

Form No: HCJD/C-121.

JUDGEMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Orig. No. 270 of 2019

The State
Vs
Dr Firdous Ashiq Awan

DATE OF HEARING: 14-11-2019.

PETITIONERS BY: M/s Jahangir Khan Jadoon, Khalid
Mehmood Khan, Shahista Tabassam and
M. Arshad Jadoon, Advocates, in Crl.
Orig. No. 287/2019.

RESPONDENTS BY: Mr. Tariq Mehmood Jahangiri, Advocate
General, Islamabad.
Mr. Tariq Mehmood Khokhar, Addl. Advocate
General.
Syed Muhammad Tayyab, Deputy Attorney
General.
Mr. Sadaqat Ali Jahangir, State Counsel.
Mr. M. Saifullah Gondal, Assistant Attorney
General.
M/s Shah Khawar, Tanveer Iqbal Khan and
Syed Muhammad Ali Bokhari, Advocates for
respondents/contemnors.
Raja Inam Amin Minhas, President IHCBA.
Ch. Khanzada, President IBA.
Mr. Yasir Shakeel, Secretary IBA.
Mr. Ali Zeeshan Gondal, Advocate for
PEMRA.

ATHAR MINALLAH, CJ.- Through this consolidated
judgment I shall decide Crl. Orig. No. 270/2019, titled "The

State v. Dr Firdous Ashiq Awan" and Crl. Orig. No. 287/2019, titled "Khalid Mehmood Khan v. Ghulam Sarwar Khan, etc."

2. The brief facts which led to initiating these proceedings are that a written report was received regarding a press conference held on 29-10-2019, by Dr Firdous Ashiq Awan, Special Assistant to the Prime Minister of Pakistan for Information and Broadcasting [hereinafter referred to as the "**Contemnor no. 1**"]. The latter, as spokesperson of the Federal Government, had held the said official press conference to brief print and media persons regarding the cabinet meeting which had been chaired by the Prime Minister of Pakistan. It was reported that during the press conference she made statements which, prima-facie, amounted to scandalizing this Court and that her act was intended to obstruct and divert the course of justice. The relevant portion of her press conference is reproduced as follows:

"میڈم اس وقت ہمارے پاکستان کی جیلوں میں ہزاروں قیدی قید ہیں اور ہر مہینہ کوئی نہ کوئی بے چارہ بیماری کی وجہ سے فوت بھی ہو جاتا ہے کیا یہ سزا کی معطلی کی مراعات انہیں بھی حاصل ہوگی اور میرا دوسرا سوال یہ ہے کہ اس وقت اسلام آباد میں ہجان برپا ہے کہ مولانا فضل الرحمن۔۔۔ کنٹینرز کی برسات ہے آپ بتائیں گی کہ کیا واقعی کوئی معاہدہ ہوا ہے اور اس معاہدے میں کیا چیزیں شامل ہیں تاکہ لوگوں کو پتہ چلے کہ وہ کس طرح آ جا سکتے ہیں اور ان کے لیے لئے کیا آسانیاں ہوگی اور۔۔۔"

(رپورٹ) 2

میڈم اس کے ساتھ ہی لے لیں کہ جو ان کا جلسہ آرہا ہے اور جو ان کے اسلام آباد کی طرف رواں دواں ہے وہ ڈنڈے تو نظر نہیں آرہے بندوقیں نظر آرہی ہیں اس کے

اوپر کوئی ناخوشگوار واقع ہوتا ہے تو اس کی ذمہ داری۔۔۔

فردوس عاشق عوان

دیکھئے آپ کے سوال میں جو Trend set ہوا ہے عدالت کا جو ایک Code of Conduct ہے اور جو ایک طریقہ کار ہے کہ عدالت نہیں بولتی ہوتی اس کے فیصلے بولتے ہیں اور یہ ان تمام بیمار قیدیوں کے لیے بھی ایک ریلیف کا دروازہ کھلا ہے کیونکہ جب بھی معزز وکلاء حضرات کسی کیس کو Plead کرتے ہیں عدالت میں جاتے ہیں کھڑے ہوتے ہیں تو وہ پچھلے کیسز کا حوالہ دیتے ہیں تو میاں محمد نواز شریف کے کیس کے ساتھ جڑے جتنے فیصلے ہیں یہ پاکستان کی مختلف جیلوں میں قید ان مظلوم بیمار قیدیوں کے لیے تازہ ہوا کا جھونکا بنے ہیں کہ یہ اب وہ بھی آئیں گے اور ان کا حق ہے کیونکہ عدالت کا کام قانون کا کام کمزور اور طاقتور کے درمیان تفریق پیدا کرنا نہیں Rule of Law کو Ensure کرنا ہے اور اب آپ سب بھی میڈیا مجھ سے سمیت ہم عدالت کی طرف دیکھتے رہیں گے کہ اور کتنے اس طرح کے مستحق قیدی عدالت چھٹی والے دن عدالت لگا کے ریلیف دیتی ہے باقی قیدیوں کو بھی تو یہ آپ بالکل ٹھیک کہہ رہے ہیں کہ یہ ایک ہمارا سسٹم جو ہے اس کو بدلنے کے لیے ابھی آپ سب نے ہماری مدد کرنی ہے یہ انسٹیٹیوشنل گیپس ہے ابھی یہ ہمارے وہ کمزور ادارے طاقتور شخصیات ابھی اس کے بوجھ سے ہم باہر نہیں آ رہے تو ہمیں ٹائم لگے گا رول آف لاء سب کے لئے ان شور کرنے کے لیے اور انشاء اللہ پاکستان کے اندر قانون کی حکمرانی اور عدالتوں کے اندر جو Relief ہے آج جو آئیں اور قانون کے مطابق عدالت نے فیصلہ دیا ہے اس کا اطلاق باقیوں کو بھی انشاء اللہ ان پہ ہوگا۔"

