JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

W.P No.537 of 2025

Major (R) Saif Ullah Khan Babar

Versus

Federation of Pakistan

Petitioner by:	Mr. Omer Farouk Adam, Advocate.
Respondent by:	Mr. Rashid Hafeez, Additional Attorney General and Mian Muhammad Faisal Irfan Deputy Attorney General along with Aubaid, DA, JAG, GHQ.
Date of Hearing:	**01.09.2025.**

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INAAM AMEEN MINHAS, J:- Through the instant petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 **("Constitution")**, the petitioner has challenged the order dated 12.11.2021, passed by the Field General Court Martial **("FGCM")**, whereby the petitioner was convicted and sentenced u/s 59 of the Pakistan Army Act, 1952 **("Act, 1952")** to 12 years Rigorous Imprisonment. The petitioner has also assailed the order dated 24.01.2025, passed by the Court of Appeal, whereby his appeal was dismissed, however, the sentence was reduced to 10 years. (Copies of the orders were not provided to the petitioner)

2. As per memo of the petition, the brief facts are that the petitioner retired from Pakistan Army as a Major in 1997. On 11.08.2020, the petitioner was arrested, tried, convicted and sentenced under Section 59 of the Act, 1952 read with Section 3 of the Official Secrets Act, 1923 **("Act, 1923")** by FGCM, and presently he is serving the sentence in Adyala Jail, Rawalpindi. The petitioner was charged with committing

civil offence, specifically for the purpose prejudicial to the safety or interest of the State, allegedly for communicating information during 2017 to an agent of CIA of United States of America namely Mr. Haji Baseer, regarding the deployment of 104 Brigade in South Waziristan District, the service of Brigadier Ameer Ahmed Khan Barki as Deputy Director General at Directorate General (Security) in Islamabad, the security mechanism of Army units in Kurram District, and a military operation in Kurram Agency resulting in the deaths of two Haqqani Commanders, as well as on 12.09.2019 to the same agent regarding the extension of service of the Chief of Army Staff, General Qamar Javed Bajwa, by the Prime Minister, which was purportedly calculated to be useful to the enemy. As per the petitioner's stance during evidence the prosecution relied upon an unauthenticated transcript/radio recording allegedly from the petitioner's cell phone and his alleged retracted confession and in this regard the prosecution produced in evidence one cell phone and two SIMs pasted at the back of the cell phone. During evidence PW-2 admitted that two SIMs and a cell phone as the only evidence were sent to him for forensic analysis and on opening the SIM slot PW-2 confirmed that the cell phone could only carry a Nano SIM thereafter all of sudden third Nano SIM was introduced. Upon inquiry of the petitioner, he was informed that the Nano SIM was issued on 19.05.2021, whereas the allegation against the petitioner was of communicating the information between 2017 to 2019. Therefore, the petitioner approached the Lahore High Court, Rawalpindi Bench in Writ Petition No. 3745/2021, seeking a declaration that issuance of the secondary/duplicate Nano SIM against his cell number was illegal and without jurisdiction and that any evidence adduced in respect of the alleged cell phone and duplicate Nano SIM was inadmissible against him. Notwithstanding the pendency of W.P. No. 3745/2021, the FGCM convicted and sentenced the petitioner vide order dated 12.11.2021. This conviction and sentence were impugned by the petitioner before the Court of Appeal u/s 133B of the Act, 1952 on 23.11.2021. Upon failure of the respondent to adjudicate the petitioner's appeal, the

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petitioner filed Writ Petition No. 1499/2022 before the Lahore High Court, Rawalpindi Bench, seeking suspension of sentence and release on bail pending final disposal of his appeal before the Court of Appeal, however, the said petition was withdrawn vide order dated 06.06.2022 to avail alternate remedy and thereafter the petitioner addressed applications u/s 144 of the Act, 1952 to the Chief of Army Staff on 14.12.2022 and 17.02.2023 seeking suspension of sentence and release on bail pending disposal of the appeal before the Court of Appeal, which were not decided. Upon continued delay to adjudicate the appeal, the petitioner again invoked the constitutional jurisdiction of the Lahore High Court, Rawalpindi Bench through Writ Petition No.3726/2022 seeking suspension of sentence and release on bail pending decision on his appeal, which was disposed of on 07.03.2023 with direction to the respondent to decide his appeal within two months. Upon the respondent's failure to adjudicate his appeal within the given time, the petitioner filed a contempt petition (Crl. Org. No. 76-W/2024) under Article 204 of the Constitution read with Sections 3, 4, and 5 of the Contempt of Court Ordinance 2003 before the Lahore High Court, Rawalpindi Bench and upon its disposal, filed I.C.A. No. 98/2024, which was pending adjudication and become infructuous upon the adjudication and rejection of the petitioner's appeal by the Court of Appeal on 24.01.2025. The petitioner's appeal was dismissed but his sentence was reduced to two years.

