

IN THE SUPREME COURT OF PAKISTAN
(Original Jurisdiction)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, HCJ
Mr. Justice Mian Shakirullah Jan
Mr. Justice Tassaduq Hussain Jillani
Mr. Justice Jawwad S. Khawaja
Mr. Justice Khilji Arif Hussain

Constitution Petition No.77 of 2012 & CMA No.3057/2012 a/w Const.
Petitions No.72, 73, 74, 75, 76, 78, 79, 80, 81, 82, 84, 85, 86, 87, 88,
91, 92, 94, 95, 96, 97, 98, 99, 100, 101, 102, and 103 of 2012

Baz Muhammad Kakar & another	(Const.P.77/2012)
Muhammad Siddique Khan Baloch	(Const.P.72/2012)
Syed Mehmood Akhtar Naqvi	(Const.P.73/2012)
Lawyers Writers Forum thr. its President	(Const.P.74/2012)
Mahmood-ul-Hassan & another	(Const.P.75/2012)
Ch. Muhammad Ashraf Gujjar	(Const.P.76/2012)
Ch. Khalid Farooq	(Const.P.78/2012)
Abdul Naveed Khan	(Const.P.79/2012)
Ghulam Mustafa	(Const.P.80/2012)
Shahid Naseem Gondal	(Const.P.81/2012)
Muhammad Azhar Siddique	(Const.P.82/2012)
Wattan Party thr. Its President	(Const.P.84/2012)
Judicial Activism Panel thr. Its Chairman	(Const.P.85/2012)
Lahore High Court Bar Association & another	(Const.P.86/2012)
Maulvi Iqbal Haider	(Const.P.87/2012)
Ch. Amjad Hassan Ali	(Const.P.88/2012)
Communist Party of Pakistan	(Const.P.91/2012)
G.M. Chaudhry	(Const.P.92/2012)
Save Judiciary Movement	(Const.P.94/2012)
Sindh Bar Council thr. Its Vice Chairman	(Const.P.95/2012)
Solicitor Muhammad Dawood	(Const.P.96/2012)
Zafarullah Khan	(Const.P.97/2012)
Muhammad Jamil Rana	(Const.P.98/2012)
Shahid Orakzai	(Const.P.99/2012)
Arshad Mehmood Bagoo & others	(Const.P.100/2012)
Pakistan Bar Council thr. Its Chairman	(Const.P.101/2012)
Concerned Citizens of Pakistan Society	(Const.P.102/2012)
Professor Muhammad Ibrahim	(Const.P.103/2012)

... PETITIONERS

VERSUS

Federation of Pakistan through Ministry of Law & Justice, Islamabad &
others

... RESPONDENTS

For the petitioners:

Mr. M. Zafar, Sr. ASC
Mr. Baz Muhammad Kakar, ASC
(in Const.P.77/2012)

Mr. Muhammad Ikram Chaudhry, ASC
Syed Safdar Hussain Shah, AOR
(in Const.P.72/2012)

Syed Mehmood Akhtar Naqvi, in person
(in Const.P.73/2012)

Mr. Liaqat Ali Qureshi, in person
(in Const.P.74/2012)

Mr. Hamid Khan, Sr. ASC
Mr. Muhammad Waqar Rana, ASC
Mr. M.S.Khattak, AOR
(in Const.P.75/2012)

Ch. Muhammad Ashraf Gujjar, ASC in person
(in Const.P.76/2012)

Mr. Abdul Rehman Siddiqui, ASC
Assisted by Ms. Neeli Khan, Advocate
(in Const.P.78/2012)

Mr. Abdul Naveed Khan (absent)
(in Const.P.79/2012)

Mr. Ghulam Mustafa, in person
(in Const.P.80/2012)

Mr. A.K. Dogar, Sr. ASC
(in Const.P.81-82/2012)

Barrister Zafarullah Khan, ASC
(in Const.P.84/2012)

Mr. Muhammad Azhar Siddique, ASC
(in Const.P.85/2012)

Sh. Ahsan-ud-Din, ASC
Ch. Akhtar Ali, AOR
(in Const.P.86/2012)

Mr. Arshad Ali Ch., ASC/AOR
(in Const.P.87/2012)

Ch. Afrasiab Khan, ASC
Ch. Akhtar Ali, AOR
(in Const.P.88/2012)

