

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE/CONSTITUTIONAL JURISDICTION)

PRESENT:

MR. JUSTICE UMAR ATA BANDIAL, HCJ
MR. JUSTICE MUNIB AKHTAR
MR. JUSTICE SAYYED MAZHAR ALI AKBAR NAQVI

CIVIL APPEAL NO. 1191 OF 2016 AND
CONSTITUTION PETITION NO. 18 OF 2000

(On appeal against the judgment dated 20.05.2015
passed by the Lahore High Court, Lahore in Writ
Petition No. 1146/2010)

(Constitution Petition filed to challenge the conviction
of the petitioner by the Field General Court Martial)

Ex. Col. Muhammad Azad Minhas
Col. Inayatullah Khan and another

(In CA 1191/2016)

(In Cnst.P. 18/2000)

... Appellant/Petitioners

VERSUS

Federation of Pakistan through Secretary
Ministry of Defence etc

(In both cases)

... Respondents

For the Appellant/Petitioners: In person
(In both cases)

For the State: Mr. Sajid Ilyas Bhatti, Addl. Attorney Gen
Barrister Hassan Adeel
Major Haider Sultan, JAG Branch
Major Zeeshan Zaman

Dates of Hearing: 24.09.2020, 01.10.2020, 15.12.2020,
01.03.2021, 27.04.2021, 27.05.2021,
30.11.2021, 18.01.2022 & 15.02.2022

JUDGMENT

SAYYED MAZHAR ALI AKBAR NAQVI, J.- Through this consolidated
judgment, we intend to decide Civil Appeal No. 1191/2016 & Constitution
Petition No. 18/2000, as common questions of law and facts are involved
in both these matters.

2. Precisely the facts of the matter pertaining to Civil Appeal
No. 1191/2016 are that appellant Muhammad Azad Minhas joined
Pakistan Military Academy as cadet and passed out as commissioned
officer on 14.11.1971. Over the time, he became Colonel on 06.07.1995

and was posted as Colonel General Staff to Corps Mangla Cantt HQ 1. Whereas, the petitioner Inayatullah Khan in Constitution Petition No. 18/2000 passed out from PMA Kakul in December, 1971. He also became Colonel with the efflux of time and was serving as Colonel Staff 17 Infantry Division, Kharian Cantt. On 26.09.1995 both of them were taken into custody along with two others by the intelligence agencies and as such they were thoroughly investigated. During course of interrogation, both of them were sent to face the following charges before the court under the Pakistan Army Act, 1952:-

First Charge:-	Under Section 59 of PAA 1952 (Against all accused)	Committing a civil offence, that it is to say, conspiring to wage war against Pakistan, an offence punishable under Section 121-A of the Pakistan Penal Code, in that they together at Rawalpindi, Mangla and elsewhere, between the period from May 1995 to September 1995, alongwith PA-12680 Colonel Liaqat Ali Raja and others, conspired to wage war against Pakistan so as to overthrow the Federal Government of Pakistan by means of criminal force.
<u>Second Charge:-</u>	Under Section 55 of PAA 1952 (Alternative to the first charge against accused No. 1 only i.e. Maj. General Zaheer ul Islam)	Conduct to the prejudice of good order and military discipline, in that he, at the places and period mentioned in the first charge, knowing the existence of a conspiracy mentioned in the first charge, improperly did not report the matter to higher authorities concerned.
<u>Third Charge:-</u>	Under Section 55 of the PAA 1952 (Alternative to the first charge against accused No. 3 only i.e. the appellant Colonel Muhammad Azad Minhas)	Conduct to the prejudice of good order and military discipline, in that he, at the places and period mentioned in the first charge, knowing the existence of a conspiracy mentioned in the first charge, improperly did not report the matter to higher authorities concerned.
<u>Fourth Charge:-</u>	Under Section 55 of the PAA 1952 (Alternative to the first charge against	Conduct to the prejudice of good order and military discipline, in that he, at the places and period mentioned in the first charge,

