JUDGMENT SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD
(JUDICIAL DEPARTMENT)

W.P. No. 105 of 2015

Ms. NADIA SARWAR
Vs.
Mr. AQEEL ABBAS AND 4 OTHERS

Petitioner/Complainant by	:	Mr. Rizwan Shabbir Kayani Advocate.
Respondents by	:	Mr. Talib Hussain Advocate for the Respondent No. 1. M/s Hassnain Ibrahim Kazmi and Saleem Iqbal Advocates for the Respondent No. 2. Mr. Imran Farooq, AAG. Mr. Waqas Haral, S.O. Establishment Division.
Amicus Curiae		Ms. Sara Malkani, Advocate
Date of Hearing	:	**5.12.2024.**

SAMAN RAFAT IMTIAZ, J.-

1. The Petitioner/Complainant [Ms. Nadia Sarwar] has filed the instant Writ Petition assailing the Order dated 11.11.2014 **("Impugned Order")** passed by the Respondent No. 3 [President, Islamic Republic of Pakistan **("President")**] whereby representations filed by the Respondents No. 1 and 2 [Mr. Aqeel Abbas and Mr. Usman Shahid] were accepted and the Judgment dated 4.2.2014 **("Ombudswoman Judgment")** passed by the Respondent No. 4 [Federal Ombudsman for Protection against Harassment of Women at Workplace] **("Ombudswoman")** was set aside.

2. The facts, as narrated in the Memorandum of Petition, briefly stated are that the Petitioner/Complainant has been an employee of the National Bank of Pakistan **("Bank")** since 2008 where she was subjected to harassment. The Petitioner/Complainant filed a complaint to the President of the Bank against the Respondents No. 1 and 2 on 24.09.2012 **("First Complaint")** but no action was taken. The Respondents No. 1 and 2 started victimizing the Petitioner/Complainant by creating an intimidating, hostile, and offensive work environment. The Petitioner/Complainant approached and informed the Divisional Head (North) about the harassment and victimization via telephone on 24.6.2013 and by e-mail dated 26.6.2013 **("Email")** but to no avail. The Petitioner/Complainant filed another complainant dated 02.07.2013 **("Second Complaint")** to the President of the Bank, whereby she specifically mentioned some of the instances of harassment in her Complaints. The Petitioner alleges that no action or inquiry was conducted by the Bank.

3. The Petitioner/Complainant finally approached the Respondent No. 4/Ombudswoman by filing a formal complaint on 03.9.2013 **("Complaint to Ombudswoman")** under the Protection against Harassment of Women at the Workplace Act, 2010 **("Workplace Harassment Act")**, which was decided vide the Ombudswoman Judgment. The preliminary objection raised by the Respondents No. 1 and 2 before the Respondent No. 4/Ombudswoman was that the Complaint to the Respondent No. 4/Ombudswoman is barred by *res judicata* as the Petitioner/Complainant's team was changed on 1.10.2012 with her consent and final order was passed by the President of the Bank. Such objection was overruled by the Respondent No. 4/Ombudswoman by noting that the requirement of law is to refer the complaint to the Inquiry Committee but that no such committee was constituted by the Bank as required by Section 3 of the Workplace Harassment Act. The Respondent No. 4/Ombudswoman found that the witnesses produced by the Respondents No. 1 and 2 were not impartial as they were on duty and their further promotion lay in the hands of the said Respondents. On the other hand, she found that the statements of the

Petitioner/Complainant were supported by the witnesses and have not been challenged in cross-examination which amounts to acceptance of plea. As such the Respondent No. 4/Ombudswoman vide her Judgment found that the Petitioner/Complainant established her case. She therefore imposed Major Punishment of 'compulsory retirement' upon the Respondents No. 1 and 2 in terms of Section 4 (4)(ii)(b) of the Workplace Harassment Act.

4. The Respondents No. 1 and 2 filed their respective representations before the Respondent No. 3/President on 14.2.2014. The Petitioner/Complainant submitted her written reply and also filed cross representation on 14.2.2014 praying that the Respondents No. 1 and 2 be given punishment of 'dismissal from service'.

5. The Respondent No. 3/President vide the Impugned Order accepted the Respondents No. 1 and 2's Representations to set aside the Ombudswoman Judgment by finding, *inter alia,* that the Petitioner/Complainant raised new allegation for the first time in her affidavit-in-evidence [against the Respondent No. 1] which was missing in all three prior complaints and was even otherwise negated by the witnesses; that entire evidence of Respondents' No. 1 and 2 was discarded by the Respondent No. 4/Ombudswoman on the basis that the witnesses were on duty and did not obtain leave of absence from the bank but on the other hand the evidence of the Petitioner/Complainant's witnesses was accepted without inquiring whether they obtained leave of absence; that the Petitioner/Complainant assigned role to the Respondent No.2 in her Second Complaint and new pleas about insolent remarks made by him were submitted in her evidence; and that in the meantime the Investigation Committee of the Bank announced the decision to issue a stern warning. Thus the Respondent No. 3/President vide the Impugned Order set aside the Ombudswoman Judgment and modified the decision of the Bank's Investigation Committee and directed the Bank to issue 'Censure' in terms of Section 4 (4)(i)(a) of the Workplace Harassment to both the

Respondents No. 1 and 2. Hence, this Writ Petition by the Petitioner/Complainant.

6. The learned counsel for the Petitioner/Complainant argued that the Respondent No. 3/President failed to appreciate the provisions of the Workplace Harassment Act and that the Impugned Order suffers from misreading and non-reading of evidence. He firstly pointed out that the Bank had not constituted an Inquiry Committee as required under Section 3 of the Workplace Harassment Act at the relevant time and therefore, the Petitioner/Complainant sent her First and Second Complaints to the President of the Bank. He denied that the Petitioner/Complainant introduced any new pleas and explained that in the First Complaint the Petitioner/Complainant simply informed the President of the Bank in a generalized manner that she is facing harassment at the hands of Respondents No. 1 and 2. The learned counsel highlighted that the Petitioner/Complainant specifically stated in her First Complaint that it was merely a short snapshot but that she wants to meet the President of the Bank in order to explain her situation. He further submitted that in her Email to the EVP-Divisional Head Corporate and Banking Division (North) she stated that she would provide further details including specific wording in due course of time and that finally in her Complaint to the Respondent No. 4/Ombudswoman she mentioned the inappropriate remarks and comments, etc., that she had been subjected to. In this background the learned counsel for the Petitioner/Complainant argued that the predominant reason given by the Respondent No. 3/President that the Petitioner/Complainant introduced new pleas in her Second Complaint by assigning a role to the Respondent No. 2, is erroneous which has resulted in miscarriage of justice as no new plea was raised by the Petitioner/Complainant rather only specific instances of harassment and details thereof were provided. He also explained that the Petitioner/Complainant was working with the Respondent No. 1 whereas the Respondent No.2 is the Corporate Head and following her First Complaint the Respondent No.2 by way of letter dated 1.10.2012 changed

her team. He argued that the Respondents No. 1 and 2's contention that the Petitioner/Complainant's Complaint stood resolved by the Investigation Committee with the consent of the Petitioner/Complainant as evident from the Letter dated 1.10.2012 is without merit because neither there was any Inquiry Committee under Section 3 of the Act, 2010 nor can the Letter dated 1.10.2012 written by the Respondent No. 2 be treated as a decision of an Inquiry Committee by any stretch of imagination. Even otherwise he relied upon *Qazi Zaheer Ahmed vs. Federal Ombudsman Secretariat for Protection Against Harassment at Workplace*, *Islamabad and 2 others*, 2021 PLC (C.S.) 839 in which this Court according to him has held that if the complainant is dissatisfied with the action or inaction of the inquiry committee or the competent authority it is the Respondent No. 4/Ombudswoman that the complainant ought to approach for redress of such grievance. In the instant case the learned counsel for the Petitioner/Complainant pointed out that in fact the Petitioner/Complainant never received any response from the Bank. He also submitted that the Petitioner/Complainant was compelled to send Email and file the Second Complaint due to the retaliatory behavior of the Respondents No. 1 and 2 in response to the Petitioner/Complainant's First Complaint. He submitted that the evidence shows that the Petitioner/Complainant's performance appraisals were previously positive but since her First Complaint against the Respondents No. 1 and 2 they show a downward trend.

7. The learned counsel for the Petitioner/Complainant then referred to the evidence produced by the Petitioner/Complainant to show that CWs Mr. Saqib Saleem, Mr. Mehmood Rafique and Mr. Shoaib Qaisrani testified regarding various instances of inappropriate language and sexual innuendos by the Respondents No. 1 and 2; CW Ms. Ayesha tendered an affidavit and testified regarding the past inappropriate conduct of the Respondent No. 2 towards her; CW Mr. Zia Iftikhar also tendered an affidavit and testified regarding overall behavior of the Respondent No.2 towards team members and also specifically against the Petitioner/Complainant; CW Mr. Asad Saleem recorded his statement

wherein he submitted that the preliminary performance appraisal of the Petitioner/Complainant shows 'cuttings' and testified that they were with the consent and instructions of the Respondent No.2; CW Mr. Muhammad Babar Ghus also confirmed that the changes made in the annual appraisal report of the Petitioner/Complainant for the year 2012 were based on instructions of the Respondent No. 2 and that after filing of the First Complaint her performance has lowered as per such reports; and CW Mr. Muhammad Irfan Baig testified regarding Petitioner/Complainant's good character. The learned counsel for the Petitioner/Complainant referred to Exhibits C13, C14, C16, and C17 and submitted that transfer letters were issued by the Respondent No. 2 for the transfer of the Petitioner/Complainant and other complaints were also issued after the Petitioner/Complainant's First Complaint as retaliatory measures. He submitted that no inquiry was conducted regarding the complaint of unauthorized/missing data against the Petitioner/Complainant.