The above statement was made in the context of bail granted in favour of Mian Muhammad Nawaz Sharif by a learned Division Bench of this Court on 26-10-2019, which was a Saturday. The bail was granted after the authorized

representative of the National Accountability Bureau [hereinafter referred to as the "**Bureau**"] had unequivocally consented to allow the petition and grant bail till 29-10-2019, i.e. the date when the main petition was fixed for hearing before another learned Division Bench. The said consent was given on the basis of the reports submitted by a Medical Board constituted by the Government of Punjab and which also included medical specialists from medical institutions under the control of the Federal Government. The authorized representatives of the Federal Government as well as the Province of Punjab had also unambiguously stated that they had been instructed not to oppose the grant of bail till 29-10-2019. The bail was thus granted solely on medical grounds pursuant to consent given on behalf of all the relevant authorities. The main petition, seeking suspension of sentence and grant of bail on medical grounds, was fixed before a learned Division Bench on 29-10-2019. The learned Division Bench, which heard the matter on 29-10-2019, had later granted bail on medical grounds since it was not opposed by the prosecution keeping in view the reports of the official Medical Board. The appeals against conviction are pending before this Court. It was, therefore, in this context that Contemnor no. 1 had made statements during the press conference, which have been reproduced above. She appears to have attempted to create an impression as if extraordinary treatment was extended and that too on a holiday. She also appears to have attempted to insinuate and create a

perception that the superior courts, particularly this Court, has treated the vulnerable and less privileged litigants differently while the influential and powerful are extended extraordinary favors. She also did not hesitate in attempting to create an impression that the institutions are weak and helpless before the influential segments of the society. The conduct and statements of Contemnor No. 1, prima facie, appeared to be an attempt to influence public opinion by creating a perception against the administration of justice with the object and intent to cause obstruction thereto. It, therefore, appeared to be an attempt to obstruct and divert the course of justice because the proceedings were pending.

3. The other contempt proceedings were initiated against Ghulam Sarwar Khan who is one of the members of the Federal Cabinet and holds the portfolio of Minister of Aviation Division. The latter, while appearing in a program which was aired by one of the television channels, namely, 'Hum News' on 06-11-2019, had made statements suggesting that there was some deal and that the relief extended to Mian Muhammad Nawaz Sharif was pursuant thereto. The relevant portion of his interview, is as under:-

”غلام سرور خان:

دیکھیں جی مولانہ کے جانے کے بعد یقیناً Political
 Stability بھی آئے گی اور Political
 Stability کے ساتھ ہی ساتھ Economic
 Stability بھی آئے گی جب Political اور
 Economically Stable ہوں گے تو یقیناً

صورت حال ہر حوالے سے پہلے سے بہتر ہو گی اور انشاء اللہ تعالیٰ جو آپ دیکھ رہے ہیں جو Political Scenario بن رہا ہے کہ۔ پیپلز پارٹی اور PML-N دونوں پس پشت چلی گئیں ہیں۔ اور انہوں نے تو سیاست ہی ہمیشہ Deals کی ہیں۔ نواز شریف کی Induction بھی ایک ڈیل کا نتیجہ تھی۔ نواز شریف کا یہاں تک پہنچنا بھی مختلف قسم کی Deals تھیں۔ نواز شریف کا پچھلے Tenure میں باہر جانا بھی ایک ڈیل تھی اور پھر باہر سے واپس آنا بھی ایک ڈیل تھی۔ اب بھی جیل سے باہر جانا Hospital سے گھر جانا

عادل شاہ زیب: ابھی بھی ڈیل ہے؟

غلام سرور: یقیناً جی یہ پس پردہ کچھ نہ کچھ تو ہے کچھ نہ کچھ تو ہے کہ وہ جیل سے **عادل شاہ زیب:** نہیں لیکن یہ کس نے کی ہے آپ تو Cabinet کا حصہ ہیں تو آپ کو۔