	accused No. 4 only i.e. petitioner Inayatullah Khan)	knowing the existence of a conspiracy mentioned in the first charge, improperly did not report the matter to higher authorities concerned.
<u>Fifth Charge:-</u>	Under Section 31(d) of the PAA 1952 (Against accused No. 2 only i.e. co-accused Brigadier Mustansar Billah)	Attempting to seduce any person in the military forces of Pakistan from his allegiance to the Government of Pakistan, in that he, at Quetta, during May 1995, attempted to seduce PA-12621 Colonel Muhammad Iqbal of Electronic Warfare Directorate, GHQ, from his allegiance to the Government of Pakistan by asking him to prepare a plan to neutralize the existing telephone communication system at Rawalpindi so as to enlist his (Colonel Muhammad Iqbal's) support for furthering the design of the conspiracy mentioned in the first charge.

3. The appellant/petitioner filed Constitution Petition Nos. 8 & 9/1996 before this Court under Article 184(3) of the Constitution of Islamic Republic of Pakistan, 1973, challenging the validity of their arrest, detention and trial by the Field General Court Martial but the same stood dismissed vide judgment dated 14.05.1996. Thereafter, the trial proceeded and at the conclusion of the trial, they were found guilty to the extent of third and fourth charge for having knowledge of the conspiracy and failing to report the same to the higher authorities, which conduct of them was prejudicial to good order and military discipline. Vide order dated 30.09.1996 they were ordered to be dismissed from service and to further suffer rigorous imprisonment for two years & four years respectively. Their conviction was also confirmed by the Chief of Army Staff vide order dated 28.10.1996. Both of them filed appeals before the Court of Appeal but the same were also dismissed vide order dated 06.11.1997. Pursuant to the conviction, their membership in the Army Officers Housing Scheme for allotment of a house at the time of retirement along with allotment of plots in Army Welfare Housing Scheme were ordered to be cancelled. Thereafter, the petitioner Inayatullah Khan

filed Constitution Petition No. 18/2000 before this Court whereas the appellant Muhammad Azad Minhas filed Writ Petition No. 1146 of 2010 before the Lahore High Court, Lahore, which was dismissed vide order dated 20.05.2015. Being aggrieved by the judgment of the High Court, he filed Civil Petition No. 1234/2015 before this Court wherein leave was granted, consequently, Civil Appeal No. 1191/2016 has arisen.

4. The appellant and the petitioner before us argued in person. During the course of arguments, the main contentions raised by them are precisely that when they were accused of principal offence i.e. First Charge, they could not have simultaneously been made accused of the alternate charge/offence. Contends that it is mandatory for the prosecution to prove the main offence before starting the trial on the alternative charge. Contends that the charge framed under the Pakistan Army Act is without jurisdiction and illegal as the same exclusively relates to misconduct or omission committed on the basis of assigned military duty. Contends that the impugned order of the Field General Court Martial was based upon *mala fides*, being *coram non judice*, as such, was without jurisdiction, therefore, the same is not sustainable in the eyes of law. Contends that their plots in Army Welfare Housing Scheme and memberships in Army Housing Scheme were cancelled illegally, without any backing of law, Rules or Regulations, which could authorize confiscation of their properties, therefore, the same is violative of Article 13 of the Constitution of Islamic Republic of Pakistan, 1973. Lastly contends that the constitutional bar of limitation is not applicable to the proceedings conducted under Article 199 or Article 184 of the Constitution, as such, any delay in filing the Constitutional petitions either before this Court or before the High Court is of no avail to the respondents.