8. The learned counsel for the Petitioner/Complainant submitted that against this overwhelming evidence the Respondents No. 1 and 2 were unable to provide any reasonable explanation or motive for the Petitioner/Complainant to falsely implicate the Respondents No. 1 and 2. He argued that the evidence has been misread or not read at all by the Respondent No. 3/President, which was properly appreciated by the Respondent No. 4/Ombudswoman. However, he conceded that the Respondent No. 4/Ombudswoman has not discussed the evidence of the Petitioner/Complainant in the Judgment dated 4.2.2014 in great detail.

9. He submitted that although in the instant case multiple witnesses came forward to corroborate the Petitioner/Complainant's stance and to testify that the Respondents No. 1 and 2 used inappropriate language and sexual innuendos toward the Petitioner/Complainant in their presence, in cases of unseen occurrences the court may look at the testimony of witnesses who have also made similar complaints against the accused

persons as well as whether there exists any motive for false implication in order to arrive at a just decision.

10. Both the learned counsels for the Respondents No. 1 and 2 argued that the Respondent No. 3/President has correctly appreciated the law and the facts involved in the instant matter and emphasized that the Petitioner/Complainant tried to improve her case by taking new pleas in each of the complaints filed by her. The learned counsel argued that facts not alleged in the First Complaint are inadmissible on the basis of principles applied in criminal cases.

11. The learned counsel for the Respondents No. 1 submitted that Criminal Procedure Code, 1898 **("Cr.P.C")** is applicable upon the proceedings under the Workplace Harassment Act. He relied upon *Maimoona Rajab vs. Province of Punjab and another*, PLD 2021 Lahore 598 where it has been stated that the proceedings before the Respondent No. 4/Ombudswoman are quasi-judicial. In this regard he referred to Section 1(2), Cr.P.C., and drew the Court's attention to Section 12 of the Workplace Harassment Act which provides that the provisions of the said Act shall be in addition to and not in derogation of any other law for the time being in force. As such, the learned counsel for the Respondent No. 1 submitted that although Cr.P.C. may not be applicable upon the Respondent No. 4/Ombudswoman's proceedings *stricto sensu* the provisions and the principles thereunder can be applied where the provisions of the Workplace Harassment Act are silent as per the discretion of the Respondent No. 4/Ombudswoman. He therefore argued that new pleas could not have been added by the Petitioner/Complainant after her First Complaint.

12. The learned counsel for the Respondent No. 1 submitted that the Petitioner/Complainant came under the supervision of the Respondent No. 1 in March, 2011 and remained as such till September, 2012. He contended that the motive for the Petitioner/Complainant's false allegation against the Respondent No. 1 is her appraisal in 2011 in which she got a 'C' grade which was against the Petitioner/Complainant's expectations. He pointed

out that there was no witness produced by the Petitioner/Complainant against the Respondent No. 1. He also highlighted that there was no mention of sketches in the Petitioner/Complainant's Complaint which were mentioned for the first time in her affidavit-in-evidence. Last but not least, he submitted that the Petitioner/Complainant's grievance if any stood resolved as her team was changed with her consent as is evident from the Letter dated 1.10.2012 issued by the Respondent No. 2. He relied upon *Prof. Dr. Naheed Haq vs. Province of Balochistan and 2 others,* PLD 2024 Balochistan 6; *M. Hamad Hassan vs. Mst. Isma Bukhari and 2 others,* 2023 SCMR 1434; *Atif Riaz vs.Federation of Pakistan,* PLD 2023 Lahore 536; *Shahina Masood and 9 others vs. Federal Ombudsman Secretariat and 2 others,* 2020 PLC (C.S.) 186.

13. The learned counsel for the Respondent No. 2 highlighted that the Respondent No.2 was not named in the First Complaint and that he was named subsequently by the Petitioner/Complainant in an effort to improve her case. He highlighted that the Bank was never made a party to the proceedings. He also referred to the Bank's comments dated 24.2.2014 filed before the Respondent No. 3/President whereby it was concluded that charges/allegations of harassment against the Respondents No. 1 and 2 have not been proven yet the competent authority at the Head Office decided to issue stern warning to both the Respondents No. 1 and 2. He contended that evidence produced before the lower *fora* cannot be discarded in writ jurisdiction and that the Petitioner/Complainant has not made any ground for invocation of writ jurisdiction. He argued that even otherwise Article 45 of the Constitution empowers the President to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority. He relied upon *Raja Tanveer Safdar vs. Mrs. Tehmina Yasmeen and others,* PLD 2024 SC 795 and *Kinza Anwar vs. Office of the Omdusman for Protection Against Harassment of Women at the Workplace and others*, 2022 CLC 1477.

14. Notice under Order XXVIIA C.P.C. was issued to the learned Attorney General for Pakistan. The learned AAG submitted that Cr.P.C. would be applicable in view of the terms used in the Workplace Harassment Act namely 'accused' and 'complaint' and also in view of the power to impose fine as a penalty which is deposited partly in the Government Treasury thereby bringing such penalty in the ambit of Section 53, the Pakistan Penal Code ("**PPC**").

15. While exercising his right of rebuttal the learned counsel for the Petitioner/Complainant submitted that the provisions of the Cr.P.C. are not applicable upon the Workplace Harassment Act and as such principles which are applicable upon criminal proceedings are not relevant to cases under the said Act. He argued that a complete procedure has been provided in the Workplace Harassment Act, 2010 and in the Protection against Harassment of Women at the Workplace (Filing and Disposal of Complaints) Rules, 2013 **("Workplace Harassment Rules")**. He further explained that Section 12 of the Workplace Harassment Act is to be read with Rule 10(7) of the Workplace Harassment Rules but conceded that where provisions of the Workplace Harassment Act are silent in terms of conduct of proceedings or inquiry the Respondent No. 4/Ombudswoman has discretion to invoke any provision of any other law. He referred to the Representations filed by the Respondents No. 1 and 2 before the Respondent No. 3/President whereby it has been admitted that the Bank Inquiry had become infructuous due to the filing of the Complaint to the Respondent No. 4/Ombudswoman. He argued that in case of misreading of evidence by the lower forum the High Court can read the evidence on the record. Lastly, he submitted that the Impugned Order passed by the Respondent No. 3/President was not a decision passed under Article 45 of the Constitution. He relied upon *Nadia Naz and another vs. The President of Islamic Republic of Pakistan, Islamabad and others,* PLD 2023 SC 588; *Uzma Naveed Chaudhary and others vs. Federation of Pakistan and others,* PLD 2022 SC 783; *Qazi Zaheer Ahmad vs. Federal Ombudsman*

Secretariat for Protection Against Harassment at Workplace, Islamabad and 2 others, 2021 PLC (C.S.) 839.

16. Vide order dated 5-12-2023 this Court appointed Ms. Sara Malkani Advocate as *Amicus Curiae.* According to the written submissions of the Amicus the nature of penalties prescribed under the Workplace Harassment Act are civil in nature and as such the burden of proof to be applied is a balance of probabilities, which in the case of harassment should be considered from the perspective of a reasonable woman. She relied upon *Nadia Naz and another vs. The President of Islamic Republic of Pakistan Islamabad an others*, PLD 2023 SC 588; *Imran Ahmed Khan Niazi vs. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member National Assembly and 9 others*, PLD 2017 SC 265; and *Apparel Export Promotion Council vs. A.K. Chopra,* AIR 1999 SC 625.

17. I have heard the learned counsel for the parties and have also perused the record. The Impugned Order reveals that it is based on the following four broad reasons:

(a) Decision of Investigation Committee of the Bank;

(b) New plea in Petitioner/Complainant's Affidavit tendered in evidence against Respondent No. 1 negated by witnesses;

(c) New plea raised in Second Complaint by assigning role to Respondent No. 2 and new plea in evidence regarding insolent remarks made by him; and

(d) Rejection of Respondents' evidence on wrongful grounds.

What is the legal significance of the findings of the Investigation Committee of the Bank?

18. The Respondent No. 3/President has recorded in the Impugned Order that the Bank filed its comments whereby it has been intimated that departmental proceedings were conducted and the allegation of harassment

was not proved against Respondents No. 1 and 2 yet they were warned to be careful in future in their inter-personal communication with staff especially with female and to adopt decent behavior and that the Investigation Committee has announced the decision to issue stern warning to both the Respondents No. 1 and 2.

19. The copy of the Comments submitted by the Bank on 24.2.2014 to the Respondent No.3/President in respect of Respondent No. 2's Representation have been appended with the para-wise comments filed on behalf of Respondent No.3/President before this Court. Vide such comments the Bank stated that the complaint of the Petitioner/Complainant was investigated by a Committee comprising Ehsan Tabassum, SVP and Zahida Waheed, VP as per the Workplace Harassment Act. However, the Inquiry Committee that each organization is required to constitute pursuant to Section 3(2) of the Workplace Harassment Act must consist of three members. As such, the Investigation Committee of the Bank was not in accordance with the law.