غلام سرور: Cabinet کہیں نہ کہیں کچھ نہ کچھ تو ہو رہا ہے کہ وہ جیل سے نکلتے ہیں سروسز ہسپتال میں آتے ہیں سروسز ہسپتال سے۔

عادل شاہ زیب: لیکن وہ تو بیمار ہیں ان کی میڈیکل رپورٹس ہیں آپ کہہ رہے ہیں ڈیل ہے وہ؟ **غلام سرور:** دیکھیں نامیڈیکل رپورٹس تو Manipulated بھی ہو سکتی ہیں۔

عادل شاہ زیب: نہیں تو خان صاحب آپ تو گورنمنٹ میں ہیں۔ تو یہ ڈیل کہاں سے۔

غلام سرور: میں دیکھیں نا کہیں نا کہیں کچھ نہ کچھ نظر آرہا ہے۔ ہر، دیکھیں نا جیسے میر صاحب نے بھی کہا انہوں نے تجزیہ کرتے ہوئے کہا کہ مارچ میں نہ شامل ہونا بھی ایک ڈیل تھی مارچ میں شامل نہ ہونا میان صاحب کو اندر سے باہر لانا یہ بھی ایک ڈیل تھی نا۔

عادل شاہ زیب: تو خان صاحب تو کہہ رہے تھے کہ NRO نہیں دوں گا ڈیل نہیں کروں گا۔

غلام سرور: وہ دیکھیں نا NRO, NRO کیسز جتنے بھی ہیں Intact ہیں۔ کیسز انہیں بھگتنا پڑھیں گے ان کی بیل

عادل شاہ زیب: آپ کہہ رہے ہیں کہ کہ ٹیل ہوئی ہے تو کس طرح سے کی ہے؟
غلام سرور: دیکھیں نا کسی لیول پہ کہیں تو کوئی بات ہے کہ انہیں کوئی تھوڑا بہتا ریلیف دیا گیا ہے اور انہوں نے بھی تھوڑا بہتا کوئی ریلیف دیا ہے اس میں Participate نہ کر کے۔"

4. The Contemnor no. 1, during the course of these proceedings, had submitted a written reply wherein she tendered her unconditional apology. Contemnor no. 2 was not served with a show cause notice but when he appeared before this Court today he also tendered his unconditional apology. Both the alleged contemnors have placed themselves at the mercy of this Court.

5. Before proceeding further it would be beneficial to record some relevant facts. Contemnor no. 1 had held the press conference on 29-10-2019, in her official capacity to brief print and media persons regarding the proceedings and decisions taken by the Federal Cabinet and, as a spokesperson, was thus acting on behalf of not only the Prime Minister but also the Federal Cabinet. The act or statements of Contemnor no. 1 were at no stage deprecated or denied by the authorities on whose behalf she had held the official press conference, rather the same was resonated by other members of the cabinet as well. Both the alleged contemnors are not ordinary citizens. They represent the political party in power and the highest echelons of the executive authorities of the State. Contemnor No. 1 represents the highest executive

office i.e. the Chief Executive of Pakistan, as official spokesperson of the State and its executive. Likewise, Contemnor no. 2, as member of the Federal Cabinet, is part of the highest forum of the executive through which the State fulfills its obligations. They are, therefore, part of and represent the highest tier of the executive organ through which the State exercises its power and performs its functions. Every act or word of those who represent and form a part of the highest executive authority of the State inevitably has enormous influence and consequences. Their statements, assertions or acts regarding the administration of justice, particularly sub judice matters, could prejudice the right to fair trial of a litigant and obstruct the course of justice, besides eroding public trust in the courts by attempting to make the judicial process appear controversial. These criminal contempt proceedings were initiated because of the gravity of the conduct of the petitioners in attempting to divert the course of justice and obstruct the administration of justice while exercising restraint regarding scandalizing the Court. It appeared from the conduct of the alleged contemnors as though a perception was being created in an organized manner prejudicial to administration of justice and the course of justice. Since criminal contempt relates to the right to fair trial, undermining the course of justice and obstructing the administration of justice, therefore this Court, despite otherwise exercising extreme restraint, felt that it was necessary to initiate these proceedings in the public interest

because it had potentially prejudicial consequences for every litigant. It would be beneficial to examine the principles and law relating to the law of contempt in order to ascertain whether, in the light thereof, both the contemnors had transgressed the right to freedom of expression by committing contempt. These proceedings are confined to the offence of criminal contempt defined under clause (b) of section 2 of the Contempt of Court Ordinance, 2003 [hereinafter referred to as the "**Ordinance of 2003**"] and not to the other forms of contempt.