Engineer Jamil Ahmad Malik, in person
(in Const.P.91/2012)

Mr. G.M. Chaudhry, Adv.
(in Const.P.92/2012)

Mr. Hashmat Ali Habib, ASC
Mr. M.S. Khattak, AOR
(in Const.P.93/2012)

Mr. Rasheed A. Rizvi, Sr. ASC
(in Const.P.95/2012)

Solicitor Muhammad Dawood, in person
(in Const.P.96/2012)

Mr. Zafarullah Khan, Advocate, in person
(in Const.P.97/2012)

Mr. Muhammad Jamil Rana, in person
(in Const.P.98/2012)

Mr. Shahid Orakzai, in person
(in Const.P.99/2012)

Malik Mushtaq Ahmad, ASC
Mr. Mehmood Ahmad Bhatti, Adv.
Mr. Arshad Mehmood Bagoo, Adv.
(in Const.P.100/2012)

Mr. Abdul Latif Afridi, ASC
Mr. Mehmood A. Sheikh, AOR
(in Const.P.101/2012)

Ms. Nasira Iqbal, ASC
(in Const.P.102/2012)

Khan Afzal Khan, ASC
(in Const.P.103/2012)

On Court Notice: Mr. Irfan Qadir, Attorney General for Pakistan
Khan Dil Muhammad Khan Alizai, DAG,
Assisted by Ch. Faisal Hussain and
Barrister Shehryar Riaz, Advocates

For Federation:
of Pakistan Mr. Abdul Shakoor Peracha, ASC
Raja Abdul Ghafoor, AOR Assisted by
M/s Haseeb Shakoor Paracha, Waseem Raiz Satti
and Malik Saqib Mehmood, Advocates

For Leader of
Opposition in Senate: Mr. Muhammad Akram Sheikh, Sr. ASC
Mr. Mehmood A. Sheikh, AOR

Other respondents: Nemo

Dates of hearing: 23rd to 27th, 30th & 31st of July and
1st to 3rd of August, 2012

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O R D E R

IFTIKHAR MUHAMMAD CHAUDHRY, CJ.— These petitions have been filed under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973 to question the constitutionality of the Contempt of Court Act, 2012 [hereinafter referred to as 'COCA 2012'] on behalf of the Bar Associations, Bar Councils, including Pakistan Bar Council, leading lawyers from different Bar Associations either in their individual capacity or as representatives of legal fraternity, members of civil society and representatives of the political parties. An important fact, which requires to be noted in this behalf is that the Pakistan Bar Council and Provincial Bar Councils, under the Legal Practitioners and Bar Councils Act (XXXV) of 1973, enjoy statutory status as the highest bodies representing the legal fraternity in the Federation and the Provinces respectively. Their active interest in these petitions together with others mentioned above is a sign of vibrancy and vitality in society and rule of law and the Constitution.

2. In these petitions, for and against, arguments have been advanced by the learned counsel for the parties. Learned Attorney General, however, appeared on Court notice under Order XXVIIA CPC. It would be advantageous to note the Contempt of Court Act (XII) of 1926 was the initial statute on the subject, which remained applicable until it was repealed by the Contempt of Court Act (LXIV), 1976 [hereinafter referred to as 'COCA 1976'], promulgated after the enforcement of the Constitution of 1973. In the Constitutions of 1956 and 1962 as well as Interim Constitution of 1972, provision to punish for contempt of Court was made. Article 123 of the Constitution of

1962 provided for punishment for contempt of Court, which is *pari materia* with Article 204 of the Constitution of 1973, however, no law was promulgated under the provisions of the earlier Constitutions except COCA 1976.

3. The COCA 2012 in its present form substantially except with a few changes is *pari materia* with COCA 1976, therefore, we have also to examine the reasons for promulgating the said enactment, which was repealed as far back as 10.07.2003. We are mindful of the fact that in the year 1998 the provision for intra-court appeal was made by inserting subsection (2-A) in section 10 of COCA 1976 *vide* Contempt of Court (Amendment) Act II of 1998 and it was given effect from 01.11.1997. The constitutionality of the said newly inserted provision of intra-court appeal was challenged and its effect was suspended during hearing of Constitution Petition No.43 of 1997. Same was dismissed. [*Navid Malik v. President of Pakistan* (1998 SCMR 1917)]. Later on, as in the meanwhile, the Bill was converted into Act of Parliament. The scenario for providing intra-court appeal prevailing at that time is somewhat similar to the present position as at that time notice of contempt of Court was issued to the then Prime Minister of Pakistan whereas presently on the petitions filed before this Court under Article 184(3) of the Constitution, *vide* judgment dated 19.06.2012 the former Prime Minister was disqualified from being a Member of Parliament in accordance with the provision of Article 63(1)(g).