20. Be that as it may, neither the findings and recommendations of the Investigation Committee of the Bank are appended with the comments nor is there any mention of the date on which such findings and recommendations were purportedly submitted by the Investigation Committee to the Competent Authority (as defined in the Workplace Harassment Act) as required under Section 4(4) of the Workplace Harassment Act or when the Competent Authority imposed the penalty as per Section 4(5) thereof. This is particularly important as the Petitioner/Complainant has specifically alleged in the instant petition that she received no response from the Bank to her complaints. The Petitioner/Complainant's stance is fortified by the Respondent No. 2's reply to the Respondent No. 4/Ombudswoman whereby he specifically stated that the Bank conducted a fact-finding exercise but that he is not aware of the final report of the Bank. The Respondent No. 1 has also not referred to any final decision of the Bank's Investigation Committee or

made any statement that he was ever in receipt of the same. Neither the Respondent No. 1 nor the Respondent No. 2 stated that any penalty was imposed on them by the Competent Authority or that they were issued a stern warning. Moreover, under the Workplace Harassment Act it is the Inquiry Committee who if it finds the accused to be guilty recommends imposition of the penalties as provided in Section 4(4) of the Workplace Harassment Act which does not include stern warning.

21. The first time that it ever came to light that the Investigation Committee submitted any findings to the Competent Authority or that the Competent Authority took any action was vide the Bank's comments to the Respondent No. 3/President and that too without copy of such findings and recommendations or proof of submission as required under Section 4(4) of the Workplace Harassment Act and/or its implementation by the Competent Authority as required under Section 4(5). The Bank's comments merely provide the gist of the findings of the purported Investigation Committee and the conclusion drawn.

22. On top of it, the Bank prayed for the Respondent No. 3/President to set aside the punishment awarded by the Respondent No. 4/Ombudswoman on the basis of the findings of the Bank's Investigation Committee and to approve the punishment of stern warning to the accused. The Bank has no legal basis for praying to the Respondent No. 3/President for setting aside the punishment awarded by the Respondent No. 4/Ombudswoman and that too on the basis of the findings of the Investigation Committee which was not in accordance with the law. Even otherwise, according to the scheme of law any party aggrieved by the decision of the Competent Authority may file an appeal to the Respondent No. 4/Ombudswoman whereas the Bank has prayed for setting aside of the Ombudswoman's Judgment on the basis of the decision of the Competent Authority. Such prayer by the Bank is clearly indicative of its partiality toward the Respondents No. 1 and 2.

23. The Bank further states in its comments that the Petitioner/Complainant without waiting for the Bank's action filed her case

before the Respondent No. 4/Ombudswoman. It may be recalled that the Petitioner/Complainant filed the First Complaint on 24.9.2012 and the Second Complaint on 2.7.2013. The Inquiry Committee under Section 3 is required to be constituted within thirty days of the enactment of the Workplace Harassment Act and Section 4(1) of the Workplace Harassment Act requires the Inquiry Committee to communicate to the accused the charges and statement of allegations leveled against him within three days of receipt of a written complaint. I have already concluded that the Investigation Committee constituted by the Bank was not in accordance with the requirement of Section 3(2) of the Workplace Harassment Act but even otherwise the comments filed by the Bank before the Respondent No.3/President do not provide the date on which the so-called Investigation Committee was constituted by the Bank. Vide their Representations filed before the Respondent No.3/President the Respondents No.1 and 2 state that in response to the Petitioner/Complainant's Second Complaint an Inquiry Committee was constituted by the competent authority who summoned the parties for inquiry on 18.9.2013. The Respondent No. 2 along with his written arguments filed before this Court has appended a copy of a letter dated 12.9.2013 purportedly written by the Investigation Committee to the Petitioner/Complainant and the Respondents No. 1 and 2 referring to an earlier letter dated 4.9.2013 and summoning the parties to attend the proceedings on the 18.9.2013, which at best indicates that the earliest action taken by the Investigation Committee was on 4.9.2013 in respect of the First and Second Complaints of the Petitioner/Complainant dated 24.9.2012 and 2.7.2013 respectively. Thus the Investigation Committee of the Bank even if it had been constituted as per the law failed to act within the timeframe provided to it under Section 4(1) of the Workplace Harassment Act.

24. On the other hand, it is undisputed that the Petitioner/Complainant filed her Complaint to the Respondent No. 4/Ombudswoman on 3.9.2013. Thus the Investigation Committee had no power under the Workplace Harassment Act to summon the parties for inquiry on 18.9.2013 when the

Complaint to the Respondent No. 4/Ombudswoman had already been filed due to the inaction of the Bank in constituting the Inquiry Committee as required by the Workplace Harassment Act and within the requisite time frame. Indeed the Respondents No.1 and 2 have expressly acknowledged in their Representation to the Respondent No. 3/President that since the Petitioner/Complainant had already filed the Complaint to the Respondent No. 4/Ombudswoman on 3.9.2013 the Inquiry Committee became infructuous.

25. Clearly, the Respondent No. 3/President failed to appreciate that the Bank's Investigation Committee was not in accordance with the law. The Respondent No. 3/President also failed to consider whether an Inquiry Committee constituted under the Workplace Harassment Act can conduct proceedings and pass any decision after the complainant has already approached the Respondent No. 4/Ombudswoman due to non-constitution of the Inquiry Committee and its failure to take timely action or whether a decision could be reached behind the parties' back which was never even communicated to them.

26. Since the constitution of the Bank's Investigation Committee was not in accordance with the mandatory requirements of the Workplace Harassment Act and in any event admittedly such Investigation Committee summoned the parties after the Petitioner/Complainant had already filed the Complaint to the Respondent No. 4/Ombudswoman the findings, if any, rendered by such Investigation Committee have no sanctity in the eyes of the law. As such, the Respondent No.3/President's reliance, if any, upon the said findings and treating it as valid in law was erroneous.

27. There is also no merit in the argument made by the Respondent No. 1 that the Petitioner/Complainant's grievance, if any, stood resolved when her team was changed with her consent pursuant to the letter dated 1.10.2012 issued by the Respondent No. 2. Change of team could at the most protect her from future harassment but was in no way a penalty for the alleged harassment already committed. Merely changing the

Petitioner's team did not preclude the Petitioner/Complainant from availing the legal remedies available to her under the Workplace Harassment Act for the harassment already faced by her.

Whether Cr.P.C. is applicable upon proceedings before the Respondent No. 4/Ombudswoman under the Workplace Harassment Act?

28. Before I consider the findings of the Respondent No. 3/President on the merits of the case particularly whether the Petitioner/Complainant raised any new pleas to improve her case as concluded in the Impugned Order and argued by the Respondents No. 1 and 2, let me first see whether the provisions of Cr.P.C., apply to the proceedings before the Respondent No. 4/Ombudswoman under the Workplace Harassment Act. To this end, it is beneficial to reproduce the relevant provisions of the Cr.P.C. as follows:

> ***1. Short Title and Commencement: (1)*** *This Act may be called the Code of Criminal Procedure, 1898; and it shall come into force on the first day of July 1898.*
>
> ***Extent.- (2)*** *It extends to the whole of, Pakistan but,* ***in the absence of any specific provision to the contrary, nothing herein, contained shall affect any special*** *or local* ***law,*** *now in force,* ***or any special jurisdiction*** *or power conferred* ***or any special form of procedure prescribed by any other law for the time being in force.***
>
> ***4. Definitions: (1) (o) "Offence"****: "Offence" means* ***any act or omission made punishable by any law*** *for the time being in force; it also includes any act in respect of which a complainant may be made under Section 20 of the Cattle Trespass Act, 1871.*
>
> ***5. Trial of offences under Penal Code: (1) All offences, under the Pakistan Penal Code shall be*** *investigated, enquired into,* ***tried,*** *and otherwise dealt* ***with according to the provisions hereinafter contained.***
>
> ***(2) Trial of offences against other laws: All offences under any other law shall be*** *investigated, enquired into,* ***tried,*** *and otherwise dealt with* ***according to the same provisions, <u>but subject</u> to any enactment*** *for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.* [Emphasis added].

29. There can be no manner of doubt that pursuant to sub-section (1) of Section 5, Cr.P.C., offences or in other words acts or omissions punishable under the PPC shall be investigated, inquired into, tried and otherwise dealt

with according to the provisions of the Cr.P.C. Under sub-section (2) of Section 5, Cr.P.C. the acts or omissions punishable under any other law shall also be investigated, inquired into, tried and otherwise dealt with according to the provisions of the Cr.P.C. but *subject* to the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences as provided in any other enactment regulating such matters. Having said that by virtue of sub-section (2) of Section 1, Cr.P.C. nothing contained therein affects *inter alia* any special law, or any special jurisdiction or any special form of procedure prescribed by any other law unless such other law includes any specific provision to the contrary.

30. In short, the provisions of Cr.P.C. shall be applicable upon the investigation, inquiry, trial, and in otherwise dealing with the acts and omissions punishable under any law other than the PPC subject to the provisions regulating such matters in any other enactment except where no specific provision has been provided for making the provisions of Cr.P.C. applicable upon a special or local law or any special jurisdiction or power or special form of procedure prescribed by any other law in which case nothing contained in the Cr.P.C shall effect the same.

31. In view of the foregoing, it must first be determined whether the Workplace Harassment Act is a special law or a general law. The concept of General Law and Special Law was discussed in *Syed Mushahid Shah and others vs. Federal Investment Agency and others*, 2017 SCMR 1218; as follows:

> *3. We begin with the concept of general and special law.* ***General law is one that is unrestricted in terms of its applicability to all issues covered by its subject matter. In juxtaposition special law may be restricted to certain localities, persons or types of cases. Whether a law is general or special depends on the particular features of the statute in issue and is ultimately a question of relativity between two or more statutes on the common subject matter. The P.P.C. is a comprehensive code for creating all criminal offences in Pakistan and applies throughout the country (Section 1).*** *Every person is liable to punishment under the P.P.C. for every act or omission contrary to its provisions (Section 2*~~~~***). Accordingly, the P.P.C. is undoubtedly a general law. Similarly, the Code is also a general law***

as it applies to the whole of Pakistan [Section 1(2)] and deals with investigation, inquiry and trial etc. of all offences under the P.P.C. [Section 5(1)].