6. The power of contempt has been provided and described in Article 204 of the Constitution of the Islamic Republic of Pakistan, 1973 [hereinafter referred to as the "**Constitution**"]. Sub Article (3) provides that the exercise of power conferred on a Court under Article 204 may be regulated by law and subject to law by rules made by the Court. Pursuant to the said constitutional mandate, the Ordinance of 2003 was promulgated and notified in the official gazette on 10-07-2003. Section 2 defines various expressions such as civil contempt, criminal contempt, judicial contempt, personalized criticism and pending proceedings. Section 3 describes the three categories of contempt, namely, civil contempt, criminal contempt and judicial contempt. The expression 'criminal contempt' is defined in clause (b) of section 2 as meaning the doing of any act with intent to, or having the effect of, obstructing the administration of justice.

Section 6 describes when criminal contempt is committed. Clause (c) of sub section (1) of section 6 provides that a criminal contempt is deemed to have been committed if a person commits any act other than described in clauses (b) and (a) with the intent to divert the course of justice. Section 7 provides how and by whom proceedings for acts relating to criminal contempt may be initiated. Section 8 describes the exceptions to the offence of criminal contempt while sub section (2) empowers the Court to prohibit the publication of information pertaining to legal proceedings. Sections 9, 11 and 12 describe 'personalized criticism', 'judicial contempt' and 'civil contempt' respectively. Section 17 describes the procedure for the purposes of proceeding against an alleged contemnor. Section 18(1) explicitly provides that no person shall be held guilty of contempt and punished unless the Court is satisfied that the contempt is one which is substantially detrimental to the administration of justice or scandalizing the Court or otherwise tends to bring the Court or Judge of the Court into hatred or ridicule.

7. It would be beneficial for deciding the petitions in hand to refer to the precedent law regarding the principles relating to the contempt law. Most of these principles have been developed under common law. The scheme of the Ordinance of 2000 shows that it is also based on the principles of contempt law developed by the courts in England.

8. In the case titled "Ambard v Attorney-General for Trinidad and Tobago", [1936] 1 All ER 704, Lord Atkin has observed:-

"But whether the authority and position of an individual Judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticizing in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way : the wrongheaded are permitted to err therein : provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men."

9. In the case titled "St James's Evening Post' (1942) 2 Atk at 469 it was observed by Lord Hardwicke LC as follows:-

"Nothing is more incumbent upon courts of justice, than to preserve their proceedings from being misrepresented; nor is there

anything of more pernicious consequence, than to prejudice the minds of the public against persons concerned as parties in cause, before the cause is finally heard."

And:

"There are three different sorts of contempt. One kind of contempt is, scandalizing the court itself. There may be likewise a contempt of this court, in abusing parties who are concerned in causes here. There may be also a contempt of this court, in prejudicing mankind against persons before the cause is heard. There cannot be anything of greater consequence, than to keep the streams of justice clear and pure, that parties may proceed with safety both to themselves and their character."

10. In the case titled "Vine Products Ltd v Mackenzie & Co Ltd" [1965] 3 All ER 58, Buckley J. has observed and held as follows:-

"It is a contempt of this court for any newspaper to comment on pending legal proceedings in any way which is likely to prejudice the fair trial of the action. That may arise in various ways. It may be that the

comment is likely in some way or other to bring pressure to bear on one or other of the parties to the action, so as to prevent that party from prosecuting or from defending the action, or encourage him to submit to terms of compromise which he otherwise might not have been prepared to entertain, or influence him in some other way in his conduct in the action, which he ought to be free to prosecute or to defend, as he is advised, without being subject to such pressure."

11. In the judgment rendered by Jordan CJ in "Re Truth and Sportsman Ltd." (1937) 37 SRNSW 242 it has been observed;

"It is of extreme public interest that no conduct should be permitted which is likely to prevent a litigant in a Court of justice from having his case tried free from all matter of prejudice. But the administration of justice, important though it undoubtedly is, is not only matter in which the public is vitally interested; and if in the course of the ventilation of a question of public concern matter is published which may prejudice a party in the conduct of a law suit, it does not follow that a contempt has been committed. The case may be one in which

as between competing matters of public interest the possibility of prejudice to a litigant may be required to yield to other and superior considerations. The discussion of public affairs and the denunciation of public abuses, actual or supposed, cannot be required to be suspended merely because the discussion or the denunciation may, as an incidental but not intended by-product, cause some likelihood of prejudice to a person who happens at the time to be a litigant. It is well settled that a person cannot be prevented by process of contempt from continuing to discuss publicly a matter which may fairly be regarded as one of public interest, by reason merely of the fact that the matter in question has become the subject of litigation, or that a person whose conduct is being publicly criticized has become a party to litigation either as plaintiff or as defendant, and whether in relation to the matter which is under discussion or with respect to some other matter.”

12. The first case which went up to the House of Lords regarding contempt and wherein the general principles relating to the contempt law were discussed was “Attorney General vs. Times Newspapers Ltd.” [1973] 3 All ER 54. The

relevant portion from the judgment authored by Lord Reid is reproduced as follows:-

"There are other weighty reasons for preventing improper influence being brought to bear on litigants, but they have little to do with interference with the fairness of a trial. There must be absolute prohibition of interference with a fair trial but beyond that there must be a balancing of relevant considerations."