4. Subsequent thereto, the case for the implementation of the judgment in *Dr. Mobashir Hassan v. Federation of Pakistan* (PLD 2010 SC 265) was fixed on 27.06.2012 when a 5-Member Bench called

upon the incumbent Prime Minister to cause a report to be submitted before the Court regarding compliance of the directions contained in Paragraphs 177 and 178 of the aforesaid judgment, failing which the Court would initiate appropriate action under the Constitution and the law. In the meanwhile, on 09.07.2012 a Bill was tabled in the National Assembly after the relevant rules were suspended and it was passed the same day. The Bill was then placed before the Senate on 11.07.2012 where too it was passed the same day and the President also gave his assent to it the same day.

5. The listed petitions were filed against the Bill as well as COCA 2012. One of the petitions, namely, Constitution Petition No. 77 of 2012 was taken up by a Bench at Quetta wherein the following order was passed: -

“This petition under Article 184(3) of the Constitution of Islamic Republic of Pakistan calls in question the constitutionality of the Contempt of Court Act, 2012 being inter alia in violation of Articles 2-A, 9, 14, 25 and 204 etc. of the Constitution of Pakistan.

2. The learned ASC has relied upon the term “any person” used in Article 204(2) of the Constitution, and contended that sub clause (i) of the proviso of Section 3 of the Act, 2012 curtails the power and the jurisdiction of the Court to punish any person, who abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court. The classification of sub clause (i) to the proviso to Section 3 of the Act, 2012 is violative of the Article 25 of the Constitution, which guarantees equal protection of the laws.

3. It is further contended that the Contempt of the Court Act, 2012 is also violative of the independence of the judiciary, guaranteed by Article 2-A, 175 and 190 of the Constitution. It is also contended that the various provisions of Act, 2012 are in derogation/inconsistent with the fundamental rights guaranteed by the Constitution of Islamic Republic of Pakistan.

4. Let notice be issued to the respondent/Federation as well as to the Attorney General for Pakistan in terms of Order 27-A CPC to examine inter alia the questions raised in the listed petition.

5. Office is directed to club all such petitions, which are identical on the subject matter instituted before this Court

by different petitioners. Notices in those petitions be also issued to the respondents and Attorney General in the same manner as it has been noted hereinabove.

6. The respondent(s) and the Attorney General may file concise statements if advised and desired, before the next date of hearing and the pleadings shall be exchanged between the parties before the commencement of the hearing of the petitions. In view of the importance of the petition as it has been pointed out by the learned counsel for the petitioner in the application for the fixation of the case today and also taking into consideration the involvement of the interpretation of the Constitution, which allegedly touches to the independence of the Judiciary, we direct let all these cases be fixed at Islamabad on 23rd July, 2012. All concerned be informed accordingly."

6. It has been contended on behalf of the petitioners, *inter alia*, that COCA 2012 is *ultra vires* Article 204 of the Constitution being against the independence of judiciary as enshrined in Article 2A, denial of access to justice under Articles 4 and 10A as by granting immunity to the public office holders, it has created a distinction between such office holders and ordinary contemnors; COCA 2012 is contrary to Article 19 and is also discriminatory in its nature and violates Article 25 of the Constitution; it is tantamount to interference in the powers of the judiciary by issuing legislative judgment as well as granting stay orders on filing appeal against interlocutory orders to facilitate the contemnors to go scot free despite undermining the authority of the Court as well as administration of justice; the Act, by debarring the judges from hearing the case after taking cognizance including a case where contempt has been committed on the face of the Judge, encroaches upon the powers of the Judges; and the Act, contrary to the provision of Article 204(3), has usurped the powers of framing of the rules by the Courts. Above all, the Act, instead of providing regulatory enactment to lay down the procedure for the trial of the contemnors as provided in the Constitution and enlarging powers and

scope of contempt of Court has curtailed the same by means of definition of contempt of Court given in section 3 along with defences. Further, no acceptable reason has been assigned for the repeal of COCA 1976 and Contempt of Court Ordinance 2004, which stood repealed and Contempt of Court Ordinance 2003 was holding the field before the promulgation of COCA 2012, therefore, the repealing clause being a nullity in the eye of law is required to be declared so and COCA 2012 as a whole is void *ab initio* and *non est* with its consequences.