4. ***Initially, all criminal offences (barring a few) in Pakistan were tried by the courts of ordinary criminal jurisdiction under the Code and the P.P.C., i.e. the general law, and this included offences committed with respect to banks. Subsequently, the Banking Companies (Recovery of Loans) Ordinance, 1978 (the Ordinance, 1978) was promulgated to provide for a summary procedure for recovery of loans of banking companies and connected matters.*** *Section 3 of the Ordinance, 1978 provided that "The provisions of this Ordinance shall be in addition to and, save as hereinafter expressly provided, not in derogation of any other law for the time being in force." According to this law, banking disputes pertaining to the recovery of loans by a banking company from a borrower were made subject to the jurisdiction (civil and criminal) of the Special Courts constituted thereunder, and no Court other than a Special Court was to possess or exercise any jurisdiction with respect to any matter to which the jurisdiction of such Court extended under the Ordinance, 1978 [Section 8(4)]. Banking offences (and their punishments) were prescribed, all of which were bailable, non-cognizable and compoundable (Section 11).* ***As is evident from its salient features, the Ordinance, 1978 was a special law.*** *The Ordinance, 1978 was repealed and replaced with the Banking Companies (Recovery of Loans) Ordinance, 1979 (the Ordinance, 1979) which re-enacted the former with some modifications.*

4(sic.) On 31.12.1984, the Banking Tribunals Ordinance, 1984 (the Ordinance, 1984) was promulgated to provide a machinery for the recovery of finance provided by banking companies under a system of financing which is not based on interest (Preamble). This law closely followed the Ordinance, 1979 to quite an extent. One major difference was the phrase "without prejudice to any other action which may be taken against him under this Ordinance or any other law for the time being in force" which appeared in the provisions relating to offences (Section 7). In 1997, both the Ordinances of 1979 and 1984 were repealed and replaced by the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Ordinance, 1997 (the Ordinance, 1997) which eventually culminated into the Banking Companies (Recovery of Loans, Advances, Credits and Finances) Act, 1997 (the Act, 1997). The Act, 1997 essentially amalgamated the Ordinances of 1979 and 1984 creating one single statute for banking companies to recover loans or finances (interest based and interest-free) from borrowers or customers respectively. Like its predecessors, the Act, 1997 contained a non-derogation clause, and the 'without prejudice' clause in the provisions relating to offences (Section 19), akin to the one in the Ordinance, 1984. The Ordinances of 1984 and 1997 and the Act, 1997 were indubitably special laws, containing features similar to those of the Ordinances of 1978 and 1979.

6(sic.) The final link in the chain is the Ordinance, 2001. It repealed and re-enacted the Act, 1997, albeit with certain modifications. The Ordinance, 2001 established Banking Courts which deals with disputes (civil and criminal) between financial institutions and customers in respect of finances availed by the latter. Sections 4, 7 and 20 of the Ordinance, 2001 are important.

*7. A few months before the Ordinance, 1984 was enacted **the ORBO was promulgated on 23.02.1984.** It provides for the speedy trial of certain offences committed in respect of banks and for matters connected therewith or incidental thereto (Preamble). Special Courts were created (Section 3) to try 'scheduled offences' defined in section 2(d) to mean "an offence specified in the First Schedule and alleged to have been committed in respect, or in connection with the business, of a bank;" Clause (a) of the First Schedule provides "Any offence punishable under any of the following sections of the Pakistan Penal Code (Act XLV of 1860), namely:- Sections [201, 204, 217, 218, 380] , 403, 406, 408, 409, [419, 420] , 467, 468, 471, 472, 473, 475 and 477-A" (some of which are subject to certain modifications as set out in the Second Schedule of ORBO read with Section 6(2) thereof). Sections 4, 5 and 12 (relevant parts) of the ORBO read as under:-*

…The ORBO created Special Courts which were given exclusive jurisdiction to try various offences (Section 4) stipulated in the P.P.C. but incorporated into the ORBO by way of legislative reference** (scheduled offences) which were/are committed in respect of or in connection with the 'business of a bank'. Furthermore, no new offences specific to the ORBO were created by it: instead the existing offences in the P.P.C. were incorporated through legislation by reference (note:- punishment was increased). **It is patently clear that the ORBO is a special law in light of its aforementioned features, as it wrests some of the jurisdiction of the ordinary criminal courts.

*8. **As established, the Code and P.P.C. are general laws whilst the ORBO and the Ordinance, 2001 are special laws.** The appellants' case is that an offence committed in relation to a finance agreement inter se the financial institution and the customer, that falls within the orbit of the Ordinance, 2001 can only be tried by the Banking Courts constituted thereunder and that the Special Courts constituted under the ORBO or the ordinary criminal courts under the Code would have no jurisdiction. Equally the jurisdiction of the Agency under the Act, 1974 would also stand excluded by the criminal complaint procedure provided in section 20 of the Ordinance, 2001. **In the above configuration of laws, does the Ordinance, 2001 have an overriding effect over the Code and the P.P.C., the ORBO and the Act, 1974?***

9. Section 7(4) of the Ordinance, 2001 confers exclusive jurisdiction on the Banking Courts with respect to certain matters albeit subsection (5) creates an exception to the exclusive jurisdiction of the Banking Courts. This confers a right on the financial institution to seek any remedy before any court or otherwise which may be *available to it under the law by which the financial institution may have been established [Section 7(5)(a)].* ***According to section 4 of the Ordinance, 2001 reproduced above, its provisions "shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force." This is essentially a non obstante clause*** *which is defined as "A phrase used in documents to preclude any interpretation contrary to the stated object or purpose." 'Notwithstanding' means despite, in spite of or regardless of something.*

From the above it is clear that the non obstante clause of section 4 of the Ordinance, 2001 has been used by the legislature to give the provisions of the said Ordinance an overriding effect over any other law for the time being in force which may be contrary thereto. The use of the word 'notwithstanding' in section 4 ibid indicates the legislative intent to avoid the operation of conflicting provisions, by providing that in the event of such conflict, the provisions of the Ordinance, 2001 would take precedence over any such inconsistent law.

10. ***So, does the Ordinance, 2001 override the provisions of the Code and the P.P.C.?*** *This question pertains to the second category of cases (identified in the second paragraph of this opinion) in which cheques issued by the customers to the financial institutions were dishonoured and FIRs were registered against the former under the provisions of section 489-F of the P.P.C.* ***It is a settled canon of interpretation that where there is a conflict between a special law and a general law, the former will prevail over the latter.*** *In Muhammad Mohsin Ghuman's case (supra) this Court observed that "special statute overtakes the operation of general statute".* ***At this juncture, it is useful to point out certain relevant provisions of the Code and the P.P.C.*** *Section 1(2) of the Code provides that "...in the absence of any specific provision to the contrary, nothing herein contained shall affect any special or local law now in force, or any special jurisdiction or power conferred, or any special form of procedure prescribed, by any other law for the time being in force." According to section 5(1) of the Code, all offences under the P.P.C. "shall be investigated, inquired into, tried, and otherwise dealt with according to the provisions hereinafter contained", whereas subsection (2) thereof states that "All offences, under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences." Section 29(1) of the Code provides "Subject to the other provisions of this Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court." While section 5 of the P.P.C. stipulates that "Nothing in this Act [P.P.C.] is intended to repeal, vary, suspend or affect any of the provisions…of any special or local law."* ***These provisions make it clear that not***

> ***only do the Code and the P.P.C. recognize special laws, but they indicate that such general laws would cede to the special laws.*** *The phrase 'for the time being in force' [in Section 1(2) of the Code] has been interpreted by a five member bench of this Court in the judgment reported as (1) Mian Iftikhar-ud-Din, and (2) Arif Iftikhar v. (1) Muhammad Sarfraz Administrator, Progressive Papers Ltd. (2) The Government of Pakistan (PLD 1961 SC 585) to mean that it will apply not only to those existing statutes enacted in the past, but also to those which may be enacted in the future.* ***Thus the Code does not affect any special laws including the Ordinance, 2001."*** [Emphasis added].

32. The Workplace Harassment Act is restricted in its scope to harassment at the workplace. Section 8(3) thereof provides that the Ombudsman shall conduct an inquiry into the matter of a complaint according to the rules made under the Workplace Harassment Act and conduct proceedings as the Respondent No. 4/Ombudswoman deems proper. Rule 10(7) of the Workplace Harassment Rules provides that in the absence of any express provision regarding conduct of proceedings or inquiry, the Ombudsman shall have the power to conduct the proceedings or inquiry as he deems fit and just according to circumstances of the case to arrive at a conclusion and formulate his recommendations and findings in the case. As such, Section 8(3) read with Rule 10(7) prescribes a special form of procedure whereby the Respondent No. 4/Ombudswoman has the discretion to conduct proceedings as she deems fit and just according to circumstances of the case. The aforementioned salient features of the Workplace Harassment Act make it clear that it is a special law in which case pursuant to sub-section (2) of Section 1 of Cr.P.C., nothing contained in the Cr.P.C. will apply to the Workplace Harassment Act unless there is a specific provision to the contrary. Examination of the Workplace Harassment Act does not reveal any section which specifically makes the provisions of Cr.P.C. applicable thereto.

