IN THE HIGH COURT OF SINDH, CIRCUIT COURT, MIRPURKHAS

Criminal Appeal No.S-10 of 2023

Appellants:	1. Sikandar Ali Kolachi S/o Dost Muhammad Kolachi, 2. Abdul Ghaffar Narejo S/o Muhammad Siddique, 3. Zain-ul-Abdin Narejo S/o Abdul Rasool, 4. Satram Das Sonani Bheel S/o Ismail, 5. Tilok Chand S/o Kastooro. Through Mr. Javed Chaudhry and Mr. Muhammad Hashim Laghari, Advocates
Respondents:	The State. Through Mr. Shahzado Saleem, Additional Prosecutor General, Sindh.
Date of Hearing:	**12.09.2023.**
Date of Judgment:	**15.09.2023.**

JUDGMENT

Omar Sial, J.: The Mirpurkhas District Bar Association, being extremely disgruntled with the learned 1st Additional District and Session Judge, Mirpurkhas (**the Judge**), in a meeting held on 18.08.2023, resolved, inter alia, that the members of the Bar would not appear in his Court. The resolution passed by the Bar highlighted the grievances which the Bar had in connection with the conduct and actions of the Judge. It was in the backdrop of the resolution that the learned advocates representing a set of accused in a criminal case did not appear in Court on 21.08.2023. The Judge averred that the members of the Bar, which included the appellants, disrupted court proceedings on that particular date and that a group of lawyers also chanted slogans against him. The actions of the lawyers prompted the Judge to issue the appellants a Show Cause Notice on 28.08.2023 (**the Notice**) to explain their disorderly behavior of 21.08.2023, failing which contempt

proceedings would be initiated against them. A reply was sought by 31.08.2023.

2. The appellants did not reply to the Notice within the given time frame and instead sought further time to file their replies. However, the Judge did not accede to their request and on 31.08.2023 passed a judgment in terms of which the appellants were found guilty of having committed an offence under section 228 P.P.C. and sentenced them to a 6-month imprisonment as well as directed them to pay a fine of Rs.3,000 each. If they failed to pay the fine, they would have to remain in prison for a further period of 2 weeks.

3. I have heard the learned counsel for the appellants. I have also been assisted by the learned Additional Prosecutor General and it was with their able assistance that I have also gone through the entire record. The arguments of the learned counsel are not being reproduced for the sake of brevity but are reflected in my observations below.

4. There are a number of facets to this case. The Bar-Bench relationship is at its core. The appropriateness of the method adopted by the Bar to record its protest and simultaneously the appropriateness of the conduct of the Judge are areas which require thought. Similarly, whether the correct procedure deployed by the Judge in initiating and conducting proceedings that led to the impugned judgment was proper and lawful also requires analysis. I have however concentrated on one aspect of the case which in my view must necessarily be decided as a preliminary issue. This is whether the judgment passed was a valid judgment. All further arguments connected with the incident will only be important if this aspect is decided in the affirmative. In my opinion,

the judgment passed was not a valid judgment and my reasons to so conclude are as follows.

5. To re-cap the important dates in the matter. A resolution to boycott all proceedings before the Judge was passed on 18.08.2023. The disorderly conduct of lawyers happened on 21.08.2023. The Notice was issued by the Judge on 28.08.2023. Entire proceedings in the matter were held on 31.08.2023 and the judgment passed on the same date. An important development impacting the case however occurred on 28.08.2023 i.e. the date when the Notice was issued. On this date, the Chief Justice of Sindh ordered the transfer of certain judges from one jurisdiction to another. These transfers also included that of the Judge, who on 28.08.2023 was transferred from his assignment as 1st Additional District and Session Judge, Mirpurkhas to take up an assignment as 1st Additional District and Session Judge, Hala. The order for transfer was with "immediate effect". In essence, the Judge stood relieved of his duties in the Mirpurkhas District upon issuance of the notification on 28.08.2023.