"I think the true view is that expressed by Lord Parker CJ in R v Duffy, ex parte Nash, that there must be 'a real risk as opposed to a remote possibility'. That is an application of the ordinary de minimis principle. There is no contempt if the possibility of influence is remote. If there is some but only a small likelihood, that may influence the court to refrain from inflicting any punishment. If there is a serious risk some action may be necessary. And I think that the particular comment cannot be considered in isolation when considering its probable effect. If others are to be free and are likely to make similar comments that must be taken into account."

"There has long been and there still is in this country a strong and generally held feeling that trial by newspaper is wrong and should be prevented. I find for example in the report of Lord Salmon's committee dealing with the law of contempt with regard to Tribunals of Inquiry a reference to the 'horror' in such a thing. What I think is regarded as most objectionable is that a newspaper or television programme should

seek to persuade the public, by discussing the issues and evidence in a case before the court, whether civil or criminal, that one side is right and the other wrong. If we were to ask the ordinary man or even a lawyer in his leisure moments why he has that feeling, I suspect that the first reply would be, well look at what happens in some other countries where that is permitted. As in so many other matters, strong feelings are based on one's general experience rather than on specific reasons, and it often requires an effort to marshall one's reasons. But public policy is generally the result of strong feelings, commonly held, rather than of cold argument."

"I think that anything in the nature of prejudgment of a case or of specific issues in it is objectionable not only because of its possible effect on that particular case but also because of its side effects which may be far reaching. Responsible 'mass media' will do their best to be fair, but there will also be ill-informed, slapdash or prejudiced attempts to influence the public. If people are led to think that it is easy to find the truth, disrespect for the processes of the law could follow and, if mass media are allowed to judge, unpopular people and unpopular causes will fare very badly. Most cases of prejudging of issues fall within the existing authorities on contempt. I do not think that the freedom of the press would suffer, and I think that the law would be clearer and easier to apply in practice if it is made a general rule that it is not permissible to prejudge issues in pending cases."

13. It would also be pertinent to reproduce the relevant portion from the judgment penned by Lord Morris Of Borth-Y-Gest, which is as follows:-

"My Lords, the phrase contempt of court is one which is compendious to include not only disobedience to orders of a court but also certain types of behaviour or varieties of publications in reference to proceedings before courts of law which overstep the bounds which liberty permits. In an ordered community courts are established for the specific settlement of disputes and for the maintenance of law and order. In the general interests of the community it is imperative that the authority of the courts should not be imperiled and that recourse to them should not be subject to unjustifiable interference. When such unjustifiable interference is suppressed it is not because those charged with the responsibilities of administering justice are concerned for their own dignity: it is because the very structure of ordered life is at risk if the recognized courts of the land are so flouted that their authority wanes and is supplanted. But as the purpose and existence of courts of law is to preserve freedom within the law for all well disposed members of the community, it is manifest that that courts must never impose any limitations on free speech or free discussion or free criticism beyond those. Which are absolutely necessary. When therefore a court has to consider the propriety of some conduct or speech or writing decision will often depend on whether one aspect of the public interest definitely outweighs another of the public interest. Certain aspects of the public interest will be relevant in deciding and assessing whether

there has been contempt of court. But this does not mean that if some conduct ought to be stigmatized as being contempt of court it could receive absolution and be regarded as legitimate because it had been inspired by a desire to bring about a relief of some distress that was a matter of public sympathy and concern. There can be no such thing as a justifiable contempt of court."

14. The august Supreme Court, in the case titled "The Attorney General of Pakistan v. Abdul Hamid Sheikh, Editor, 'Civil & Military Gazette' and another" [PLD 1963 S.C. 170] observed and held as follows:

"From a review of these decisions it appears to us that the real test in such cases is whether the publication complained of tended or was calculated to interfere with the course of justice in any substantial or real manner, either by prejudicing a fair trial or "by prejudicing the minds of the public against persons concerned as parties in causes before the cause is finally heard." In determining this effect neither the intention of the printers or authors nor the truth or falsity of the allegations contained in the publication complained of is of any consequence, for, what we are concerned with is that we should not permit anyone "to poison the fountain of justice before it begins to flow."