33. The learned counsel for the Respondent No. 1 argued that there is no non-obstante clause in the Workplace Harassment Act that gives its provisions an overriding effect over all other enactments. Instead Section 12 of the Workplace Harassment Act provides that the provisions of the

said Act shall be in addition to and not in derogation of any other law for the time being in force. Thus he argued that the provisions of the Cr.P.C. shall be applicable upon proceedings before the Ombudsman.

34. The expression *'not in derogation of'* came under discussion in the *Meera Shafi and others vs. Federation of Pakistan and others*, PLD 2022 Lahore 773 wherein it was noted that the Oxford Advanced Learner's Dictionary defines the word "derogation" to mean (i) an occasion when a rule or law is allowed to be ignored and that the Karnataka High Court in the case of *State of Mysore v. P.K. Atre,* AIR 1959 Kant 65 judicially interpreted the phrase to mean the same thing as "in addition to". Thus the Lahore High Court held that provisions of the Prevention of Electronic Crimes Act, 2016 **("PECA")** have to be read in tandem with the laws mentioned in Section 50(1) thereof in view of the words used therein.

35. In contradistinction to Section 50(1) of PECA which specifically lists Cr.P.C. as one of the laws the provisions of PECA will not have effect in derogation of, the language used in Section 12 of the Workplace Harassment Act is generalized in nature. It does not list Cr.P.C. specifically whereas sub-section (2) of Section 1, Cr.P.C. requires the presence of a specific provision which makes the Cr.P.C. applicable upon a special law.

36. It is significant to note that where the Legislature intended to make another general law applicable upon the proceedings before the Respondent No. 4/Ombudswoman under the Workplace Harassment Act it has done so explicitly and unambiguously under Section 10 which provides that the Respondent No. 4/Ombudswoman shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure ("**C.P.C.**") in respect of the stipulated matters.

37. I am fortified in my view by the judgment rendered in *Messrs Green Valley Trading Company Vs. Additional Director of Adjudication, State Bank of Pakistan*, 2003 YLR 1185. The question before the Sindh High

Court in such case was whether Cr.P.C. is applicable upon the proceedings before the Adjudicating Officer and the Appellate Board established under the Foreign Exchange Regulation Act, 1947 ("**FERA**") pursuant to the amendments made therein vide the Finance Act, 1987. Section 23 of FERA provides the penalties and procedure in respect of any contravention of the provisions of FERA (except contravention of the provisions of FERA specifically excluded under Section 23) which are to be tried by a Tribunal constituted under Section 23A. Section 23A provides that every Sessions Judge of the area shall be a Tribunal for the trial of an offence punishable under Section 23 of FERA and that such Tribunal shall have such powers under the Cr.P.C. as are stipulated therein.

38. On the other hand, the contraventions of the provisions of FERA specifically excluded by Section 23 fall within the jurisdiction of the Adjudicating Officer notified under Section 23B of FERA, which does not contain any provision expressly making the provisions of Cr.P.C. applicable upon such proceedings. The Sindh High Court considered sub-sections (2) of Sections 1 and 5, Cr.P.C. and held that a joint reading of these provisions indicates that Cr.P.C. is not applicable to the matters governed by any special or local law unless there is a provision expressly making the Code applicable to such special or local law wholly or to any extent. In this regard the Court observed that while the application of Cr.P.C. extends to the Tribunal constituted under Section 23A of FERA it does not extend to the forums of Adjudicating Officer established under Section 23B and the Appellate Board constituted under Section 23C thereof. The Sindh High Court found it significant to note that the Adjudicating Officer adopts the procedure laid down in Section 23E which are essentially powers of a Civil Court under the CPC. The Court noted that an express and specific provision laying down the applicability of the C.P.C. under Section 23E of FERA is sufficient to hold that the Cr.P.C. cannot be made applicable to these forums by any sound reasoning.

39. In case there is still any lingering doubt it may be recalled that the Workplace Harassment Act specifically provides by way of Section 8(3) that the Respondent No. 4/Ombudswoman shall conduct inquiry as per the rules made under the said Act and shall conduct proceedings as deems proper. Rule 10(7) of the Workplace Harassment Rules provides that in the absence of any express provision regarding conduct of proceedings or inquiry, the Respondent No. 4/Ombudswoman shall have the power to conduct the proceedings or inquiry as she deems fit and just according to circumstances of the case to arrive at a conclusion and formulate her recommendations and findings in the case. The intention of the Legislature is evident from the provisions of Section 8(3) and Rule 10(7) i.e., that in order to arrive at a conclusion and make recommendations, the proceedings may be conducted by the Respondent No. 4/Ombudswoman as deemed fit, just, and proper given the circumstances of the case. The Respondent No. 4/Ombudswoman is not constrained to follow any set procedure except as deemed fit, just and proper by her in order to arrive at a conclusion in the given circumstances of the case. Section 8(3) of the Workplace Harassment Act is specific whereas Section 12 thereof is of general import. It is trite law that the specific prevails over the general[1]. Therefore, Section 8(3) which allows the Respondent No. 4/Ombudswoman to conduct an inquiry and proceedings as she deems proper shall prevail over the general provision of Section 12 whereby provisions of other laws may not be ignored.

40. It is also a settled principle of interpretation that statutes are interpreted harmoniously. A provision of law cannot be interpreted in a manner that would make it contradictory to another provision of the same law or make another provision ineffective[2]. In view of the foregoing, Section 12 cannot be interpreted in a way that makes the Cr.P.C. compulsorily applicable upon such proceedings thereby taking away the

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[1] *Neimat Ali Goraya and 7 others vs. Jaffar Abbas, Inspector/Sargeant Traffic and others* , 1996 SCMR 826; and *Muhammad Iqbal and others vs. Nasrullah*, 2023 SCMR 273.
[2] *Jamal Din vs. Haji Muhammad Aslam*, PLD 1965 Lahore 503; and *Qaiser Javed Malik Vs. Pervaiz Hameed*, 2009 SCMR 846.

Ombudsman's power to conduct proceedings as deemed fit and proper and just according to circumstances of the case to arrive at a conclusion and formulate her recommendations and findings in the case making Section 8(3) virtually ineffective.

41. Moreover, all the counsels including the AAG were in agreement that Cr.P.C. cannot be made applicable upon the proceedings before the Inquiry Committee as envisaged in the Workplace Harassment Act. However, if Section 12 is interpreted in a way that makes the Cr.P.C. applicable upon the proceedings before the Respondent No. 4/Ombudswoman the same shall also apply to the proceedings before Inquiry Committee as Section 12 applies to the Workplace Harassment Act in general and is not restricted in its scope to only the former proceedings.

42. Having said that there is no provision in the Workplace Harassment Act that precludes the Ombudsman from conducting the proceedings or inquiry as per the Cr.P.C. if she deems it proper. Thus, in my opinion, nothing contained in the Cr.P.C. shall affect the Workplace Harassment Act pursuant to sub-section (2) of Section 1 of the Cr.P.C., but where there is no express provision regarding conduct of proceedings or inquiry the Ombudsman may, as per Section 8(3) read with Rule 10, conduct the proceedings or inquiry as per the provisions of the Cr.P.C if she deems fit and just according to circumstances of the case in order to arrive at a conclusion and formulate her recommendations and findings in the case.

Whether evidence beyond the scope of the First Complaint was admissible?

43. With that settled let me consider the conclusion drawn by the Respondent No. 3/President in the Impugned Order that the Petitioner/Complainant introduced 'new pleas'.

44. The Respondent No.3/President vide the Impugned Order rejected the evidence produced by the Petitioner/Complainant regarding the 'sketching' incident partly by holding that it was for the first time

mentioned in her affidavit tendered in evidence. The Petitioner/Complainant in her affidavit-in-evidence stated that once she was called in by Respondent No.1 to his room when Mr. Saqib Saleem and Mr. Mehmood Rafique were also present and where the Respondent No.1 had drawn the figure of a woman and asked the other persons in the room to tell the Petitioner/Complainant what they (private parts) were.

45. Insofar as the Respondent No. 2 is concerned, the Respondent No.3/President vide the Impugned Order held that the Petitioner has introduced new pleas in her Second Complaint by assigning role to the Respondent No. 2 and in her evidence also she added new pleas regarding insolent remarks. The Respondent No. 2 argued that the said Respondent was not implicated by the Petitioner/Complainant in the First Complaint and as such the subsequent allegations made by her against the Respondent No. 2 in her Second Complaint and the Complaint to the Respondent No. 4/Ombudswoman constitute 'new pleas' as an afterthought.

46. The Respondents No. 1 and 2 argued that evidence beyond the scope of the First Complaint is not admissible on the analogy that evidence not mentioned in an FIR is inadmissible.

47. First of all the difference between an FIR and the First Complaint filed by the Petitioner in the instant case ought to be appreciated. An FIR is the first information report made under Section 154 of the Cr.P.C. to report an offence. On the other hand, it may be noted that the First Complaint was not made under the provisions of the Workplace Harassment Act. In fact no complaint as contemplated under the Workplace Harassment Act was filed by the Petitioner/Complainant till the Complaint to the Respondent No. 4/Ombudswoman. The First and Second Complaints made by the Petitioner/Complainant were addressed to the President of the Bank and the Email was sent to the Division Head (North) of the Bank. This is because no Inquiry Committee was constituted by the Bank at the time of the complaints made by the Petitioner/Complainant despite the fact that Section 3 of the Workplace Harassment Act requires

that each organization shall constitute an Inquiry Committee within thirty days of the enactment. As such, the First and Second Complaints nor the Email can be considered as complaints made under the Workplace Harassment Act which only contemplates complaints made either to the duly constituted Inquiry Committee or to the Respondent No. 4/Ombudswoman. Thus the First and Second Complaint as well as the Email were outside the scope of the Workplace Harassment Act.