5. On the other hand, learned Additional Attorney General argued that any person charged during Court Martial with any offence punishable under Section 59 of the Army Act may be found guilty of any other offence to which he might have been found guilty. Contends that

the entire proceedings of the Field General Court Martial were well within the recognized principles of criminal justice and the same are unexceptionable. Contends that the Pakistan Army Act has complete mechanism and jurisdiction to charge and proceed against any army personnel found involved in commission of any illegal act, as such, any act committed by them can be tried under the relevant law i.e. Pakistan Army Act, 1952. Contends that the allocation of plots and membership in the housing society are the privileges, which are only assigned for army officers but after dismissal from service the appellant/petitioner have lost right to retain such a privilege. Lastly contends that as a general principle Constitutional bar of limitation is not strictly applicable to the proceedings under Article 199 and 184 of the Constitution, however, it is not absolute as the same should be initiated promptly and within a reasonable time to avoid the question of *laches*.

6. We have heard both appellant/petitioner and the learned Law Officer at considerable length and have perused the case record. The questions which crop up for our consideration are as follows:-

- i) Whether the appellant/petitioner were subject to Pakistan Army Act and the proceedings carried out by the forum constituted under Pakistan Army Act, 1952, were based upon *mala fides, coram non judice*, hence, passed without jurisdiction in violation of fundamental rights?
- ii) Whether an accused can be convicted under alternative charge/offence in case the main offence is not proved?
- iii) Whether the Constitution Petition No. 18/2000 filed before this Court is maintainable?
- iv) Whether the inordinate delay of about 13 years in filing the Constitutional Petition before the High Court can be condoned?
- v) Whether after dismissal from service, the appellant & petitioner are entitled for perks & privileges, which are meant for Army Personnels?

7. In order to adjudicate the question (i) supra, it seems essential to evaluate the intent of the Legislature while legislating the aforesaid Act i.e. Pakistan Army Act, 1952, wherein it is categorically stated "***whereas it is expedient to consolidate and amend the law relating to Pakistan Army***". Section 2 of the said Act provides that following persons shall be subject to this Act. Relevant portion of the said provision reads as under:-

"2. Persons subject to the Act.- (1) The following persons shall be subject to this Act, namely:-

(a) officers, junior commissioned officers and warrant officers of the Pakistan Army;"

8. The plain reading of the afore-referred provision of law depicts that the persons subject to Pakistan Army Act, 1952, either in any of the capacity as an officer, junior commissioned officer or warrant officer during service at the relevant point of time are subject to Pakistan Army Act, 1952, and whenever an act violating any provision of said enactment is committed by them, the same would be exclusively dealt with by the provisions contained in the aforesaid Pakistan Army Act, 1952. There is no denial to this fact that both the appellant/petitioner were serving officers of Pakistan Army at the time when in pursuance of confidential/intelligence information regarding violation of the provisions of said enactment, they were taken into custody. During course of interrogation, the accusation against them was found to be correct and as such they were rightly dealt with under the law on the subject and as such their argument that the action taken by the authorities in pursuance of the material collected and the proceedings before the Court constituted under Pakistan Army Act, 1952, may be declared to be based upon *mala fides* has no legal justification. The enactment referred above does not disclose any exception to the general principle that any serving officer of military if found violating the law relating to its discipline would be dealt otherwise except under the Pakistan Army Act, 1952. Hence, the argument of the appellant/petitioner that their trial before the Field General Court Martial was an abuse of process has no sanctity and the same is vehemently

discarded. All the grievances of the appellant/petitioner regarding their apprehension, custody and prosecution before the Field General Court Martial are the steps, which can be taken by the order of the Commanding Officer subject to receipt of tangible information regarding the violation of any provision of Pakistan Army Act, 1952. Even under Section 549 of Code of Criminal Procedure, 1898, on receipt of an information from any source, the said provision can be pressed into to initiate proceedings to bring any subject to Army Act to face the attire of said enactment if there is an information regarding its breach/violation. Under this provision of law, the word "from any source" includes information supplied by armed forces of those who are falling within the jurisdiction of Pakistan Army Act, 1952 but their whereabouts are not traceable to them after their absence or being fugitive from law. In the instant case, both the appellant/petitioner were not falling within this category rather they were directly saddled with accusation falling squarely within the ambit of Pakistan Army Act, 1952, hence, the same was justifiably applicable in the given circumstances. In Ex. Gunner Muhammad Mushtaq Vs. Ministry of Defence (2015 SCMR 1071), this Court held the custody, trial and conviction of the accused army personnel by the Field General Court Martial to be held in accordance with law. The question whether a serving Army Officer is subject to Army Act and is triable by Field General Court Martial also came under discussion in Asim Bashir Vs. Federation of Pakistan (2021 SCMR 1176) wherein this Court candidly held as under:-