15. In the case titled "Suo Motu Contempt Proceedings initiated against Mr. Daniyal Aziz, Federal Minister on account of derogatory and contemptuous speeches/statements in respect of this Hon'ble Court telecast by different TV

Channels” [PLD 2018 S.C. 738] the august Supreme Court has held that the nature of proceedings under the Ordinance of 2003 were not in a strict sense a criminal trial under the Code of Criminal Procedure, 1898 but were sui generis in nature, partaking some of the elements of both civil and criminal proceedings. It has been further held that the purpose of such proceedings was not to wreak vengeance, nor was it related to the ego of a judge to punish the alleged contemnor but, rather, to vindicate the honour and dignity of the Court so as to maintain and strengthen the confidence of the general public in the judicial system and to keep the justice system away from any obstructions. In the case titled “Suo Motu contempt Proceedings initiated against Mr Talal Chaudhry, State Minister on account of derogatory and contemptuous speech/statements at a public gathering in respect of this Hon’ble Court telecasted by different T.V. Channels” [PLD 2018 S.C. 773] the apex Court has held that the law of contempt was meant to maintain the efficacy of the Courts of justice and to secure public confidence in the administration of justice. It was further held that the rationale for the imposition of conditions on freedom of speech and expression, as underlined by the Constitution itself, was that citizens, while exercising such right, had to maintain decency and decorum and not act in a manner which would infringe upon the rights of other citizens or transgress the mandate of law in relation to the working of State institutions. It has been further held that once an alleged contemnor takes up the

defence that his act or utterance was referred to out of context then the burden was upon the latter to show and establish that such was the case. The apex Court has emphasized that the principle of judicial restraint, though, has to be exercised but that it was not to be applied universally in each and every case.

16. The august Supreme Court in the case titled "Contempt Proceedings against Imran Khan, Chairman, Pakistan Tehreek-e-Inshaf" [PLD 2014 S.C. 367] has held and observed as under:

"In our opinion, the submission of an unconditional apology by the alleged contemnor in every case is neither a condition precedent, nor a point of ego or prestige for the Courts, which practice is to be adhered to in each case as a rule of thumb before discharging the notice. Similarly, mere submission of unconditional apology is also no ground for further inaction in the proceedings or discharge of such notice without looking into the intent behind it. Rather, it would entirely depend upon the facts and circumstances of each case, particularly the stance taken by the alleged contemnor qua his overall conduct during such proceedings before the Court, which will enable the Court seized of the matter to form an opinion about strict adherence to such a practice or otherwise."

In the above judgment it has been held that contempt

proceedings are in the nature of quasi judicial proceedings and that the benefit of any doubt would be extended in favour of the alleged contemnor.

17. In the case titled "The State v. Khalid Masood, Regional Director, Pakistan Narcotics Control Board, Lahore and 3 others" [PLD 1996 S.C. 42] it has been held that the purpose and object of the law of contempt is not to protect the Courts or the judges but rather to safeguard the rights of the public. It has been further emphasized that justification for law of contempt is that it is contrary to the public interest that public confidence in the administration of justice should be undermined. The august Supreme Court quoted with approval the observations made in the case titled "The Evening News, Newspaper (1830) 1 NSWLR 211 and the same is reproduced as follows:

"The necessity for this branch of contempt lies in the idea that without well-regulated laws a civilized community cannot survive. It is therefore, thought important to maintain the respect and dignity of the Court and its officers, whose task is to uphold and enforce the law, because without such respect, public faith in the administration of justice would be undermined and the law itself would fall into disrepute. Wilmot, J. expressed this basic premise in R. v. Almon."

In re: The Evening News, Newspaper (1830) 1 NSWLR 211 at page 237 Sir James Martin, CJ said:--

"What are such Courts but the embodied force of the community? whose rights they are appointed to protect? They are not associations of a few individuals claiming on their personal account specific privileges and peculiar dignity by reason of their position. A Supreme Court like this, whatever may be thought of the separate members composing it, is the accepted and recognized -tribunal for the maintenance of the collective authority of the entire community it derives its force from the knowledge that it has the whole power of the community at its back. This is a power unseen but it is efficacious and irresistible and on its maintenance depends the security -of the public."

18. In the case titled "Shahid Orakzai v. Pakistan Muslim League (Nawaz Group) and 8 others [2000 SCMR 1969] the august Supreme Court has held as follows:

"It is well-settled that a contempt case in the matter of placing the onus is totally different from a case under the criminal law, which presumes innocence of the accused and places the burden on the prosecution to establish the charge against him beyond any reasonable doubt. Whereas in a contempt case the onus is entirely upon the person charged to prove his innocence. The same view was taken by a seven-member Bench of this Court in Masroor Ahsan v. Ardeshir Cowasjee (PLD 1998 SC 823). This Court also held in State

v. Khalid Masood (PLD 1996 SC 42 at 66), that, 'the rule of criminal jurisprudence that if two views on the same evidence are plausibly possible, the one favouring the persons standing trial should be preferred over the one against him, cannot be pressed into service in contempt proceedings as the same are not criminal proceedings stricto sensu but are sui generis in nature partaking of some of the elements of both civil and criminal proceedings' but constituting neither. This principle was also reiterated in Masroor Ahsan (supra), at page 879, Placitum-C."