7. On the other hand, learned counsel for the Federation of Pakistan has contended that COCA 2012 has been promulgated with a motive to ensure that democratic order continues to prevail under the Constitution as according to him one of the Prime Ministers has been convicted and sentenced and declared disqualified from being a member of the Parliament and same could happen with another Prime Minister, therefore, instant enactment has been promulgated to provide protection to the public office holders by incorporating Article 248(1) as a proviso to section 3 of COCA 2012. The learned counsel also objected to the maintainability of the Constitution Petitions under Article 184(3) of the Constitution and stated that none of the Fundamental Rights of the petitioners have been infringed and therefore, they have no right to approach this court to challenge the constitutionality of COCA 2012. He has argued that the independence of judiciary has not been compromised in any manner, rather contrary to it, the impugned enactment will strengthen the institution of the judiciary. He stated that legislature is empowered to legislate a law in exercise of the powers conferred upon it by the Constitution and no law can be declared contrary to the Constitution or as a colourable

legislation. According to him, the legislature has enacted the law strictly according to the Constitution, however, he conceded that a constitutional provision like Article 204 cannot be amended by means of ordinary legislation. He also conceded that under Article 204 (3), the rule making power is vested in the Court, but the Act has laid down the procedure to regulate the proceedings and it is not necessary while enacting a regulatory provision to just confine to the extent of the procedure. He contended that the lawgiver is empowered to provide the definition clause and if the Court feels that there are some lacunae in it, the same may be interpreted following the principle of harmonizing the provisions of the Constitution and the law, instead of declaring the same unconstitutional.

8. Learned Attorney General, at the outset, raised question of bias against some of the Members of the Bench without being specific and without giving any particulars or instances. However, he subsequently dropped the submission. He explained that there was necessity to enact COCA 2012 as there was confusion as to which law was holding the field because according to him Syed Yousaf Raza Gillani, former Prime Minister has been convicted and sentenced in absence of any statutory law applicable on the subject. According to him, the Court should make efforts to save the legislation and if there is conflict or contradiction between two provisions, the same may be harmonized in the process of interpretation of the law. The legislature during the debates before the National Assembly and Senate deliberated upon all aspects of the case and enacted the COCA 2012. He further contended that the Legislature enjoys jurisdiction under Constitution to enact a law, therefore, the same could not be

questioned. As far as provision of Intra-court appeal is concerned, it has been provided to enforce the fundamental rights of the contemner under Article 10A of the Constitution and this is not for the first time that such provision has been enacted as identical provision existed in COCA 1976, which continued till its repeal.

9. The learned Attorney General further argued that under Article 204(3) the Federal Government is empowered to regulate the exercise of power of the Court to punish for its contempt, therefore, once such power is exercised, the rules framed by the Court being the subordinate legislation would be subject to the law made by the legislature. The fundamental right of freedom of speech and expression of the citizens enshrined in Article 19, which is in line with the Universal Declaration of Human Rights of the United Nations Organization, cannot be curtailed by awarding punishment to person, therefore, the aforesaid right of freedom of speech and expression being on the higher pedestal deserves to be respected as against the awarding of punishment for the violation of Court's order, etc. He has argued that there is no substantial difference in the provisions of Article 204 and section 3 of the COCA 2012. As regards incorporation of Article 248(1) in proviso (i) to section 3, he has explained that if any action is done by the persons mentioned therein in the performance of duty, it would not amount to contempt of Court. He has categorically stated that if there is any contradiction between Article 204 and section 3 of the COCA 2012, the two provisions should be read together and given effect accordingly by adopting the principle of harmonization, or by reading down the provision of Article 204(2) of the Constitution, section 3 of COCA 2012 can be kept intact. In respect

of section 11, he has stated that this provision has been enacted for the purpose of providing relief to the accused or the contemner and it would hardly make any difference if the sentence awarded to the accused is suspended because it is for the Courts to decide the appeal as early as possible. In respect of section 13, he has argued that as there was confusion in respect of existence of contempt of Court law as it was not clear as to which law was holding the field, therefore, to remove all such doubts, the COCA 2012 has been enacted.