"Given his status as an Army Officer, his apprehension, custody and prosecution before a Field General Court Martial are the steps taken within the remit of section 549 of the Code of Criminal Procedure, 1898 (the Code) which unambiguously authorizes such a prosecution on the option of Commanding Officer, a choice that is in line with the concurrent jurisdiction of Court Martial and Criminal Courts on the discretion of "Prescribed Officer" as contemplated by sections 94 and 95 of the Act ibid, laying down the procedure in such an eventuality, therefore, the argument that the petitioner was not liable to be treated as subject to the Act in view of the nature and venue of the crime is entirely beside the mark. We are also not impressed by the contention that the petitioner ought not to have been tried in Bahawalpur Cantonment and that

proceedings of Field General Court Martial stood vitiated on this score alone."

(Underlined to lay emphasis)

9. In the case of Said Zaman Khan Vs. Federation of Pakistan (2017 SCMR 1249) this Court has extended the view of this Court in Ex-Gunner Muhammad Mushtaq supra case wherein a civilian found in combat with army personnel was held liable to be tried under the Pakistan Army Act, 1952. One Said Zaman who was a civilian but was engaged in combat with the soldiers of the Pakistan army being a member of religiously motivated terrorist organization was found involved in attacking Armed Forces with deadly weapons causing death of Army personnel. This Court held that accused was involved in the commission of an offence under Section 2(1)(d)(iii) of the Pakistan Army Act, 1952, as incorporated by the Pakistan Army (Amendment) Act, 2015, hence, by operation of law he became subject to the Pakistan Army Act, 1952, and, therefore, became liable to trial by a FGCM. The Court further held that the offence with which the accused was charged was obviously punishable under the ordinary law of the land triable by a Criminal Court, hence, constituted a "civil offence" as defined by subsection (3) of Section 8 of the Pakistan Army Act, 1952, and was liable to be tried by the Field General Court Martial in view of the provisions of Section 59 of the said Act.

10. The concept of duty/obligation assigned to a military officer does necessarily relate to duty/responsibility assigned for a particular task, as argued before us if accepted correct it would amount to a narrow interpretation regarding responsibilities of members of disciplined force. A military officer of either of the rank is under bounden duty to execute momentary obligations assigned or not in order to uphold dignity, reputation, discipline and above all maintain order of the institution in letter and spirit. Any act or omission, which hampers integrity/discipline of the institution would definitely be accountable considering it an act triable under the Army Act. During the course of arguments, we have noticed that

the appellant/petitioner had already voiced their grievances while filing Constitutional Petition Nos. 8 & 9/1996 before this Court while calling in question the validity of their arrest, detention and trial by the Field General Court Martial convened under the provisions of Pakistan Army Act, 1952. However, this Court after discussing all aspects in detail and the relevant provisions of Law and the Constitution held that the appellant/petitioner along with other co-accused were subject to Pakistan Army Act and the trial held against the military officers before the Field General Court Martial was in accordance with law. All the objections raised before us are in-fact dealt with by this Court in a concrete manner while considering each and every aspect of the case with reference to "fair trial", "due process" eliminating any scope of exploitation and dignity of the man while attending all requirements of justiciability and fairness to broaden the scope of safe administration of criminal justice. This judgment was reported as Shahida Zahir Abbasi Vs. President of Pakistan (PLD 1996 SC 632). It would be advantageous to reproduce the relevant portion of the judgment, which reads as under:-