48. Indeed had the Inquiry Committee been constituted and the Complainant already approached the same she would not be able to institute a fresh complaint before the Respondent No. 4/Ombudswoman on the same cause of action except in the event of the Inquiry Committee's failure to take action as required by the law. This is because Section 8 of the Workplace Harassment Act provides the complainant an option to either prefer a complaint to the Respondent No. 4/Ombudswoman or to the Inquiry Committee. Thus pursuant to the *doctrine of election* the complainant would be precluded from filing a complaint to the Respondent No. 4/Ombudswoman in case a complaint has already been filed before the Inquiry Committee and such Inquiry Committee had proceeded on the complaint as required under the law. In such case when the Inquiry Committee makes recommendation to the Competent Authority as defined in the Workplace Harassment Act, the party aggrieved by the decision of the Competent Authority made accordingly has the right of appeal before the Respondent No. 4/Ombudswoman under Section 6 of the Workplace Harassment Act but cannot file a fresh complaint before the Respondent No. 4/Ombudswoman.

49. Secondly, it is incorrect to suggest that evidence not mentioned in an FIR is outright inadmissible. The principle objective of an FIR is to set the law in motion[3]. An FIR is merely the first information report of a cognizable offence[4]. In fact as held by this Court in *Faisal Hayat vs.*

[3] *Abdul Saboor vs. Federation of Pakistan and others*, PLD 2024 Lahore 244; *Muhammad Fazal vs. The State and others*, 2023 MLD 1477; and *Khalid Javed vs. The State*, 2001 PCr.L.J. 1968.
[4] *Raja Khurram Ali Khan vs. Tayyaba Bibi,* 2019 YLR 98.

Additional Sessions Judge/Ex-Officio Justice of Peace, West-Islamabad and 3 others, 2024 YLR 1037 Section 154, Cr.P.C. speaks of the *substance* of the information relating to the commission of a cognizable offence given to an officer in charge of a police station to be entered in a book. The Supreme Court in *Jan Muhammad vs. Msuhammad Ali and 3 others*, 2002 SCMR 1586 held that an FIR is neither a substantial piece of evidence nor an exhaustive document and if the detailed facts have not been mentioned therein it would not diminish its correctness. In the case of *Khalid Javed vs. The State*, 2001 P Cr. LJ 1968, the Lahore High Court held that even if the accused was not nominated in the FIR the supplementary statement can be read along with the FIR and the prosecution evidence cannot be discarded on this score. The Lahore High Court further held that the complainant who had seen his young wife murdered would naturally be under stress and pressure and as such cannot be expected to record minute details in the FIR and therefore the Court found nothing wrong with the fact that he provided the same by way of his supplementary statement without loss of time which were corroborated by a witness. Similarly, in *Muhammad Fazal vs. The State and others*, 2023 MLD 1477, the Peshawar High Court rejected the argument of the accused that the witnesses had improved their case while appearing before the trial court and held that the FIR was not meant to be an encyclopedia of all details. Therefore the Peshawar High Court refused to discard the testimony of the witnesses on that account.

50. This is not to say that evidence produced regarding alleged facts not mentioned in the FIR is always considered reliable. There are many instances in which evidence of details not mentioned in the FIR is held to be weak by itself unless there is corroborative evidence[5]. However, that certainly does not mean that testimony of witnesses or other evidence pertaining to details not mentioned in an FIR can be discarded or rejected as inadmissible *per se*. The effect of failure to mention a particular alleged detail in the FIR may vary from case of case. It has to be considered in

[5] *Roidad Khan vs. State and another*, 2022 MLD 660.

light of the specific circumstances and also the strength of the evidence produced which can outweigh the effect of such failure, if any. As explained by the Peshawar High Court in *Rahat Ali vs. The State and another*, 2018 PCr.L.J. 206 the ordinary rule of prudence is that Court should keep out of consideration the testimony of a witness not named in the FIR but that it is not a rule of law and in a fit case the Court can take such testimony into consideration if it is corroborated by other reliable evidence on the record.

51. Suffice it to say that the First Complaint cannot be equated with an FIR but even otherwise evidence produced by the Petitioner/Complainant before the Respondent No. 4/Ombudswoman in support of her Complaint to the Respondent No. 4/Ombudswoman cannot be outright discarded or rejected as inadmissible simply because it was not mentioned in the First Complaint made by her.

52. In any event, it is beyond comprehension as to how any allegation made by the Petitioner/Complainant in the Second Complaint and/or the Complaint to the Respondent No. 4/Ombudswoman can be regarded as a 'new plea'. The concept of 'new plea' is with reference to pleadings. It is well settled law that parties are bound by their pleadings[6] and no party can be allowed to deviate from its pleadings[7]. In other words, evidence adduced in support of a plea not taken in the pleadings cannot be taken into consideration[8]. However, neither the First nor the Second Complaint constitutes pleadings i.e., plaint or a written statement[9].

53. The Respondent No. 3/President by rejecting evidence produced by the Petitioner as a 'new plea' has erroneously equated the First Complaint with a plaint but as already concluded herein above, the First and Second Complaints as well as the Email were outside the scope of the Workplace Harassment Act. Such complaints can therefore not be treated as

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[6] *Imam Din vs. Muhammad Ali*, 1987 MLD 380.
[7] *Executive Engineer Irrigation Rohri Division Moro and 4 others vs. Gul Mohammad*, 2024 CLC 1460.
[8] *Abdul Kadir vs. Abdul Karim*, 1986 CLC 1894.
[9] *Hafiz Qari Abdul Fateh vs. Ms. Urooj Fatima and others* , 2024 SCMR 1709.

'pleadings'. Thus the evidence produced by the Petitioner/Complainant cannot be rejected as a 'new plea' simply because it was not mentioned in the First and Second Complaints or the Email. The Respondent No. 3/President erred in rejecting or failing to consider the Petitioner/Complainant's evidence against the Respondents No. 1 and 2 on the basis of constituting new pleas with reference to the First Complaint, which has resulted in non-reading of evidence.

54. The Respondent No.3/President failed to appreciate that there is no legal compulsion upon the complainant to state all the facts and details relating to an incident of harassment at the workplace or to disclose the names of the witnesses in the complaint made to the Inquiry Committee or to the Respondent No. 4/Ombudswoman under the Workplace Harassment Act. Rule 5 of the Workplace Harassment Rules provides that the complaint *may* contain *inter alia* comprehensive statement of all facts with all necessary details relating to an incident of harassment at the workplace and names of witnesses etc., but does not make it mandatory to do so. Therefore it is not necessary to exclude from consideration any specific incident mentioned in the affidavit-in-evidence simply because it has not been mentioned in the original complaint to the Inquiry Committee or to the Respondent No. 4/Ombudswoman, as the case may be. In the case of the Petitioner/Complainant she specifically stated in her Complaint to the Respondent No. 4/Ombudswoman that the incidents narrated therein are only few examples of harassment by the Respondents. Thus she was not precluded from producing evidence of other incidents of harassment, which was liable to have been considered on its own merits.

<u>Are the First and Second Complaints and the Email irrelevant</u>?

55. Without prejudice to the foregoing discussion, the First and Second Complaints and the Email are certainly not irrelevant nor can they be ignored if they contain contradictory statement(s). Any previous statement of the complainant notwithstanding that it is outside the scope of the

Workplace Harassment Act may be relevant if it constitutes a prior inconsistent statement.

56. Before I consider whether the First and Second Complaints and/or the Email constitute or contain any prior inconsistent statement, it is important to consider the difference between a 'new plea' and a 'prior inconsistent statement'. As observed herein above a 'new plea' is a new ground not raised in the pleadings filed by a party whereas a prior inconsistent statement is a previous statement made by a party which may reflect or contain a contradiction with the stance taken by such party in Court.

Does the First Complaint, Email, and/or the Second Complaint contain any prior inconsistent statements of the Petitioner/Complainant?

Respondent No. 1:

57. The learned counsel for the Respondent No. 1 argued that the Petitioner/Complainant tried to improve her case by way of the Second Complaint. A bare perusal of the First Complaint to the President of the Bank shows that the Petitioner/Complainant has clarified that it is merely a short snapshot of the harassment being faced by her in the form of personal comments, shameless double meaning words, abusive language, being forced to stay in the office after office hours; disclosing personal details for taking sick leave and/or domestic issues; comments about her medical fitness owing to her marital status etc., and that she wants to have a meeting with the President in order to explain the situation. The intention appears to be to simply bring to the President's notice that she was being subjected to harassment so that she could be afforded a meeting in which she could explain the situation in person. Similarly, she stated in the Email that details including specific wording will be provided in due course.

58. In the Second Complaint the Petitioner/Complainant referred to her First Complaint and observed that no action had been taken against the Respondents No. 1 and 2. Therefore, she stated some of the allegedly shameful, unethical, scandalous, immoral and un-Islamic comments made

by the Respondents No. 1 and 2 which allegedly constituted harassment in the Second Complaint as well as the Complaint to the Respondent No. 4/Ombudswoman. It is not out of place to observe that the contents of the Complaint to the Respondent No. 4/Ombudswoman are virtually the same as the contents of the Second Complaint. There is no contradiction in the First Complaint and the Second Complaint/Complaint to the Respondent No. 4/Ombudswoman and the contents thereof can in no way be termed prior inconsistent statements.

