

Form No:HCJD/C-121

ORDER SHEET

**IN THE LAHORE HIGH COURT LAHORE
JUDICIAL DEPARTMENT**

Case No: Crl.Org.No.53450/2019

Tahir Mirza

Versus

Saleha Mehmood DCO etc.

S.No. of order/ Proceeding	Date of order/ Proceeding	Order with signature of Judge, and that of Parties or counsel, where necessary.
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30.09.2019 Mr. Shawar Khilji, Advocate for the Petitioner.
Barrister Umair Khan Niazi, Additional
Advocate General, Punjab (on Court's call).
M/s Khalid Saeed Watto and Muhammad Asad
Sajjad, Director and Secretary Overseas
Pakistani Cell, Lahore High Court, Lahore
respectively.

The Petitioner has filed this contempt
petition for non-compliance of order dated
27.03.2018 passed by this Court in Writ Petition
No.134681/2018 which was disposed of in the
following terms:-

*“Given that the parties acknowledge that
there is a pending civil litigation and
Respondents No.1 to 4 have stated that
they will not conduct any parallel
proceeding in view of the civil litigation,
this petition is disposed of accordingly.”*

Learned counsel for the Petitioner submits that
despite passing of the aforesaid order, Deputy
Commissioner, Lahore, the Respondent No.1, has

started proceedings against the Petitioner without any justification.

2. When confronted how contempt is made out against the Respondents because there is no undertaking given by the Respondent No.1 in the Court on 27.03.2018 and the Petitioner has a remedy to file suit or an application to the concerned Deputy Commissioner while the Respondent No.5, being an overseas Pakistani, has also a remedy in the shape of filing a complaint before the Commissioner, Punjab Overseas Commission under relevant provisions of the Punjab Overseas Pakistanis Commission Act, 2014 (the "Act") and the Commissioner appointed may take action on the said complaint under Section 7 of the Act, learned counsel for the Petitioner does not press this petition in order to avail remedy before the relevant forum under the law.

3. It is evident from the record that the Respondent No.1 has taken action against the Petitioner on the application of the Respondent No.5, being an overseas Pakistani, despite the fact that there is a pending civil litigation between the same parties. No one, on the basis that he/she is

an overseas Pakistani, can take law in his/her own hand and is above the law because Article 4 of the Constitution of Islamic Republic of Pakistan, 1973 makes it very clear that it is the inalienable right of every citizen, **WHEREVER HE MAY BE, AND OF EVERY OTHER PERSON FOR THE TIME BEING WITHIN PAKISTAN,** shall enjoy the protection of law and to be treated in accordance with law (under the Act) and no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law. This Article clearly protects the citizens of Pakistan defined under Article 260 of the Constitution whether inside or outside Pakistan (wherever they may be). The Hon'ble Apex Court of the Country in National Commission on Status of Women through Chairperson and others versus Government of Pakistan through Secretary Law and Justice and others (PLD 2019 SC 218) expounded the scope of Article 4 of the Constitution by holding that *Adverting to international law on the subject, it is pertinent to note that Pakistan is a signatory to the Universal Declaration of Human Rights*

(UDHR) since 1948, Articles 7 and 8 whereof are relevant which provide as under:-

“7. All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination.

8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted to him by the constitution or by law.”

Article 4(1) of the Constitution goes further than Article 2 of the ICCPR by extending the right to enjoy the protection of law to every citizen regardless of where he is. Moreover, persons, who are not citizens, are also given this right while they are in Pakistan. The value placed by the Constitution on the inalienability of this right to protection of the law for all can be gauged from the fact that this right is further extended to every other person for the time being within Pakistan. Article 4(2)(a) to (c) of the Constitution provides for the specific right to protection from any detrimental action with

regards to life, liberty, body, reputation or property and ensures that no person is compelled to do anything or forbidden from any action unless the law specifically provides for the same.

4. Further, the Article 5(2) of the Constitution states that Obedience to the **Constitution** and law is the inviolable obligation of every citizen **WHEREVER HE MAY BE AND OF EVERY OTHER PERSON FOR THE TIME BEING WITHIN PAKISTAN.** The Honourable Full Bench of the Supreme Court of Pakistan in the judgment cited as *Watan Party and another versus Federation of Pakistan, and others (PLD 2011 SC 997)* has held that *Article 4 thereof remained fully operative, which laid down that to enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan and in particular no action detrimental to the life, liberty, body, reputation or property of any person would be taken except in accordance with law.* The august Supreme Court in the case

reported as President Balochistan High Court Bar Association and others Vs. Federation of Pakistan and others (2012 SCMR 1784) has further held that *To be loyal to the State is the basic duty of all citizens and they have to be obedient to the Constitution and the law, wherever they may be. Similarly, it is also inviolable obligation of every person for the time being within Pakistan. Thus, adherence to the Constitution and the Law by the citizens, who are officials or otherwise, is mandatory. Non-compliance of the Constitution and the Law makes a citizen liable for action, in accordance with law.*

5. In view of the judgments mentioned above and the provisions contained in Articles 4 and 5 of the Constitution, it is observed that both the citizens **IN AND OUTSIDE THE PAKISTAN** are protected under the Constitution without any discrimination as provided under Article 25 of the Constitution. Article 25 of the Constitution also states in unequivocal terms that all citizens are equal before law and are entitled to equal protection of law. No one is above the law and everyone has to follow the law in its true spirit.

6. This contempt petition is, therefore, **disposed of** with a direction to the Petitioner to file an appropriate application/complaint before the concerned Deputy Commissioner, Lahore who shall then look into the matter and decide the same strictly in accordance with the relevant provisions of the Act/Law on the subject, after hearing the Petitioner as well as the Respondent No.5, through a speaking order, by keeping in view the pendency of cases between the parties, and the order dated 27.03.2018 of this Court passed in W.P.No.134681/2018, within a period of four weeks from the receipt of certified copy of this order. In the meanwhile, no adverse action will be taken against the Petitioner till the decision of the matter by the Commissioner.

(JAWAD HASSAN)
JUDGE

*Mājid