3. The learned counsel for the petitioner contended that the petitioner was a civilian at the time of his arrest on 11.08.2020, therefore, he was not subject to the Act, 1952. He contended that Section 2 of the Act, 1952 limits its applicability to the persons in active service or those performing specified military functions, whereas the respondent unlawfully invoked Section 2(1)(d), of the Act, 1952 which applies only to civilians already accused of specific offences under the Act, however, at the time of arrest, the petitioner was not an accused and the charges eventually framed fell outside the scope of this provision. He further submitted that the proceedings were marred by

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grave procedural and constitutional violations, including illegal detention, denial of access to counsel, fabricated evidence, a coerced confession obtained during 49 days of solitary confinement and the alleged audio recordings relating to a SIM fraudulently issued in 2021 are inadmissible under the Qanun-e-Shahadat Order, 1984, which applies to military trials under Section 112 of the Act, 1952. He also submitted that the charges, particularly regarding a public comment on the Army Chief's extension, involves no classified information and does not attract Section 3 of the Official Secrets Act, 1923 and that FGCM acted with bias by denying key evidence and witnesses and the delay of over three years in deciding the appeal despite the directions of the constitutional Court underscores the arbitrary and *mala fide* nature on the part of prosecution. Lastly, it was submitted that the FGCM proceedings were in violation of Articles 4, 9, 10, 10-A, 14 and 25 of the Constitution as well as mandatory procedures under Sections 73 and 74 of the Act, 1952 and relevant Rules.

4. The learned Additional Attorney General raised a preliminary objection regarding the maintainability of the titled petition on the ground that this petition should have been filed before the Lahore High Court, Rawalpindi Bench and hearing this petition by this Court would amount to issuing a writ outside the territorial limits. The learned Additional Attorney General has also resisted the instant petition on merits.

5. I have heard the arguments of the learned counsel for the parties and perused the record.

6. Since the learned Additional Attorney General has raised objection regarding maintainability of the instant petition, therefore, this Court shall decide first the question of the maintainability.

7. The authority of this Court to exercise judicial review of the vires of any act done or proceedings taken in relation to the affairs of the Federation within its territorial jurisdiction is categorical; nevertheless,

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the constitutional scheme embodied in Article 199 of the Constitution must be carefully adhered to so as to preserve the principles of judicial comity and institutional harmony. The instant petition has been filed against the orders of the FGCM and Court of Appeal at Rawalpindi and applying the scheme of Article 199 any act done or proceedings taken can only be challenged as per Article 199(1)(a)(ii), before the High Court within whose territorial jurisdiction such act was done or proceedings taken.

8. The dominant object of the petitioner in approaching this Court is to call into question the orders of the FGCM and Court of Appeal, which in fact were rendered within the territorial limits of the Lahore High Court, Rawalpindi Bench. The record demonstrates that the petitioner was charged under the Act, 1952 as well as the Act, 1923 and the ensuing proceedings, being a continuation thereof, were convened within Punjab. In these circumstances, the plea of concurrent jurisdiction cannot displace the territorial nexus of the matter with the Lahore High Court, Rawalpindi Bench, so as to permit adjudication by another High Court. The same view was expressed in the case of ***Muhammad Farhan Khan vs. Federation of Pakistan,*** **(PLD 2016 Lahore 629)** and by a Division Bench of Sindh High Court in the case of ***Aqeel Kareem Dhedhi vs. National Accountability Bureau through Chairman and 3 others,*** **(PLD 2015 Sindh 1)**.

9. Moreover, the record reflects that the petitioner filed multiple petitions in the Lahore High Court, Rawalpindi Bench during the course of proceedings. The Honorable Supreme Court of Pakistan has held in the case of ***Taufiq Asif and others vs. General (Retd) Perveiz Musharraf and other,*** **(PLD 2024 SC 610)** that no person can seek relief regarding an act of a federal body from one High Court and relief regarding an act done in furtherance of or pursuance to that act from another High Court. Both reliefs must be sought before the High Court, which has territorial jurisdiction over both acts.

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10. Yet another aspect relevant to the present matter is the doctrine of election under which the petitioner is estopped to file the instant petition before this Court. Doctrine of election is a well setlled principle of law that when an aggrieved person intends to commence any legal action to enforce any right and or invoke a remedy to set right a wrong or to vindicate an injury, he has to elect and or choose from amongst the actions or remedies available under the law. The choice to initiate and pursue one out of the available concurrent or co-existent actions or remedy from a forum of competent jurisdiction vests with the aggrieved person. However, once the choice is exercised and the election is made, the aggrieved person is precluded from initiating any other proceedings to seek a relief or remedy inconsistent with that which could be claimed or obtained through the elected proceedings, action, or remedy. Reliance is placed on ***Chief Executive Officer Npgcl, Genco-III, Tps Muzafargarrah Vs. Khalid Umar Tariq Imran and others,*** **(2024 SCMR 518).**

11. In view of the foregoing, I am of the considered view that the instant petition is not maintainable before this Court, therefore, the same stands **dismissed**. The petitioner may approach the appropriate forum for redressal of his grievance, if so advised.

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(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 05.09.2025.

JUDGE

R.Anjam