutak Sub Tehsil Baghbana, District Khuzdar and their properties were also set on fire. However, later on 14 persons have been released, but 16 persons are still missing. Notice of this application be given to the Home Secretary with direction to take all necessary steps to effect recovery of the aforesaid 16 persons. Meanwhile, Home Secretary shall also examine the Tehsildar and record his statement. He should complete this exercise and submit report to the Registrar on or before 16

Mr. Zahoor Shahwani and Mr. Sajid Tareen, President and Vice President of High Court Bar Association, Balochistan, respectively.

18. It has been informed that investigation in the murder case of granddaughter of Nawab Akbar Bhugti has been handed over to Mushtaq Ahmad Mahr, DIG, CID because Shabbir Sheikh, Additional IG, who was earlier conducting the investigation has left the country for America for a departmental course over there, although in view of the importance of the case we had not allowed him to leave the country before completion of the investigation of the case. It has been stated that IG Police, Sindh himself is conducting the investigation, which is likely to achieve the result within a short time. However, we are not satisfied with this report. Let the IG Police, Sindh appear and explain. He should also examine that if need be, Shabbir Sheikh shall be called back so that investigation of the case may come to its logical conclusion.

19. In response to our order dated 05.04.2012, the learned Advocate General, Balochistan, has placed on record a report on behalf of the Secretary Local Government with regard to non holding of elections. No such report has been received from other provinces, perhaps, on account of non-attending the Court by the learned Attorney General for Pakistan. Same process be

repeated to the learned Attorney General and meanwhile notice be also issued to all the Chief Secretaries that they should appear, in person, under instructions to make the statement as to why provisions of the Constitution in terms of Articles 32 and 140-A are not being complied with, on the next date of hearing.

20. As question relating to maintaining the law and order situation in the prevailing circumstances in the Province of Balochistan has attained much significance, and the activities noted hereinabove as well as in order dated 05.04.2012 relate to denial of the fundamental rights of the citizens enshrined in Articles 9, 14, 15 18 and 24 of the Constitution, therefore, not only it is the duty of the Provincial Government to take necessary steps but at the same time in terms of Article 148(3) of the Constitution, the Federal Government is also equally responsible to assist the Provincial Government in maintaining the law & order situation; restoring the peace; and to protect the lives and properties of its citizens, as it has already been observed by this Court while deciding the case of law and order situation in Karachi reported as Watan Party v. Federation of Pakistan (PLD 2011 Supreme Court 997). For sake of convenience, a relevant portion therefrom is reproduced hereinbelow:

*“Declare that recent violence in Karachi represents unimaginable brutalities, bloodshed,*

*kidnapping and throwing away dead bodies and torsos in bags; as illustration, indicating toll of 306 live in one month; detection of torture cells video of which has been produced; receiving Bhatta to strengthen the ranks of one group against the other; grabbing land during mafia etc., destroying moveable and immovable properties of the citizens, establishes that the Fundamental Rights of the citizens enshrined in Articles 9,14,15,18 and 24 of the Constitution have not been protected/enforced by the Provincial Government/executive authority and this failure has made the lives and properties of the citizens insecure, inasmuch as Federal Government/executive has also not protected Province of Sindh against internal disturbance, thus the government of Province of Sindh, on this account, too, failed to carry out functions in accordance with the provisions of the Constitution [Article 148(3)].”*

The Chief Secretary, Home Secretary and Inspector General of Police, Balochistan, may go through the same and follow them in order to ensure restoration of peace in the Province of Balochistan.

21. In view of the facts and circumstances of the case, we direct that the order dated 5.4.2012 and the instant order be sent to the Prime Minister through Principal Secretary, Secretary Establishment, Secretary Interior, and the Secretary Defence as well as Governor, Chief Minister/Chief Executive, Government of Balochistan for perusal and taking necessary steps under the Constitution to enforce the constitutional provisions and to protect the citizens from atrocities, which they are facing in the province of Balochistan. Learned Attorney General shall ensure that orders are duly conveyed to the functionaries noted hereinabove.

22. Let this case be fixed on **12.04.2012 at Islamabad at Sr.No.1** to ascertain the compliance of the directions made hereinabove as well as in order dated 05.04.2012 and thereafter for further hearing, the case shall be heard at Quetta Branch Registry of this Court in the week commencing from **30<sup>th</sup> instant**. The learned Attorney General for Pakistan and learned Advocate General, Balochistan are required to remain in attendance.

**Chief Justice**

**Judge**

**Judge**

**QUETTA**  
06.04.2012