

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:**

MR. JUSTICE UMAR ATA BANDIAL, CJ

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

MR. JUSTICE JAMAL KHAN MANDOKHAIL

**CRL.P.921/2023, CRL.P.938/2023 AND CRL.P.922/2023**

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|-----------------------|----------------|---|
| 1.                    | Crl.P.921/2023 | Imran Ahmad Khan Niazi v. District Election Commissioner, Islamabad   |
| 2.                    | Crl.P.938/2023 | Imran Ahmad Khan Niazi v. District Election Commissioner, Islamabad and another   |
| 3.                    | Crl.P.922/2023 | Imran Ahmad Khan Niazi v. District Election Commissioner, Islamabad   |
| For the Petitioner(s) |                | : Sardar Muhammad Latif Khan Khosa,<br>Sr. ASC<br>Mr. Gohar Ali Khan, ASC assisted by<br>Mr. Intazar Hussain, Advocate HC and<br>Ms. Surain Jehan Khan, Advocate HC |
| On Court's call       |                | : Mr. Amjad Pervez, ASC   |
| ECP                   |                | : Mr. Khurram Shahzad, Addl. DG Law,<br>ECP<br>Mr. Falak Sher, Consultant   |
| Date of Hearing       |                | : 23.08.2023  |

**ORDER**

We have heard the learned counsel for the petitioner who has read to us from the impugned order of the High Court dated 03.08.2023 whereby a number of jurisdictional and maintainability objections were remanded for consideration by the Trial Court. The proceedings before the Trial Court were already fixed for hearing on 05.08.2023. The case was called a number of times but neither the petitioner nor his authorized representative were present in the court. As a result, the Trial Court proceeded *ex-parte* and decided the complaint filed by the

Election Commission of Pakistan (“ECP”) without hearing the petitioner on 05.08.2023 convicting him for offences under Sections 167 and 173 of the Elections Act, 2017 and sentencing him to 03 years S.I. We are also informed that the petitioner in his statement recorded under Section 342 Cr.PC on 01.08.2023 had expressed the intention to produce defence witnesses. That application was turned down by the Trial Court on 02.08.2023 for the reason that the four witnesses mentioned in the list were not relevant to the controversy in issue.

2. We asked the learned ASC, who represents the ECP-Complainant before the Trial Court as well as the High Court, whether the aforementioned two points are correct. He has candidly acknowledged the claim made by the learned counsel for the petitioner to be true. He has also admitted that notwithstanding the remand order passed by the High Court on 03.08.2023 whereby the jurisdictional and maintainability objections were returned to the Trial Court, the final judgment of the Trial Court dated 05.08.2023 failed to decide the same afresh. Instead the final judgment reaffirms the Trial Court's earlier orders dated 05.05.2023 and 08.07.2023 which had considered these points. However, the same were set aside by the High Court through order dated 03.08.2023 that is impugned before us. In this respect, the final judgment of the Trial Court dated 05.08.2023, *prima facie*, defies the direction of remand issued by the High Court by relying on its earlier point of view that already stands rejected by the High Court.

3. These are serious points of law that deserve consideration but we are told that an appeal against the final judgment passed by the Trial Court on 05.08.2023 has been filed before the High Court on 08.08.2023. The petitioner is in jail since 05.08.2023. Therefore, an application for suspension of sentence of the petitioner has also been filed before the High Court which is fixed for hearing tomorrow i.e., 24.08.2023. Notwithstanding the legal issues highlighted to us and noted above regarding the jurisdiction of the Trial Court and the maintainability of the complaint, the procedural propriety of the trial and compliance with the due process requirements ordained by the Constitution, we consider that the High Court is the first Court which should hear and decide such matters. As the petitioner's application for suspension of sentence is fixed for hearing tomorrow, it is appropriate that out of respect for the High Court we first await its decision.

4. Mr. Khurram Shahzad, Addl. DG Law has appeared on behalf of the respondent-ECP and waives notice. These petitions to come up for hearing at 02:00 PM on 24.08.2023.

**Sd/-  
Chief Justice**

**Sd/-  
Judge**

**Sd/-  
Judge**

Islamabad  
23.08.2023  
Rashid/\*

Not approved for reporting