10. At the outset, it may be mentioned that under Article 204 read with Entry 55 of the Federal Legislative List (Fourth Schedule to the Constitution) jurisdiction is conferred upon the Supreme Court to punish any person for contempt of Court. Article 204 and Entry 55 read as under: -

“204. Contempt of Court.--(1) In this Article, 'Court' means the Supreme Court or a High Court.

(2) A Court shall have power to punish any person who--

(a) abuses, interferes with or obstructs the process of the Court in any way or disobeys any order of the Court; or

(b) scandalizes the Court or otherwise does anything which tends to bring the Court or a Judge in relation to his office into hatred, ridicule or contempt; or .

(c) does anything which tends to prejudice the determination of a matter pending before the Court; or

(d) does any other thing, which, by law, constitutes contempt of the Court.

(3) The exercise of the power conferred on a Court by this Article may be regulated by law and, subject to law, by rules made by the Court.”

“55. Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List and, to such extent as is expressly authorized by or under the Constitution, the enlargement of the jurisdiction of the Supreme Court, and the conferring thereon of supplemental powers.”

In view of the clear provision of above Entry 55, no difficulty is seen in holding that under the above entry of the Fourth Schedule, the founding fathers of the Constitution had provided for the enlargement of the jurisdiction and supplement the powers of the Supreme Court, and had never conceived about curtailing the powers of the Supreme Court.

11. In the original Article 204, as it was enacted initially, after clause (2) (*ibid*), there existed an Explanation wherein defences in relation to commission of contempt of Court were provided. In the meanwhile, Fifth Constitutional Amendment was introduced on 15.09.1976 effective from 01.12.1976 in pursuance whereof clauses (2) & (3) of Article 204 including Explanation were substituted by new clause (2), which states that "a Court shall have the power to punish a person for contempt of Court in accordance with law". A day before the promulgation of the Fifth Constitutional Amendment on 30.11.1976, COCA 1976 was promulgated. Article 204 remained in force in its amended form till the introduction and promulgation of Eighth Constitutional Amendment *vide* Revival of the Constitution of 1973 Order, 1985 (PO 14 of 1985), which was made applicable w.e.f. 02.03.1985. The original Article 204 was restored except the Explanation, which was originally available in this Article.

12. The constitutionality of COCA 1976 was never challenged before any Court. But in the case of State v. Khalid Masood (PLD 1996 SC 42), Hon'ble Ajmal Mian, J., as he then was (later Chief Justice of Pakistan) added his separate note, *inter alia*, with the following observations: -

"3. Indeed in the above-quoted clause (3), it has been provided that the exercise of the power conferred on a Court by this Article may be regulated by law and subject to law by rules made by the Court, but, in my view, it does not mean that a statute can control or curtail the power conferred on the superior Courts by this Article, nor it means that in the absence of a statute on the above subject, the above Article will be inoperative. The law referred to in clause (3) of the above Article relates to procedural matters or matters which have not been provided for therein.---- Though the Preamble to the Contempt of Courts Act, 1976 (hereinafter referred to as the Act) purports that the Act has been enacted pursuant to above Article 204 of the Constitution, but factually, it is not confined to the Supreme Court and the High Courts and covers all Courts including subordinate Courts as is evident from the definitions of the terms "Judge" and "judicial proceedings" given in clauses (a) 10 and (b) of section 2 of the Act and of the definition of the expression "Contempt of Court" provided for in section thereof. In the case in hand, it is not necessary to examine the question, whether any provision of the Act is in conflict with the above Article. The above question may be examined in an appropriate case."