59. Insofar as the 'sketching incident' is concerned, it is neither a new plea nor an inconsistent or contradictory plea. It is simply a narration of another incident of harassment originally complained of. It must be borne in mind that harassment is not necessarily a one-off occurrence rather it can comprise of a multitude of instances over a period of time that individually and/or collectively constitute harassment. In the instant case where the Petitioner/Complainant was subjected to harassment over a period of almost one year it is conceivable that there were numerous incidents which she did not exhaustively mention in her Complaint to the Respondent No. 4/Ombudswoman. Evidence of such incidents is not inadmissible on that score particularly when the Workplace Harassment Rules do not make it mandatory to do so. However, findings of the Respondent No. 4/Ombudswoman with regard to such evidence would vary on a case to case basis and would depend on the strength of corroborative evidence, if any. That does not mean that the complainant can improve her case or set up an altogether different case than her original complaint. However, it is reiterated that in the instant case the Petitioner has not taken any contradictory or inconsistent or new plea against the Respondents at any material stage.

<u>Respondent No. 2</u>:

60. Perusal of the First Complaint shows that while giving a snapshot of the harassment allegedly caused to her by the Respondent No. 1 the Petitioner/Complainant had specifically stated that the Respondent No. 1

was supported by the Corporate Head and gets personal favours from him. There is no denial that the Respondent No. 2 was the Petitioner's Corporate Head. As such, the Respondent No. 2 has been referred to by the Petitioner/Complainant in the First Complaint though not by name. In the Second Complaint the Petitioner/Complainant gave specific examples of comments constituting harassment allegedly made by the Respondent No. 2. As observed herein above the Complaint to the Respondent No. 4/Ombudswoman is virtually identical to the Second Complaint in respect of allegations against the Respondent No. 2.

61. In any event, no specific question was asked of the Petitioner/Complainant during cross-examination as to whether the role ascribed to the Respondent No. 2 in her First Complaint was contradictory to the role attributed to him by way of her Second Complaint and/or Complaint to the Respondent No. 4/Ombudswoman nor was she confronted with any specific portion of the First and the Second Complaints as constituting prior inconsistent statements. As such, she was never given a chance to explain the alleged contradiction. It has been held in *Siyanda Hayat vs. Fazal Karim*, PLD 1971 SC 730 and *Razia Begum vs. Muhammad Saleem*,1989 MLD 298 that without following such procedure the previous statement cannot be used as legal evidence. The Supreme Court in *Muhammad Yusuf vs. S.M.Ayub*, PLD 1973 SC 160 held that even if a document has been admitted in evidence it can only be used as a previous admission only if the party has been confronted with it.

62. Although the provisions of Qanoon-e-Shahadat Order, 1984 have not been made applicable upon the proceedings before the Respondent No. 4/Ombudswoman *per se* Courts are not prohibited from adopting any just and fair rules of evidence[10]. In such circumstances I find that it would be patently unjust and unfair to give a finding that the First Complaint is in any way contradictory to or inconsistent with the allegations made by the Petitioner/Complaintant against the Respondent No. 2 by way of her

[10] *Aziz A. Sheikh vs. The Commissioner of Income Tax,* PLD 1989 SC 613.

Complaint to the Respondent No. 4/Ombudswoman when she wasn't given a chance to defend such allegation particularly considering the overwhelming evidence produced against him which is discussed later in this judgment.

Whether the Impugned Order is based on misreading or non-reading of evidence?

Respondent No.1:

63. The learned counsel for the Respondent No. 1 submitted that no witness was produced by the Petitioner/Complainant against the Respondent No. 1. However, such submission is negated by the testimony of CW Mr. Saqib Saleem, who was serving as AVP Senior Manager from 1.12.2010 and also by the testimony of CW Mr. Mehmood Rafique who worked with the Petitioner/Complainant and the Respondents No. 1 and 2 from 1.12.2010 till 21.6.2012. CW Mr. Saqib Saleem testified that it was correct to suggest that Respondent No.1 sketched some private parts on his table in Mr. Saqib Saleem's presence and asked the Petitioner/Complainant to explain the same. Similarly CW Mr. Mehmood Rafique also testified that it was correct to suggest that the Respondent No.1 showed the Petitioner/Complainant private parts of the body sketched on the glass of his table by marker and asked her to name them and on her refusal asked Mr. Mehmood Rafique to explain the same.

64. The Respondent No.3/President in part rejected such evidence by observing that the said witnesses negated the Petitioner/Complainant's allegation regarding the sketching incident that it was the Petitioner/Complainant who was first called upon to name the private parts. The only difference between the testimony of the Petitioner/Complainant regarding such incident and that of the aforementioned witnesses was whether she was asked to name the private parts first or the others. Such difference is hardly sufficient to reject to testimony of two witnesses which otherwise remained un-shattered. It is normal course of human conduct that while narrating a particular incident there may occur minor discrepancies

due to errors of observation, memory loss due to lapse of time, shock at the time of the occurrence, etc.[11]

65. Furthermore, CW Mr. Mehmood Rafique confirmed that Respondent No.1 used abusive and immoral language with the Petitioner/Complainant. He also confirmed that once when the Petitioner/Complainant was wearing loose clothing the Respondent No.1 threatened to tear off her clothes if she ever wore such clothes again. The Respondent No. 3/President has altogether failed to take into consideration such evidence thereby committing gross misreading and non-reading of evidence.

Respondent No.2:

66. CW Mr. Zia Iftikhar, CW Mr. Saqib Saleem, CW Mr. Mehmood Rafique, and CW Mr. Shoaib Kasani all confirmed that Respondent No.2 habitually used filthy, street, abusive, and immoral language in office with his employees and the Petitioner/Complainant. In addition CW Mr. Zia Iftikhar stated that Respondent No.2 made indecent suggestions to the Petitioner/Complainant about her attire publicly. CW Mr. Mehmood Rafique further stated that Respondent No.2 would question the Petitioner/Complainant about her single status in the presence of others and once or twice also inquired whether she has a boyfriend.

67. CW Ms. Ayesha confirmed in her Affidavit filed before the Respondent No. 4/Ombudswoman that Respondent No.2 made passes at her and compared her to actresses and would also use sexually explicit terms to describe her. She also stated that she was offered to work with Respondent No.2 as his Secretary and upon her refusal he started giving her low performance rating. Respondent No.2 eventually transferred her but that her low ratings led her to leave her job with the Bank. CW Mr. Zia Iftikhar confirmed about Respondent No.2's flirtatious behavior with Ms. Ayesha and use of degrading and filthy language about her in front of the whole team. CW Mr. Shoaib Kisrani also confirmed in cross-examination

[11] *Aqil vs. The State*, 2023 SCMR 831; and *zain Ali vs. The State*, 2023 SCMR 1669.

that Ms. Ayesha used to tell him about the comments made by Respondent No.2 against her and that he used to pressurize her to sit late.

68. The Respondent No. 3/President overlooked all such evidence and discarded the same simply by mischaracterizing it as 'new pleas'.

Whether the alleged comments/conduct of the Respondents No. 1 and 2 constitute harassment?

69. It is noteworthy that though the Respondents No. 1 and 2 denied making the alleged comments there is no denial that such comments/conduct would constitute harassment.

70. Not only did the Respondent No. 3/President misread the evidence as highlighted herein above he failed to appreciate that retaliation also constitutes harassment. The definition of "harassment" as given in clause (i) of sub-section (h) of Section 2 of the Workplace Harassment Act not only includes any unwelcome sexual advance, request for sexual favours, stalking or cyber stalking or other verbal, visual or written communication or physical conduct of a sexual nature or sexually demeaning attitudes, including any gestures or expression conveying derogatory connotation causing interference with work performance or creating an intimidating, hostile or offensive work environment but also any attempt to punish for refusal to comply to such request or where the same is made a condition of employment. Retaliation is also part of harassment as per the Code of Conduct for Protection Against Harassment of Women at the Workplace, which is defined in Section 2 (c) of the Workplace Harassment Act as the Code of Conduct in the Schedule to the Act and which pursuant to Section 11 thereof is the responsibility of the employer to implement as part of their management policy.

71. The Petitioner/Complainant in her Email to the EVP-Divisional Head Corporate and Banking Division (North) as well as in the Second Complaint and in the Complaint to the Respondent No. 4/Ombudswoman implicated the Respondent No. 2 also for acts allegedly taken by him in retaliation to her First Complaint such as reduction in performance rating;

change in accounts as well as compelling her to visit remote areas; abuse of authority; creating hostile environment; limiting future option of promotion; generating gossip; adverse remarks about work performance; and shameful statements/words.

72. The Respondent No. 3/President was liable to consider the evidence produced by the Petitioner/Complainant against the Respondent No. 2 in respect of retaliatory acts allegedly committed by him against the Petitioner/Complainant following her First Complaint which the Respondent No. 3/President failed to consider in the Impugned Order, which constitutes gross misreading/non-reading of evidence.

73. The Respondent No. 1 admitted in cross-examination that he gave the Petitioner/Complainant the highest marks and good remarks in her ACR in 2011. Similarly, the Respondent No. 2 admitted in cross-examination that in 2011 he nominated the Petitioner/Complainant for spot reward because of her performance. Although the Respondent No. 2 stated in cross examination that the Petitioner/Complainant's performance was average the Letters dated 4.2.2011 and January, 21, 2012 written by the Respondent No. 2 and produced as Ex.C/7 show that the Spot Award was in recognition of high performance and constant extra efforts.

