

SUPREME COURT OF AZAD JAMMU AND KASHMIR

(Review Jurisdiction)

PRESENT:

Raja Saeed Akram Khan, ACJ.

Ghulam Mustafa Mughal, J.

Criminal review No.04 of 2019

(Filed on 23.10.2019)

Chaudhary Muhammad Saeed son of
Chaudhary Muhammad Saleem, r/o Sector F-1,
Tehsil and District Mirpur.

.... PETITIONER

VERSUS

Haji Javed Akram son of Ch. Muhammad
Akram, r/o Sangote, Tehsil and District Mirpur.

.... RESPONDENTS

(In the matter of review from the judgment of
this Court dated 20.08.2019 in criminal
original No.28 of 2018)

FOR THE PETITIONER: Sardar Abdul Raziq
Khan, Advocate.

FOR THE RESPONDENT: Mr. Khalid Rasheed
Ch., Advocate.

Dates of hearing: 10.12.2020/15.12.2020

JUDGMENT:**Raja Saeed Akram Khan, ACJ.—**

Through the titled petition, the petitioner has sought review of the judgment of this Court dated 20.08.2019, whereby the petitioner was convicted for the act of contempt of Court.

2. The facts necessary for disposal of this review petition are that while noticing some encroachment made adjacent to the Supreme Court Rest House at Mirpur, this Court ordered the Deputy Commissioner Mirpur to submit a report regarding the nature of encroachment. The Deputy Commissioner submitted the report stating therein that the encroachment has been caused by the petitioner, herein, upon the land acquired for Mangla Dam reservoir. On this, the Deputy Commissioner Mirpur and Director General Mirpur Development Authority, were further directed to submit the detailed report along with the accurate measurement and also

ensure the stoppage of encroachment. In this regard, a separate file was maintained. In the meantime, on 05.10.2018, the respondent, herein, also filed an application for initiation of contempt of Court proceedings against the petitioner and claimed that the petitioner, herein, by making encroachment upon the State land has violated the judgment of this Court reported as *Muhammad Azeem Dutt and others v. Raja Khadim Hussain and others* [2017 SCR 577]. On the completion of the necessary proceedings, this Court decided the matter in the following terms: -

"As we have held in paragraph No.7 of the judgment that the alleged contemnor deliberately by violating the judgment tried to undermine the authority of the Court and committed contempt of Court; therefore, he is convicted and punished with imprisonment till rising of the Court. The contemnor stands disqualified from being elected or chosen as, and from

being a member of Legislative Assembly for a period of 5 years from today. Let a copy of this judgment be sent to the Election Commission for an immediate appropriate action."

3. Sardar Abdul Raziq Khan, Advocate, the learned counsel for the petitioner argued that this Court awarded the sentence of imprisonment to the petitioner till rising of the Court and under the provisions of Article 24 of the Azad Jammu and Kashmir Interim Constitution, 1974, which deals with the qualification and disqualification of members of the Legislative Assembly, a member can only be disqualified from being so elected as a member of the Assembly if he is awarded the imprisonment for a term of not less than two years. Thus, the order of disqualification passed by this Court for a period of 5 years is not justified as the same is too harsh and to this extent the impugned judgment is liable to be reviewed. He also submitted that the provisions

of Article 62 of the Constitution of Islamic Republic of Pakistan, 1973, which deals with the qualifications and disqualifications for membership of Parliament are quite different, therefore, the case law from Pakistan jurisdiction relied on is not applicable to the instant case.