6. Mr. Hashim Laghari, learned counsel appearing for the appellants, argued extensively that the Judge could not have passed the impugned judgment on 31.08.2023 as he had become *functus officio* on 28.08.2023. One of the judgments cited has been reported as **Qazi Mehardin vs. Mst. Murad Begum (PLD 1964 SC 446)**. This was a case originating from a dispute under civil law. In this case, the question before the Court was whether a judgment pronounced by a Single Judge of the High Court, had been written and signed by him after he had handed over the charge and had become a Minister of the Bahawalpur State, was a valid judgment or not. The Supreme Court observed

"……..*it should be held that a Judge who has become functus office, after being relieved of his office, should not be allowed to have anything to do with judicial work of the Court over which he previously presided.*" It is important to note that the Court also observed that, "*The cases, therefore, in which judgments written by persons after transfer or on leave, were held to be valid, would not be sufficient authority for the view that a judgment written by a Judge who had ceased to hold his office would be immune from exception.*" In my research, I have come across a plethora of judgments in which it has been held that a judge becomes functus officio when he has signed and delivered a judgment. He can only re-visit it to correct a typographical error. Similarly, there is much precedent also of cases where a judge who retired before pronouncing a judgment was held to be functus officio. The case before me is somewhat different to the extent that in this case, the Judge did not retire or cease to be a judge but was transferred to handle the affairs of another jurisdiction. He ceased to be a judge performing his duties in the Mirpurkhas District and transferred to Hala, a Taluka of Matiari District, to perform his duties there. The Judge remained a judge but lost territorial jurisdiction. There is a strong and convincing argument, especially in light of the principle enunciated in the ***Qazi Mehardin*** case, that a transfer of a judge would also make him fall within the ambit of *functus officio* once he loses territorial jurisdiction.

7. I am also of the view that the principle of *coram non judice* would kick in in the facts of the case before me. **Black's Law Dictionary, 11th edition**, defines *coram non judice* as, "*1. Outside the presence of a judge. 2. Before a judge or court that is not the proper one or <u>that cannot take legal cognizance of the matter.</u>*" Similarly, in **Latin for Lawyers, 1st Edition (1999)** by Lazar Emanuel, it is defined as "*a proceeding before, or*

determination by, a judge who has no authority or jurisdiction to deal with the matter." **Merriam-Webster Dictionary, 2023 Edition** defines the term to mean "*before a judge not competent or without jurisdiction*". (underlining has been added).

8. A learned Division Bench of this Court in **Dr. Seema Irfan & Others vs. Federation of Pakistan and others (PLD 2019 Sindh 516)** while expanding on lack of jurisdiction, has observed that, "*The lack of jurisdiction means lack of power or authority to act in a particular manner or to give a particular kind of relief. It refers to a court's total lack of power or authority to entertain a case or to take cognizance. It may be a failure to comply with conditions essential for exercise of jurisdiction or that the matter falls outside the territorial limits of a court*". The Supreme Court of India in (a case arising under the civil law) of ***Bhoruka Textiles Ltd. v. Kashmiri Rice Industries*, (2009) 7 SCC 521**, explained the principle of *coram non judice*. "*it is a fundamental principle that a decree passed by a court without jurisdiction is a nullity and that its invalidity could be set up whenever and wherever it is sought to be enforced or relied upon, even at the stage of execution and even in collateral proceedings. A defect of jurisdiction, whether it is pecuniary or territorial, or whether it is in respect of the subject matter of the action, strikes at the very authority of the court to pass any decree, and such a defect cannot be cured even by consent of parties.*"

9. On 28.08.2023, when the orders of transfer were effected, the Judge stood transferred from Mirpurkhas to Hala. Hence, for all intents and purposes, his mandate for the jurisdiction of Mirpurkhas lapsed and he lost territorial jurisdiction. It is unclear whether the Notice was issued by the Judge prior to or after the receipt of transfer orders. Regardless, as his judicial mandate as a judge in Mirpurkhas expired on 28.08.2023,

he could not have proceeded to hold his Court sittings post notification let alone conduct a trial and pass a judgment after that date.