74. CW Mr. Asad Saleem stated that he coordinated with the Respondent No.2 in relation to employee related issues. He explained in cross-examination that his role is to enter the appraisal report developed by the respective supervisor and finalized by the corporate head. He produced the performance appraisal of the Petitioner/Complainant for the year 2012 as Ex.C/3 and confirmed that it contains 'cuttings' (deletions) in overall score of the Petitioner/Complainant which he stated were amendments introduced with the consent/instructions of the Respondent No.2.

75. CW Mr. Muhammad Babar Ghous who assisted CW Mr. Asad Saleem in appraisal system also confirmed that the changes made in Ex.C/3 were on the basis of instructions of Respondent No.2. He also confirmed that the Petitioner/Complainant had a good service record before the filing

of the complaint and after filing of the First Complaint her performance has been shown to be lower.

76. The above mentioned statements of CW Mr. Asad Saleem and CW Mr. Muhammad Babar Ghous were not challenged by way of cross-examination. Thus the evidence on the record establishes that Petitioner/Complainant's performance record was good prior to her First Complaint and that the Respondent No. 2 caused deletions to be made in the Petitioner/Complainant's appraisal report for the year 2012 which resulted in lowering her performance evaluation.

77. The Respondent No. 2 explained in his statement that the 'cutting' referred to by CW Mr. Asad Saleem were made on the directions sent to him by email dated 20.6.2013(Ex. C-1) by the junior of the said Mr. Asad Saleem that the score allotted by Respondent No. 2 does not meet the criteria of Bell Curve. On the other hand, perusal of the said email shows that the reason why the scores allotted by the Respondent No. 2 did not meet the criteria of Bell Curve was because he had given the same score (4.97) to four other team members. Therefore, such email does not explain the cutting shown in the Petitioner/Complainant's appraisal report for the year 2012 as she was given the score of 3.97.

78. Another example of retaliation is the Letter dated 10.9.2013 (Ex.C-16) written by the Respondent No. 2 to the EVP and Division Head-North, Cooperate Banking Division, Head Office in Karachi complaining that the Unit Head i.e. Mr. Ahmed Saeed has brought to the Respondent No. 2's notice that official data is missing from the Petitioner/Complainant's computer since her transfer in July, 2013. The Petitioner/Complainant vide email dated 12.7.2013 (Ex. C-15) had already informed Mr. Asad Saleem that she showed all the official data on her PC to Ms. Amna but after she left the office someone has deleted the files and that she provided all the data to the Admin Incharge upon inquiry from backup. In any event, the record does not reflect that any inquiry was made with regard to the Respondent No. 2's allegations pertaining to missing date nor is there is

any conclusion or finding about the allegation of the missing data on the record.

79. The Respondent No. 3/President failed to appreciate that the allegation that the Respondent No. 2 retaliated against the Petitioner/Complainant due to the First Complaint, which too constitutes harassment stands proven by evidence.

80. The Respondent No. 3/President failed to give due consideration to such overwhelming evidence produced by the Petitioner/Complainant. Instead the Respondent No. 3/President laid greater emphasis on the rejection of the Respondents No. 1 and 2's evidence by the Respondent No. 4/Ombudswoman on the ground that their witnesses had not obtained leave whereas as per the Impugned Order the record does not show that witnesses produced by the Petitioner/Complainant had obtained leave of absence on the dates their testimony was recorded by the Respondent No. 4/Ombudswoman and upon queries by the Secretariat of the Respondent No. 3/President the Bank intimated that they were present on duty whereas CW Mr. Mehmood Rafique was not in service.

81. Clearly, the Respondent No. 3/President failed to appreciate that admittedly the Respondent No. 2 writes DW-1 Mr. Ahmed Saeed's ACRs and his increments are confirmed on the initial recommendation of the Respondent No. 2 and that he was supervised by the Respondent No. 2 till the date of his evidence. Similarly, admittedly, the Respondent No. 1 was the immediate boss of DW-2 Ms. Fakhra Ahmad while Respondent No. 2 was her corporate head who as such prepared and counter signed her ACRs and who also recommended her increments and promotion as well as the fact that the Respondent No. 2 recommended renewal of her contract with the Bank. DW-3 Mr. Saadullah Khan also admitted on cross examination that his contract service and increments are based on the recommendation of the Respondent No. 2 who signed his ACRs. Therefore, the Respondent No. 4/Ombudswoman rightly took note of the fact that admittedly all three DWs appears as witnesses on behalf of the Respondent No. 2 while on duty

which casts a shadow of doubt on their testimonies particularly when each of them was specifically confronted with the suggestion that they are deposing falsely to save their service and/or at the instance of the Respondent No. 2.

82. On the other hand, it was the learned counsel for the Respondents No. 1 and 2 who failed to ask the witnesses produced by the Petitioner/Complainant whether they were on duty or not. Even otherwise, such line of questioning would have no bearing given that there is no evidence that the CWs worked under the Respondents No. 1 and 2 and in any event they testified against the Respondents No. 1 and 2.

83. More importantly, the Respondent No. 3/President has failed to discuss in the Impugned Order the evidence produced by the witnesses of the Respondents No. 1 and 2 or its evidentiary value and what effect, if any such evidence would have on the outcome of the case if it had been considered by the Respondent No. 4/Ombudswoman. Examination of such evidence shows that DW-1 Mr. Ahmed Saeed Tahir; DW-2 Ms. Fakhra Ahmed; and DW-3 Mr. Saad Ullah Khan simply stated that they never witnessed the Respondents No. 1 and 2 using indecent/abusive/foul language with the Petitioner/Complainant or pressurizing or harassing her and that she never mentioned any complaint to them apart from testifying that she was not a good worker and used to leave early due to a language course taken in April or May of 2013. Therefore, even if such evidence of the DWs is taken into consideration it does not disprove the allegations leveled by the Petitioner/Complainant nor does it negate the evidence produced by her. At the most, according to such evidence the Respondents No. 1 and 2 did not subject the Petitioner/Complainant to harassment in the presence of the said DWs. That certainly does not mean that the Respondents No. 1 and 2 never harassed the Petitioner/Complainant especially when such harassment has been witnessed by the CWs. Similarly, leaving early in one month of 2013 does not disprove Petitioner/Complainant's allegation that she was made to sit late made in the First Complaint which was in September, 2012.

Motive:

84. The counsel for the Respondents No.1 and 2 argued that her poor performance appraisal was the motive behind the Petitioner/Complainant's complaints against the Respondents No. 1 and 2. However, there is nothing on the record to show that her performance appraisal was poor prior to the First Complaint. In fact as noted herein above, the Respondent No. 1 admitted in cross-examination that he gave the Petitioner/Complainant the highest marks and good remarks in her ACR in 2011. Similarly, the Respondent No. 2 admitted in cross-examination that in 2011 he nominated the Petitioner/Complainant for spot reward because of her performance. Moreover, DW-1, Mr. Ahmed Saeed Tahir admitted on cross-examination that in spite of the fact that he gave the Petitioner/Complainant low marks on her ACR in the year 2012, she did not make any allegation against him.

85. Moreover, the learned counsel was unable to show any cross-examination of the Petitioner/Complainant whereby she was confronted that she has leveled false allegations against the Respondents No. 1 and 2 because of her performance appraisal report[12].

86. The discussion herein above makes it abundantly clear that that the matter has not been disposed of by the Respondent No. 3/President in a legal and judicious manner and the Impugned Order passed by the Respondent No. 3/ President suffers from gross misreading and non-reading of evidence, and misapplication of the law which has resulted in miscarriage of justice and as such is not sustainable. Thus this is a fit case that warrants interference in exercise of Constitutional jurisdiction which is meant to serve the cause of justice, allowing the High Court to correct wrongs committed contrary to the evidence and the law[13].

[12] *Mst. Nur Jehan Begum vs. Syed Mujtaba Ali Naqvi*, 1991 SCMR 2300.
[13] *Hammad Ali Khan and others vs. Mst. Sadia Akbar and others,* 2024 MLD 1445.

87. The standard of proof in civil proceedings is balance of probabilities and understanding of prudent man[14] whereas the Supreme Court has already held in *Nadia Naz and another vs. The President of Islamic Republic of Pakistan Islamabad and others*, PLD 2023 SC 588 that in cases of harassment it is the standard of a reasonable woman that should be applied. The Petitioner/Complainant in the instant case has met her burden of proof as there is abundant evidence on the record that establishes on a balance of probabilities that she was subjected to harassment by the Respondents No. 1 and 2 which rendered the workplace intimidating, hostile, and offensive for the Petitioner/Complainant.

88. In view of the foregoing, the instant petition is **allowed** and the Impugned Order is set aside whereas the Ombudswoman Judgment is hereby restored.

89. The Bank is directed to implement the recommendations of the Ombudswoman within a period of thirty days from the date of this judgment.

90. Before parting with the judgment, I would like to acknowledge the research assistance provided by Ms. Sara Malkani Advocate, *Amicus Curiae* and Ms. Aamna Bin-te-Iqbal, Law Clerk, which I found to be most beneficial.

(SAMAN RAFAT IMTIAZ)
JUDGE

Announced in the open Court on this 31st day of December, 2024.

JUDGE

Tanveer Ahmed/*

Approved for Reporting
Blue Slip added.

[14] *Imran Ahmed Khan Niazi vs. Mian Muhammad Nawaz Sharif, Prime Minister of Pakistan/Member National Assembly and 9 others*, PLD 2017 SC 265.