'From the above quoted passage, it is quite clear that the rules of procedure applicable for trial of a person in a criminal case before a Military Court do not violate any accepted judicial principle governing trial of an accused person. With the assistance of learned Attorney-General and the learned counsel for the petitioners we have gone through various provisions of the Act governing the procedure of trial before a Military Court and after going through the same, I am of the view that the procedure prescribed for trial before Military Courts is in no way contrary to the concept of a fair trial in a criminal case, I may also add here, that unlike the previous position when no appeal was provided against the conviction and sentence awarded by a Military Court, the Act now provides an appeal against the conviction and sentence awarded by a Military Court before an appellate forum.'

11. In the second round of litigation, both the appellant/petitioner exhausted all legal remedies available to them under the Pakistan Army Act up to the level of Chief of Army Staff and the Court of Appeals. It was afterwards, that they again invoked the Constitutional jurisdiction of this Court as also of the learned High Court by filing Constitutional petitions calling in question all those preliminary questions

already dealt by this Court. As far as maintainability of these petitions is concerned, though this Court in a number of cases has already held that Article 199 (3) of the Constitution of Islamic Republic of Pakistan clearly ousted the jurisdiction of High Courts from making an order in relation to affairs of matter of a person who is member of the Armed Forces of Pakistan, or who is for the time being covered by any special law relating to any of such forces, or in respect of any action taken in relation to such person as a member of the Armed Forces, or a person subject to such law and under this clause of Article 199(3) the jurisdiction of the High Court if assailed is barred with reference to the conviction or sentences recorded by the Field General Court Martial. However, a view contrary to earlier stance has now developed, which is recent in all fairness that the superior Courts have jurisdiction to interfere in the orders of the authorities relating to the Armed Forces if the same are found to be either result of *mala fide* or the same are *coram non judice*. In Said Zaman supra, this Court has held that any proceedings, convictions and sentences awarded by the Field General Court Martial (FGCM) can be called into question before the Constitutional Courts on the ground of *mala fides*, if tainted with bias or taken for a collateral purpose to cause damage to a person without legal justification while ignoring all settled principles of decency and fairness. Specific allegations of the collateral purpose or an ulterior motive must be made to hilt and proved to the satisfaction of the Court. However, this new concept of interference is still holding very bleak ground to interfere in the presence of express provisions of Constitution. However, in the instant case we have not been able to find out any element of *mala fides* on the part of the prosecution or authority to entertain these petitions in the given circumstances. Therefore, in absence of any element of *mala fides* on the part of competent *fora*, the conviction and sentences inflicted to the appellant/petitioner by the Field General Court Martial cannot be stamped to be result of *coram non judice*. The argument that the order of Field General Court Martial was violative of fundamental rights has no legal sanctity because firstly there is no material available to substantiate such aspect. Further both of them joined Pakistan