Similarly some of the provisions of Article 204 of the Constitution read with COCA 1976 were discussed in Syed Masroor Ahsan v. Ardeshir Cowasjee (PLD 1998 SC 823). Mr. Mahmood Ahmad Bhatti, Advocate who appeared on his own behalf and on behalf of other petitioners in Constitution Petition No. 100 of 2012 referred to a paragraph from Syed Masroor Ahsan's case, which is reproduced hereunder: -

(ix) Brahma Prakash Sharma and others v. The State of Uttar Pradesh AIR 1954 SC 10:

... .. The Indian Supreme Court, while setting aside the judgment of the Allahabad High Court, by holding that the contempt, if any, was only of a technical character and after the submission of affidavits on behalf of the appellants before the High Court the proceedings should have been dropped, made the following observations as to the scope of the contempt proceedings:

"(8) It admits of no dispute that the summary jurisdiction exercised by superior Courts in punishing contempt of their authority exists for the purpose of preventing interference with the course of justice and for maintaining the authority of law as is administered in the Courts. It would be only

repeating what has been said so often by various Judges that the object of contempt proceedings is not to afford protection to Judges personally from imputations to which they may be exposed as individuals; it is intended to be a protection to the public whose interests would be very much affected if by the act or conduct of any party, the authority of the Court is lowered and the sense of confidence which people have in the administration of justice by it is weakened. "

Article 204 has also been discussed in the judgment authored by Mr. Justice Nasir-ul-Mulk in Criminal Original Petition No. 06 of 2012 in Suo Motu Case No. 04 of 2010 whereby Syed Yousaf Raza Gillani former Prime Minister was convicted and sentenced.

13. It may be mentioned that this Court has the power of judicial review to examine the constitutionality of any provision of any enactment, if the same is found to be contrary to the Fundamental Rights as well as constitutional provisions. A perusal of COCA 2012 suggests that it has been promulgated in haste obviously for reasons which have been admitted by learned counsel for the Federation in the wake of history of the impugned legislation narrated hereinabove, including the recent decision of 7-Member Bench passed on 26.04.2012, in pursuance whereof the then Prime Minister was found guilty of contempt of Court followed by another judgment declaring him to be disqualified from being a member of Parliament in terms of Article 63(1)(g) of the Constitution.

14. The apprehensions expressed by the learned counsel for the Federation are unfounded. Pakistan has a written Constitution and all the organs of the State, namely, legislature, executive and the judiciary are functioning within their respective domains. The judiciary has never claimed supremacy over other organs of the State.

However, it has a duty to interpret the Constitution and law as well as to examine the constitutionality of any law if it is concluded that it has been promulgated in derogation of the Fundamental Rights as envisaged by Article 8 of the Constitution, or where any of the provision of any law is found contrary to the Constitution. It is also one of the recognized principles of jurisprudence that person specific laws cannot be promulgated because such exercise instead of promoting the administration of justice causes injustice in the society amongst the citizens who are being governed under the Constitution, particularly, in a matter relating to implementation of Court orders following the directions of the Court. The Courts have always made efforts to avoid enforcement of their orders by taking extreme steps of punishing the delinquents for disobeying the orders/judgments. However, if an act of contempt of Court persists and no prompt action is taken, the court loses its authority and all its decisions and the judgments will be considered mere paper decrees, therefore, to maintain its dignity and respect and to restore the confidence of the citizens in the supremacy of the Constitution and the rule of law, as a last resort, proceedings for contempt of Court are initiated.

15. It is to be noted that on the question of severability of a statute, Mr. Hamid Khan, Sr.ASC has referred to the case of Attorney General for Alberta v. Attorney-General for Canada (AIR 1948 PC 194) wherein it has been held that "the real question is whether what remains is so inextricably bound up with the part declared invalid that what remains cannot independently survive or, as it has sometimes been put, whether on a fair review of the whole matter it can be

assumed that the legislature would have enacted what survives without enacting the part that is *ultra vires* at all."

16. In view of the above background, for reasons to be recorded later, the listed petitions are disposed of as under: -

- (i) The petitions are maintainable under Article 184(3) of the Constitution as questions of public importance with reference to enforcement of Fundamental Rights are involved therein;
- (ii) Under Article 204 read with Entry 55 of the Fourth Schedule to the Constitution, the High Courts and the Supreme Court have powers to punish any person who is found guilty for the Contempt of Court falling within the definition of contempt of Court given in clause (2) of Article 204 of the Constitution;
- (iii) Section 2(a) of COCA 2012, which defines the word "Judge" as including all officers acting in judicial capacity in administration of justice, is contrary to Article 204(1) of the Constitution as under the latter provision, the Court means the Supreme Court or a High Court;
- (iv) Section 3 of the COCA 2012 as a whole is void and contrary to Articles 4, 9, 25 & 204(2) of the Constitution for the reasons that—
 - (a) The acts of contempt liable to be punished mentioned in Article 204(2)(b) and some actions of contempt of Court falling under Article 204(2)(c) have been omitted from the definition of contempt of Court given in section 3 of COCA 2012;
 - (b) COCA 2012 has been promulgated under clause 3 of Article 204 of the Constitution, which confers power on the legislature to make law to regulate the exercise of power by the Courts, and not to incorporate any substantive provision or defences as it has been done in the proviso;
 - (c) Powers of the courts have been reduced by incorporating expression "by scandalizing a Judge in relation to his office" whereas in Article 204(2) the word 'Court' has been used. Similarly, the definition provided by section 3 runs

