

Form No:HCJD/C-121

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

Case No: W.P.No.51384/2019

Abdul Wali

Versus

State Bank of Pakistan 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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19.09.2019 Mr. Muzammil Qasmi, Advocate for the
Petitioner.
Ms. Sadia Malik, Assistant Attorney General
(on Court's call).
Muhammad Asad Sajjad, Secretary Overseas
Pakistani Cell, Lahore High Court, Lahore.

The Petitioner, who is an overseas
Pakistani and residing in Germany, has filed this
writ petition through his special attorney namely
Mushtaq Hussain with the following prayer:-

*“It is, therefore, most respectfully prayed
that the act of the Respondent No.4
regarding committing embezzlement in the
account of the Petitioner and the act of the
Respondents regarding not redressing the
grievance of the Petitioner may very kindly
be declared as illegal, unlawful, void ab-
initio, nullity in the eye of law,
discriminatory, without lawful authority
and of no legal effect, violative to
fundamental rights of the Petitioner as
guaranteed by the Constitution of Islamic
Republic of Pakistan, 1973 and the
Respondents are liable to be directed to*

redress the grievance of the Petitioner without any further loss of time and during the investigation of the matter, Respondent No.4/Sibghat Ullah Shad may very kindly be restrained from leaving the territorial jurisdiction of Pakistan, in the interest of justice.”

2. Learned counsel for the Petitioner submits that the Petitioner, in the year 2016, has deposited an amount of Rs.57,39,976.45/- in his saving account bearing No.0249107900149746 with Faysal Bank Limited, Chenab Nager Branch, Tehsil Lalian, District Chiniot without applying for ATM Card and the bank only issued a cheque book for the said account when he left for Germany. He further submits that after his return to Pakistan in October, 2019, when the Petitioner visited the concerned branch of bank and obtained a bank statement, it came to his knowledge that an amount of Rs.36,00,000/- was illegally withdrawn from his account through ATM Card for which he never applied and received. Then, the Petitioner immediately filed a formal complaint with the Respondent No.4 who deliberately delayed the matter and ultimately, extended threats to him for withdrawing the said

complaint. Due to non-action on part of the Respondent No.4, the Petitioner moved numerous applications before the authorities concerned for the redressal of his grievance but none of the said applications has been decided thus far. Learned counsel pleads that because of the fraud committed with the Petitioner by the Respondents No.4, he suffered irreparable loss, which violates his fundamental rights under Articles 23 and 24 of the Constitution of Islamic Republic of Pakistan, 1973 (the "Constitution"). He finally argued that the Petitioner, who is a respectable citizen of Pakistan, has been treated in a discriminatory manner, hence, through this petition he has sought a direction to the Respondent No.1 to act in accordance with the provisions contained in Section 41 of the Banking Companies Ordinance, 1962 (the "1962 Ordinance") which empowers the State Bank of Pakistan to pass direction to the banking companies *to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the*

banking company or to secure the proper management of any banking company generally.

3. When confronted how writ is maintainable because no direction can be issued under Article 199(5) of the Constitution to the Respondent No.4 which is a private person and also the Petitioner has a remedy in the shape of filing a complaint under Section 5 of the Offences in Respect Of Banks (Special Courts) Ordinance, 1984, (the “1984 Ordinance”), learned counsel submits that the Petitioner has only filed this writ petition to secure his fundamental rights as enshrined in Articles 9 and 18 of the Constitution.

4. Learned Law Officer, at this juncture, submits that as the issue/dispute is between the private parties, it would be more appropriate that a direction be issued to the Respondent No.1 to redress the grievance of the Petitioner.

5. If the Petitioner is an overseas Pakistani as defined under Section 2(i) of the Punjab Overseas Pakistanis Commission Act, 2014 (the “Act”) then being a citizen of Pakistan he has inalienable rights defined under Articles 23 and 24 of the Constitution i.e. right to acquire, hold and dispose of the property and its protection. However the

Article 4 of the Constitution makes it very clear that it is an inalienable right of every citizen, **WHEREVER HE MAY BE, AND OF EVERY OTHER PERSON FOR THE TIME BEING WITHIN PAKISTAN**, to 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). Further, 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.

6. Section 41 of the 1962 Ordinance empowers the State Bank of Pakistan to exercise its jurisdiction in such like matters, which reads as follows:

41. Power of the State Bank to give directions:-

(1) Where the State Bank is satisfied that:-

- (a) in the public interest; or*
- (b) to prevent the affairs of any banking company being conducted in a manner detrimental to the interests of the depositors or in a manner prejudicial to the interests of the banking company; or*
- (c) to secure the proper management of any banking company generally;*

it is necessary to issue directions to banking companies generally or to any banking company in particular, it may, from time to time, issue such

directions as it deems fit, and the banking companies or the banking company, as the case may be, shall be bound to comply with such directions.

(2) The State Bank may, from time to time, issue direction, guidelines and instructions with respect to activities and operations of banks and the institutions mentioned in section 3A as may be deemed necessary by it for carrying out purposes of this Ordinance and matters ancillary thereto.

(3) The State Bank may, on representation made to it or on its own motion, modify or cancel any direction issued under sub-section (1), and in so modifying or canceling any direction may impose such conditions as it thinks fit, subject to which the modification or cancellation shall have effect.

7. In view of above by relying on the judgment cited as *Shahid Idrees versus Government of the Punjab and others* (PLD 2018 Lahore 284), if the Petitioner is an overseas Pakistani as defined under Section 2(i) of the Act, a copy of this writ petition alongwith all annexures be remitted to the Respondent No.1

who shall enquire/examine the matter, record in detail and the directions as per the 1962 Ordinance. Then after hearing the parties including the Representative of the Respondent No.3/Chairman & CEO of Faysal Bank Limited, if the case is made out against the Respondent No.4, then redress the grievance of the Petitioner in accordance with the relevant provisions of law, within a period of one (1) month under intimation to the Deputy Registrar (Judicial) of this Court.

Disposed of accordingly.

Copy *dasti* on payment of usual charges.

(JAWAD HASSAN)
JUDGE

*Mājid