19. The Ordinance of 2003 has been enacted to regulate the power conferred on the Court under Article 204 of the Constitution. There are three categories of contempt which have been described in section 3 *ibid* i.e. civil, criminal and judicial. Clause (c) sub article 2 of Article 204 explicitly provides that it is a punishable contempt to do anything which tends to prejudice the determination of a matter pending before the Court. Section 6 of the Ordinance of 2003 describes the acts or eventualities when a criminal contempt defined in section 2(b) is committed. It, *inter alia*, includes the doing of any act with the intent to divert the course of justice. Criminal contempt thus pertains to acts done with the intent of obstructing, impeding or preventing due process of justice. The object of exercising the power of criminal contempt is not to elevate the Court nor to protect the dignity of a judge. Its exercise is justified on the touchstone of

ensuring access to an adjudicatory process by an independent adjudicator and to protect the fairness of the legal process for every litigant. Safeguarding the dignity and decorum of the Courts and the administration of justice is inevitable for upholding the rule of law and to ensure that disputes are decided in a fair and uninfluenced manner. The category of criminal contempt is to safeguard the right to a fair trial of the litigants regardless of the nature or gravity of the crime. Every litigant has a right to a fair and public hearing by an independent and impartial Court. Every litigation is aimed at determination of the truth and the litigants are not the only interested parties. The victims, society as a whole, witnesses and many others are also important stakeholders of the judicial system and the administration of justice. Maintaining the integrity of the administration of justice is in the public interest. As noted above, Article 205(2)(c) has explicitly made any act liable to be punished for contempt if it tends to prejudice the determination of a matter which is pending before a Court. The Constitution, the highest law of the land, thus recognizes the sub judice rule. This type of contempt essentially falls within the ambit of 'criminal contempt'. Any incorrect reporting by a reporter which is published or aired could amount to a criminal contempt. Trial outside the Court in any form which tends to influence the proceedings and determination in a pending matter would attract the offence of criminal contempt if the intent is to obstruct the administration of justice or divert the course of justice. It

would, therefore, depend on the facts and circumstances of each case as to whether the act had tended to or was intended to prejudice the determination of a matter pending before the Court. Pre trial or during trial publicity or acts relating to pre judging the outcome of pending proceedings also prejudices the determination of pending matters before the Court. The offence of criminal contempt will be attracted if the likely prejudice is substantial. It is not a condition precedent for the commission of criminal contempt that the alleged act had actually prejudiced determination but it would be sufficient if the act tended to interfere with the administration of justice. There must be some degree of intent to prejudice or obstruct the administration of justice. Each case has to be decided on its own merits. The acts committed during the pendency of a matter are the most serious form of contempt because it has a likely effect on one of the most important rights i.e. the right to a fair trial. The power relating to the law of contempt is applied with great reluctance but the only category of contempt which cannot be ignored is when the act tends to prejudice the determination of a pending matter because it has the effect of infringing the constitutionally guaranteed right of due process. Likewise, acts which amount to prejudicing public confidence in the administration of justice in a pending case would fall within the ambit of commission of a criminal contempt. Any publicity during pending proceedings or attempts to influence the public by creating a perception that extra ordinary favors are

or have been extended to a litigant otherwise than in accordance with the law would definitely be an act done with the intent to divert the course of justice or impede and obstruct the administration of justice.

20. Now I would advert to examining the acts and statements of both the alleged contemnors to ascertain whether the offence of criminal contempt has been committed. As noted above, the press conference was held by Contemnor No. 1 on 29-10-2019, in her official capacity as spokesperson of the Chief Executive of Pakistan to brief print and electronic media persons regarding the meeting of the Federal Cabinet. She gave the impression as if some extraordinary relief was granted to a particular litigant on 26-10-2019. She also stated that the relief was given on a holiday and this statement was contrary to the rules which have been adopted by this Court. She also attempted to mislead the general public by creating a perception, as an official spokesperson, that an influential litigant had managed to get relief which otherwise is not extended to the less privileged. This press conference was held on 29-10-2019, when the main petition seeking the suspension of sentence was fixed before a learned Division Bench of this Court and while three days bail had been granted by another Division Bench on 26-10-2019.

21. This Court has adopted and thus follows the Rules and Orders of the Lahore High Court, Lahore. Clause (d) of Part A(a), Chapter 1, Volume V thereof provides as follows:

"(d) The Chief Justice or in his absence the most senior Judge available in Islamabad may, in his discretion, entertain at his residence an application requiring immediate orders at a reasonable hour."

Likewise clause (4) of Part A, Chapter-1, Volume-1 provides as follows:

"4. Taking up cases on holidays.—Civil suits and appeals ought not, as a rule, to be taken up on a holiday; but any Civil suit or appeal may be legally heard, by consent of the parties, on a holiday, if the Presiding Officer of the Court thinks it expedient, for any reason, to keep this Court open for the purpose."