10. It would be expedient to also define the term "*Judge*". Black's Law Dictionary, 11th edition defines it as, "*A public official appointed…to hear and decide legal matters in court…an officer who (1) is so named in his or her commission, and (2) presides in a court.*" Whereas, section 19 of the P.P.C. defines it as, "The *word "Judge" denotes not only every person who is officially designated as a Judge…*" There is no cavil to the proposition that as at 28.08.2023, on account of the Notification, the judicial mandate of the Judge for the geographical limits of Mirpurkhas ceased to operate. He was no longer the *official designate or appointee* for the *territorial limits of District Mirpurkhas*. Hence, did not fall strictly speaking, within the definition of a Judge for Mirpurkhas as ascribed above. Any action taken for the territorial limits of Mirpurkhas after the issuance of the Notification stood tainted by the principle of *coram non judice*.

11. Without delving deep into the Bar and Bench relationship, as many of my learned colleagues, much wiser than me, have written extensively on it, suffice to say that the effectiveness of the legal system is contingent upon mutual cooperation, trust and congeniality of the Bar and the Bench. In this case, not only has there been a breach of that trust, there has been evident animus on both sides. I am compelled to observe that if the grievance of the Bar, is accurate, then the same is a cause of serious concern in relation to the constitutionality and legality of judicial proceedings conducted by the Judge. The loss of confidence in the Judge is then naturally compromised and so is the judicial function. For, "*Justice must be rooted in confidence and confidence is destroyed when the right minded people go away thinking: 'The Judge was biased.'*" **Lord**

Denning in Metropolitan Properties Co (FGC) Ltd v. Lannon & others [1968] 3 All ER 304. In the case before me, I am constrained to observe that the language used in the impugned judgment by the Judge reflects great anger and disdain and therefore it seems that as a consequence, in places, words have been used by the Judge which perhaps were not appropriate. **Al-Bukhari (Hadith No. 7,158; Muslim, Hadith No. 1,717)** records the Holy Prophet to have said "*No arbiter between two disputants may give a ruling when he is angry*."

12. A judge is expected to show magnanimity at all times but the Bar must not take the magnanimity as a weakness of the judge. In the present case, neither engaging in unruly and disruptive conduct nor slogan chanting by the members of the Bar was an appropriate response towards addressing the issues which they had with the Judge. As officers of the Court, the lawyers are duty-bound to uphold the sanctity and repute of our Courts. Rule 159 of the **Pakistan Legal Practitioners and Bar Councils Rules, 1976** specifically stipulates that "*It is the duty of an Advocate to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance. Judges not being wholly free to defend themselves, are peculiarly entitled to receive the support of the Bar against unjust criticism and clamour. At the same time whenever there is proper ground for complaint against a judicial officer it is the right and duty of an Advocate to ventilate such grievances and seek redress thereof legally and to protect the complainant and persons affected.*" I am heartened to note that Mr. Hashim Laghari, learned counsel for the appellants, acknowledged that the mode of protest adopted by the Bar was not the most appropriate and tendered an apology on behalf of the appellants. Mr. Laghari, however, submitted

that the lawyers' reaction was as a consequence of repeated and continuous violations of proper procedure by the Judge as well as the language used by him against lawyers and litigants repeatedly, which had reached such a level that members of the Bar temporarily may have resorted to conduct, they should not have in hindsight. The grace and maturity shown by the appellants and their counsel in rendering an apology are admirable and appreciated. It is hoped and expected that the learned members of the Bar will conceive ways to mark their protests without resorting to strikes and unruly conduct.

13. In view of the above discussion, it is concluded that the Judge for want of authority could not have exercised judicial power. As his mandate had ceased with an immediate act on 28.08.2023, all further actions were barred by well-entrenched concepts of *functus officio* and *coram non judice*. Accordingly, without dilating upon the merits, the impugned judgment is hereby declared as null and void. However, the learned Sessions Judge, Mirpurkhas, may, if he deems fit conduct an inquiry into the events of the date and if he is of the view that reasonable grounds for alleged misconduct against the appellants exist, he would be at liberty to take any legal action that he deems appropriate.

JUDGE

Dated 15.09.2023

Faisal