Army as of their own, with free will and after serving as commissioned officers for considerable time, they were reported for an act as such being subject to Pakistan Army Act, 1952, proceedings were initiated against them in lieu of violation of law, hence it cannot be termed as infringement of any fundamental right, which actually was not specifically pointed out during the course of proceedings. Otherwise these aspects qua proceedings before us have already been dealt in the afore-referred salutary judgment of this Court. Otherwise, the "code of procedure" of the Field General Court Martial was even brought under the judicial scrutiny of this Court in another famous case titled F.B. Ali Vs. The State (PLD 1975 SC 506) and the same was found to be in conformity with the generally accepted and recognized principles of administration of criminal justice. In Shahida Zaheer Abbasi case mentioned supra, this Court after thoroughly analyzing the provisions of Pakistan Army Act, Pakistan Army Rules and the Constitution of Islamic Republic of Pakistan has candidly reiterated while holding that the "*Army Act, 1952 is one of those pieces of legislation which is protected under Article 8(3)(a) of the Constitution from being challenged on the grounds of its consistency with the provisions contained in Chapter I of Part II of the Constitution of Islamic Republic of Pakistan. Rules of procedure applicable for trial of a person in a criminal case before a Military Court do not violate any accepted judicial principle governing trial of an accused person. Procedure prescribed for trial before Military Courts is in no way contrary to the concept of a fair trial in a criminal case.*" These judgments were upheld by this Court in a subsequent judgment reported as District Bar Association Vs. Federation of Pakistan (PLD 2015 SC 401) and it was held that the provisions of Pakistan Army Act cannot be invalidated for offending against fundamental rights including Article 25 of the Constitution. Similarly Article 10-A also cannot be pressed into service to challenge the provisions of Pakistan Army Act, 1952. All these questions were determined by this Court in the earlier round of litigation, which has been pointed out in the preceding paragraphs. Furthermore, the case of the appellant/petitioner has become more sensitive by way of conviction

recorded against them and further it was served out, which makes them previous convicts.

12. Now the “pivotal question” raised during arguments is as to whether an accused person under the Pakistan Army Act can be convicted for an alternative charge/offence in case the principal charge/offence is not proved. The concept of alternative charge is not unknown in the sphere of Pakistan Army Act. Sections 111(5) of the Pakistan Army Act and Rules 21(4) and 51(7) & (8) speak about the framing and punishment of an accused under alternative charge/offence. The bare perusal of the charge sheet reveals that both the appellant/petitioner were not only charge sheeted for the main offence but also for the alternative charges/offences and it was well within the knowledge of both of them. It is now well settled without second thought that if an accused is charged with one offence but from the evidence it appears to have committed a different offence for which he might have been charged under the said provisions of law, he may be convicted for the offence he is found to have committed, although he was not charged with the same. However, in the present case, the appellant/petitioner were not only charged for the main offence but for the alternative charges as well, which is spelled out from bare reading of charge sheet. All courts after evaluating the evidence led by the prosecution found that the main offence could not be proved against them but as there was sufficient evidence to sustain their conviction under the alternative charge, hence, they were convicted accordingly. Needless to mention that when appellant/petitioner had filed Constitutional petitions before this Court in the year 1996, although charge had been framed at that time but they never raised this objection before any court including this court at that juncture of time as to why they have been charge sheeted for the alternative offences, rather they failed to bring on record an iota of material in their defense except instant contention at belated stage, which has no legal value in the eyes of law. The concept of conviction under alternative charge in the absence of conviction under the main charge is a well established/recognized principle of criminal justice system as provided in Sections 236 to 240 of the Code of Criminal

Procedure. In Jiand Vs. The State (1991 SCMR 1268), this Court held that cumulative effect of Sections 236/237 Cr.P.C. is that if an accused is charged with one offence but from the evidence it appears to have committed an alternative offence for which he might have been charged under the provisions of that section, he may be convicted for an offence which he is shown to have committed, if supported by record, although he was not charged with the same. Even this aspect is not absolute, in absence of any alternative charge he can be convicted for any offence if it covers the ingredients of said offence.

13. Now, we would advert to the question as to whether Constitution Petitions before this Court and the High Court were maintainable. Before dealing with this question, it would be in order to discuss as to whether the jurisdiction exercised by the Supreme Court under Article 184(3) of the Constitution is analogous to the power available to the High Court under Article 199 of the Constitution. In Shahida Zahir supra case, this aspect of the matter was considered at length and this Court while relying on an earlier judgment of this Court in Benazir Bhutto Vs. Federation of Pakistan (PLD 1988 SC 416), which is perhaps considered as the judgment of first impression laying down the parameters within which the power and jurisdiction of this Court under Article 184(3) of the Constitution is exercised, held as follows:-