contrary to the provisions of Article 63(1)(g) of the Constitution according to which, if a person has been convicted/sentenced for ridiculing the judiciary, he will be disqualified to hold a public office, and in section 3 this expression has been omitted and instead of institution of judiciary, scandalization of a Judge has been confined in relation to his office;

- (d) By enacting provisos (i) to (xi) to section 3, immunities/defences have been provided, whereas no such provision exists in the Constitution; and
 - (e) The proviso (i) to section 3, which grants exemption to the public office holders mentioned in Article 248(1) from contempt of Court is violative of Article 25 as under Article 204(2), the Court is empowered to punish 'any person' for its contempt without any exception.
- (v) Incorporation of Article 248(1) in proviso (i) to section 3 is tantamount to amending the Constitution, which cannot be done without following the procedure laid down in Articles 238 and 239 of the Constitution;
 - (vi) Article 248(1) has not granted immunity to any of the public office holders mentioned therein from any criminal proceedings, therefore, by means of proviso (i) to section 3, no immunity can be granted to the public office holders in violation of Article 25 of the Constitution;
 - (vii) The terms and phrases used in provisos (i) to (xi) to section 3 are ambiguous and absurd and are meant to give benefit to contemners who have no respect for the judgments of the Courts, therefore, the said provisos being contrary to the principle of equality before law are void;
 - (viii) Under subsection (4) of section 4, the effect of earlier judgments has been nullified by pronouncing a legislative judgment without removing the basis on which the judgments were pronounced, which is violative of the Fundamental Right of access to justice as enshrined in Article 9 and this provision also runs contrary to Article 189 of the Constitution; therefore, this provision is void;

- (ix) Section 6(2) is not sustainable because of declaration of section 3 void as a whole;
- (x) Section 6(3) encourages/promotes the commission of contempt of Court by postponing cognizance of a contempt of Court arising from an averment made in due course in appellate, revisional or review proceedings, till such proceedings have been finalized and no further appeal, revision or review lies, although to maintain the dignity and respect of the Court, prompt action to punish the contemner is called for. As any delay in this behalf would not only erode the dignity, but would also promote the tendency of disrespecting the courts and their orders, therefore, this provision being contrary to the principle of independence of judiciary and access to justice as enshrined in Articles 2A and 9 of the Constitution is void;
- (xi) Section 8 relating to transfer of proceedings is tantamount to curtailing the judicial powers. Subsection (1) of section 8 is not sustainable because instead of the phrase 'scandalizing the Court', expression 'scandalizing a Judge in relation to his office' has been used. This subsection also runs contrary to recognized principle of punishing any person who is guilty of contempt on the face of the Court where a prompt action to maintain the dignity of the court is called for;
- (xii) Transfer of proceedings from one Judge/Bench to another Judge/Bench is the prerogative of the Chief Justice being administrative head of his Court, which cannot be controlled by the legislature, therefore, subsection (3) of section 8 is violative of the principle of independence of judiciary;
- (xiii) Under subsection (5) of section 8, legislature cannot exercise power of transferring a case from the file of Chief Justice to next Senior Judge as it would be against the independent functioning of the Court and legislative interference in this behalf is tantamount to undermining the authority of the Chief Justice and other Judges as well. As such, this provision too is not sustainable;
- (xiv) Section 10(b) is violative of Fundamental Right of freedom of speech and expression enshrined in Article 19, which is subject to a reasonable restriction, *inter alia*, in relation to contempt of

Court and Article 68 of the Constitution, which provides that no discussion shall take place in Parliament with respect to conduct of a Judge of the Supreme Court or a High Court;