4. On the other hand, Mr. Khalid Rasheed Chaudhary, Advocate, the learned counsel for the respondent strongly controverted the arguments advanced by the learned counsel for the petitioner. He submitted that the contents of the review petition are contemptuous and this Court has got ample inherent powers under the Constitutional provision to pass any order. While referring to Article 24(2)(f) of the Azad Jammu and Kashmir Interim Constitution, 1974, he forcefully contended that it has been provided that a person shall be disqualified from being so elected if he is otherwise disqualified

from being a member by the Constitution or by or under any other law. When this Article is read with the provisions of qualifications and disqualifications as provided under section 5 of The Azad Jammu and Kashmir Legislative Assembly Ordinance, 1970, (now Chapter V, Section 31 of The Azad Jammu and Kashmir Elections Act, 2020), the petitioner was liable to be disqualified for a period of 7 years but the Court while taking the lenient view has disqualified him only for a period of 5 years. He prayed for dismissal of review petition.

5. We have heard the arguments and gone through the record made available along with the judgment under review and also considered the Constitutional as well as the statutory provisions on the subject referred to by the learned counsel for the parties. The learned counsel for the petitioner has not raised any objection on the findings recorded in the

impugned judgment against the petitioner, he only submitted that the order passed by this Court for disqualification of the petitioner from being elected a member of the Legislative Assembly for a period of 5 years is not covered by any law. We deem it proper to observe here that the Constitution has vested this Court with the inherent powers to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it. Moreover, under Article 24(2)(f), it has been provided that a person shall be disqualified from being so-elected if he is otherwise disqualified from being a member of the Assembly by the Constitution or by or under any other law; therefore, it cannot be said that in view of the Constitutional provision only a person who is convicted and sentenced to imprisonment for a term of not less than two years can be disqualified. Furthermore, in view

of section 5(1)(f) of The Azad Jammu and Kashmir Legislative Assembly (Elections) Ordinance, 1970, a person shall be qualified to be elected as and to be, a member if he is sagacious, righteous, honest, ameen and not profligate and under subsection (2)(x) of section 5 of the said Ordinance, it has been provided that a person shall be disqualified from being elected or chosen and for being a member if he is found guilty of corrupt or illegal practice under any other law for the time being in force; thus, after declaring a person guilty of an illegal act/practice, the Court can pass an order for disqualification from being elected or chosen and from being a member of Legislative Assembly and it cannot be said that the order passed by the Court for disqualification is not covered by any law. Hence, the only ground agitated by the learned counsel for the petitioner in support of review is ill-founded

which is hereby repelled. However, in the contempt proceedings, the matter is between the Court and the contemnor and it is the discretion of the Court to pardon or punish the contemnor keeping in view the nature and gravity of the act done as well as the facts and circumstances of the case. In the instant matter this Court after thoroughly examining the gravity of offence and conduct of the contemnor has awarded a short sentence of imprisonment till rising of the Court and also disqualified him, as discussed hereinabove, and it is settled principle of law that the punishment should be compatible with the allegation. Reference may be made to a case reported as *Niaz Ahmed v. The State and 2 others* [2008 SCR 326], wherein, this Court held as under:

"The Court, therefore, cannot resolve the issue of awarding sentence blindly or without taking note of theories of punishment and background of

offenders. This duty falls on the superior Courts to fill in the vacuum and the Courts should do justice keeping in view all the circumstances and background of the offenders. Therefore the punishment awarded should neither exceed a ceiling equal to a level just deserved by the offender for the offence nor far below a floor level necessary to protect public from further serious crimes and to show that the gravity of offence is depreciated.”

As the convict in the matter in hand has already served out sentence of imprisonment; moreover, he was a member of the Legislative Assembly and holding the portfolio of Minister and due to the order of disqualification passed by the Court he has lost the said positions and thereafter he could not participate in the byelections held in the Constituency, therefore, keeping in view the overall facts and circumstances of the case in our view the punishment already served out by the petitioner is compatible to the offence/adequate

to serve the purpose. Thus, in the interest of justice, while exercising the inherent powers, the remaining period of disqualification from being so elected as a member of Legislative Assembly is reduced to the period already undergone.

With the above modification, this review petition stands disposed of.

ACTING CHIEF JUSTICE

JUDGE

Muzaffarabad,