“I would, however, like to make it clear that the power conferred on the Supreme Court by Article 184(3) is distinct and has its origin in Article 22 of the 1956 Constitution and is exerciseable on its own terminology. The impression, if there is, that the trappings of sub Articles 1(a) and I (c) of Article 199 are also to be read into this Article appears to me to be without substance as there are no words in Article 184 (3) to incorporate them except, of course, the words make an order of the nature mentioned in the said Article, which are specifically referable to the nature of the order in sub-Article 199(c) of Article 199 giving such directions as may be appropriate for the enforcement of any of the Fundamental Rights. The nature of the order, however, is the end product of the Judicial power exercised. Therefore, it will not control or regulate, in any way, the exercise of power so as to make it exerciseable only at the instance of the 'aggrieved party' in the context of adversary proceedings.

.....

On the language of Article 184(3), it is needless to insist on a rigid formula of proceedings for the enforcement of the Fundamental Rights. If the framers of the Constitution had intended the proceedings for the enforcement of the Fundamental Rights to be in a strait-jacket, then they would have said so, but not having done that, I would not read any constraint in it, Article 184(3) therefore, provides abundant scope for the enforcement of the Fundamental Rights of an individual or a group or class of persons in the event of their infraction.

Unlike in Article 199, the Framers of the Constitution placed no limitation nor prescribed any condition or stipulation for obtaining relief and redress under Article 184(3). No strait-jacket formula was prescribed for the enforcement of the Rights, the obvious reason that can be spelled out is that in case the Supreme Court was itself of the view in a given case that a question of public importance with reference to the enforcement of any of the Fundamental Rights conferred by Chapter 1 of Part II is involved, it should directly interfere, and any rigid formula or strait-jacket formula prescribed for enforcement of the Rights would be self-defeating."

14. In District Bar Association Vs. Federation of Pakistan (PLD 2015 SC 401), this Court has held that in our Constitution, fundamental rights have been guaranteed to the citizen; specific provisions have been inserted in the Constitution to reinforce such protection and where there is a violation in this behalf by the Executive or the Legislature, the remedy available to an aggrieved person is to approach the Courts for the redressal of his grievances and enforcement of his Fundamental Rights, as is evident from Articles 184 and 199 of the Constitution. It is, therefore, clear that although powers conferred upon this Court and the High Courts under Articles 184 (3) and 199 of the Constitution are distinct but an aggrieved party, whose fundamental rights have been infringed, can knock the doors of the Court for redressal of its grievances. However, it is also settled that any order passed or sentence awarded during a Court Martial or other forums under the Pakistan Army Act, 1952, is subject to judicial review both by the High Courts and the Supreme Court only on the ground of *mala fides* including malice in law, without jurisdiction or *coram non judice*. Before invoking the jurisdiction of this Court or the High Court, the test to pass is strictly confined as to whether the order/sentence passed during Court Martial is suffering from *mala fides*, without jurisdiction and

coram non judice. In absence of any *mala fide* on the part of the prosecution, the conviction and sentences awarded to the appellant/petitioner by the Field General Court Martial cannot be stamped to be *coram non judice*, which otherwise is a rare phenomenon, therefore, it can safely be said that the Constitutional petitions filed by the appellant/petitioner either before this Court or before the High Court in the given circumstances as disclosed in detail were not maintainable. Even otherwise, petitioner Inayatullah Khan by filing Constitution Petition No. 18/2000 had challenged his conviction after lapse of more than three years. Same is the case with appellant Muhammad Azad Minhas, who had challenged his conviction before the High Court after delay of more than 13 years. It is established principle that delay defeats equity and equity leans in favour of vigilant. Any person may have an enforceable right but if he fails to enforce such right within the time stipulated by law then the right becomes unenforceable. Law of limitation is not considered a mere formality and is required to be observed being of mandatory nature. Law of laches takes away right of the party to have the right enforced, which otherwise, is enforceable under the law because law requires that one having an enforceable right should seek enforcement whereof within time specified by law. Although as a general principle bar of limitation is not applicable to the proceedings under Article 199 and 184 of the Constitution but insistence is placed on initiating proceedings promptly and within a reasonable time to avoid the question of *laches*. Reliance is placed on Dr. Muhammad Tahir-ul-Qadri Vs. Federation of Pakistan (PLD 2013 SC 413). In the said case, this Court while placing reliance on an earlier judgment of this Court reported as Jawad Mir Muhammadi vs. Haroon Mirza (PLD 2007 SC 472) held that *laches per se* is not a bar to the constitutional jurisdiction and question of delay in filing would have to be examined with reference to the facts of each case; question of delay/laches in filing constitutional petition has to be given serious consideration and unless a satisfactory and plausible explanation is forthcoming for delay in filing constitutional petition, the same cannot be overlooked or ignored subject to facts and circumstances of each case. In