- (xv) Section 11(3) relating to filing of intra-court appeal against issuance of show cause notice or an original order including an interim order passed by a Bench of the Supreme Court in any case, including a pending case to a larger Bench consisting of all the remaining available Judges of the Supreme Court within the country is violative of the principle of expeditious disposal of the cases enshrined in Article 37(d) of the Constitution and the possibility of hearing of appeals by a larger Bench consisting of remaining Judges of the court within the country may render the proceedings ineffective as against each interlocutory order, appeals will be filed and there would be no end to the proceedings and in such a manner the dignity and independence of the Courts would be compromised;
- (xvi) The first proviso to section 11(3) will render the whole proceedings of contempt of Court ineffective as at the initial stage after issuing a show cause notice, Full Court will have to be assembled to examine the grievance of the contemner if the show cause notice has been issued by half of the Judges whereas under the Supreme Court Rules, 1980, even very high profile cases may be decided by a two-member Bench;
- (xvii) The second proviso to section 11(3), which provides for automatic suspension of a judicial order, is violative of the principle of trichotomy of power and the independence of judiciary. The passing of such an order is essentially a judicial function, which has to be performed by the Judges of the Supreme Court or the High Courts. The provision in question is contrary to settled principles governing the grant or refusal of an injunction/stay order. Thus, it being against the principle of independence of judiciary is not sustainable;
- (xviii) The provisions of subsections (4) and (5) of section 11, which prescribe limitation of 30 days for filing an appeal to a Bench of the High Court, 60 days for filing appeal to the Supreme Court, and filing of intra-court appeal or application for re-appraisal within 30 days from the date of show cause notice or the order,

as the case may be, are aimed at delaying decision of contempt cases and compromise the expeditious disposal of such cases to restore the dignity of the Courts, who are responsible for administration of justice;

- (xix) Section 12 of the Act is contrary to Article 204(3) of the Constitution, thus *void ab initio*;
- (xx) By means of Article 270(AA), the Contempt of Court Ordinance, 2003, which was promulgated on 15.12.2003, continued in force till 12.07.2012, the day on which COCA 2012 was promulgated. In enacting section 13, which repeals COCA 1976, and the Ordinances of 2003 and 2004, no reason has been assigned for the repeal of the same;
- (xxi) Subsection (2) of section 13 whereby COCA 1976, which already stood repealed on 15.12.2003, has also been repealed along with Ordinances of 2003 and 2004 without spelling out logical reasons to promulgate COCA 2012, therefore, it is a nullity in the eyes of law;
- (xxii) As per preamble of the legislation under scrutiny, it has been framed in exercise of the powers conferred by clause (3) of Article 204 of the Constitution, which provides that the exercise of the power conferred on a Court by this Article may be regulated by law and subject to law by rules made by the Court, but it does not mean that a statute can control or curtail the powers conferred on the superior Courts by the said Article, nor does it mean that in the absence of a statute on the above subject, the above Article would be inoperative; and
- (xxiii) While enacting COCA 2012 in pursuance of clause (3) of Article 204 read with Entry 55 of the Fourth Schedule to the Constitution, attempt has been made to reduce the powers of the Court as has been indicated in different provisions, thus, all such provisions are contrary to Entry 55 of the Constitution.

17. After having found various provisions of COCA 2012 as *ultra vires* the Constitution, we are of the opinion that the remaining provisions of the impugned legislation, if allowed to stay on the statute book, would serve no purpose particularly, when it has been held that

repealing section itself is a nullity, therefore, the principle of severability as applied by this Court in Mehram Ali v. Federation Pakistan (PLD 1998 SC 1445) and Dr. Mobashir Hassan' case is not attracted. Thus, having been left with no constitutional option, COCA 2012 is declared unconstitutional, void and *non est*, as a consequence whereof, following the dictum laid down in Attorney General for Alberta v. Attorney-General for Canada (AIR 1948 PC 194), it is declared that the Contempt of Court Ordinance, 2003 shall be deemed to have revived with effect from 12.07.2012, the day when COCA 2012 was enforced with all consequences.

18. No order as to costs.

CHIEF JUSTICE

JUDGE

JUDGE

JUDGE

JUDGE

Announced in open Court on _____
Islamabad

CHIEF JUSTICE

APPROVED FOR REPORTING