22. It was pursuant to the above powers that this Court, on 13-09-2014, which also happened to be a Saturday, had entertained a petition in the late evening i.e. W.P. No. 4006/2014, titled "Muhammad Ayub & another v. The State, etc." seeking release of the workers and office bearers belonging to the political party, Pakistan Tehreek-e-Insaf, who had been arrested during the Dharna (sit in) of 2014. The petition was not only entertained on a Saturday but late in the evening an order was also passed without notice to the prosecution for the release of all those who had been

arrested. The Contemnor No. 1, therefore, ought to have been aware that relief has never been denied to a litigant at any time and on any day if a case of urgency could be made out. She also was thus presumed to know that there is no holiday in case of matters involving urgency. This Court would not hesitate in taking up a case even on a holiday if the Government medical reports confirm extreme urgency. It was this Bench of this Court which had entertained W.P. No. 4028/2014, titled "Jahangir Tareen Khan, etc. v. Federation of Pakistan, etc." and pursuant thereto permission was granted to Pakistan Tehrik-e-Insaf by the District Magistrate for holding a public meeting. Another petition i.e. W.P. No. 4809/2014, titled "Asad Umer v. Federation of Pakistan, etc." was entertained wherein imposition of section 144 of the Code of Criminal Procedure, 1898 was challenged and pursuant thereto workers of Pakistan Tehrik-e-Insaf were being arrested. The relief granted had the effect of restraining the arrest of workers and citizens who were attending the sit in. Through W.P. No. 3726/2014, titled "Asad Umer v. Federation of Pakistan, etc." the barricading and placement of containers was challenged. In all these petitions this Court had passed orders in order to protect the fundamental rights which were being violated by the public functionaries while exercising powers on behalf of the State. The political party which had brought these petitions in 2014 was then in the opposition and was aggrieved on account of the actions and abuse of power of the public functionaries who were acting on

behalf of the State. The executive authorities are indeed the strongest because they exercise powers of the State. The Contemnor No. 1 belongs to the same political party which now has been elected to power by the people of Pakistan and, therefore, she is presumed to be aware that no one else but the executive authorities are the strongest in the State. It is a constitutional duty of the Courts to dispense justice in accordance with law and regardless to the unpopularity of the litigant or the cause.

23. The Contemnor No. 1, being the official spokesperson of the Chief Executive of the State, can obviously not take the plea of not knowing the above mentioned facts. She cannot be presumed to have been so reckless so as to have acted in a manner that her statements tended to prejudice the determination of pending proceedings before this Court. This was not a solitary attempt to create a perception and influence the public regarding extraordinary relief being extended to a litigant whose appeals against convictions are pending before this Court. As an official spokesperson Contemnor No. 1 was obviously aware that the bail granted for three days on 26-10-2019, was solely on medical grounds and that the petition was not opposed by any of the relevant parties, including the authorized representative of the Federal Government. The statements made by Contemnor No. 2 further indicated that a perception was being created by the holders of the highest executive

public offices regarding the administration of justice being compromised, resulting in extending extraordinary relief or favor to an influential litigant. It is noted that this attempted perception was being created by those who exercise and wield the powers of the State as its executive authorities. The Contemnor No. 2 went to the extent of doubting the medical reports by unequivocally stating that they could have been manipulated. It is ironic that such an assertion was being made by a responsible member of the Federal Cabinet, which was an indictment against his own Government. Having regard to the status, duties and obligations of both the alleged contemnors, they cannot be extended the benefit of doubt for not being aware of the facts and the consequences of their statements which tended to prejudice the determination of matters pending before this Court. They opted not to contest the respective notices and tendered unconditional apologies. As noted above, it is settled law that tendering of unconditional apology does not necessarily lead to putting an end to the contempt proceedings.

24. This Court is satisfied that both the contemnors had acted in a manner that constitutes criminal contempt. They attempted to obstruct the administration of justice and through their acts and statements they had tended to prejudice the determination of a matter pending before this Court. They also tried to create a false perception which was likely to lower the prestige of the judicial process and

consequently prejudice the trust of the people in the Courts. Their acts and statements were intended and calculated to impede, obstruct and divert the administration and course of justice. However, this Court, despite the gravity of the offence, restrains itself from handing down a conviction and sentencing both the alleged contemnors because during the course of these proceedings it appeared to this Court that there is probably not sufficient awareness in the society regarding the importance of criminal contempt in the context of a pending matter before a Court. The Courts have also ignored this most crucial form of contempt and thus generally there is hardly any appreciation regarding its importance in the society. Moreover, both the alleged contemnors appear to have realized the consequences of their conduct and have thus tendered unconditional apologies. This Court expects that in future they will exercise care by not doing anything that tends to prejudice the determination of pending proceedings or to obstruct or divert the course of justice.

25. For the above reasons, the petitions are **disposed of** and consequently the proceedings stand withdrawn.

CHIEF JUSTICE

Announced, in open Court, on 25-11-2019.

CHIEF JUSTICE

Approved for reporting.