S.A. Jameel v. Secretary to the Govt. of the Punjab (2005 SCMR 126), this Court held that question of laches has to be examined on equitable principles for the reason that the exercise of Constitutional jurisdiction is always discretionary with the Court and the relief so granted is always in the nature of equitable relief. In case the Court finds that the party invoking Constitutional jurisdiction is guilty of contumacious lethargy, inaction, laxity or gross negligence in the prosecution or a cause for enforcement of a right, the Court would be justified in non-suiting such person on the premise of *laches*. Both the appellant/petitioner could not give sufficient reason as to why they remained silent for years and did not invoke the Constitutional jurisdiction well in time, therefore, on this score alone, their Constitutional petitions are liable to be dismissed.

15. The only question which remains in the field is whether after dismissal from service, the appellant/petitioner are still entitled for the privileges i.e. membership in the housing scheme, allotment of plots and further all amenity services, which are meant for the army personnel. Further, that the withdrawal of all these facilities does fall within the ambit of dictum 'double jeopardy'? It is settled that dismissal from service squarely takes away all the perks, privileges and amenity services from an army personnel conferred in lieu of his induction into the Pakistan Army. All these benefits are subject to service and any action contrary to service structure takes away not only perks and privileges rather the privilege of salary, pension, gratuity etc for which he was otherwise entitled. Soon after the action taken by the military authorities against the appellant/petitioner, their services were terminated resulting into depriving them of all the benefits and in pursuance of that order, which was upheld to the highest forum, the benefits attached to the service i.e. plot, house, amenity services etc had been withdrawn. There is no second cavil to this proposition that after dismissal from service, the appellant/petitioner cannot claim any benefit because of the reason that their termination was in pursuance of the defiance of the discipline and order of the institution discretely. We have repeatedly asked them to show any law or precedent wherein the perks, privileges and amenity

services were continued to be enjoyed by a person, who was dismissed from service after facing court martial but they failed to do so. Apart from this, to consider whether it amounts to 'double jeopardy', it would be in order to reproduce Section 403 of the Code of Criminal Procedure and Article 13(a) of the Constitution of Islamic Republic of Pakistan, 1973, which read as under:-

"403. Persons once convicted or acquitted not to be tried for the same offence. (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not to be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 36, or for which he might have been convicted under section 237.

13. No person— (a) shall be prosecuted or punished for the same offence more than once"

16. A close analysis of the above said provisions discloses that the case of the appellant/petitioner does not fall within the ambit of these provisions of law and the Constitution. The concept of double jeopardy is placed upon entirely different premises which are meant for entirely different situations which are squarely missing in this case, hence, the claim of the appellant/petitioner that they are victim of double jeopardy is without any legal foundation, consequently it is immensely rebutted.

17. For what has been discussed above, the appeal and Constitution petition are dismissed being without merit.

CHIEF JUSTICE

JUDGE

JUDGE

Islamabad, the
Announced on **12.09.2023**

Approved For Reporting
Khurram