

**Judgement Sheet**

**IN THE LAHORE HIGH COURT, LAHORE.  
JUDICIAL DEPARTMENT  
(In Appellate Jurisdiction)**

**Election Appeal No.831 of 2024**

**Imran Ahmed Khan Niazi**

**versus**

**The Returning Officer and another**

**JUDGMENT**

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| <i>Date of hearing:</i>                    | 10.01.2024.  |
| <i>Appellant by:</i>                       | M/s Uzair Karamat Bhindari, Muhammad Azhar Siddique, Mian Sami-ud-Din, Ameer Hamza Dogar, Asfand Mir, Ali Uzair Bhindari, Kamran Asif, Amna Liaqat and Rai Muhammad Ali, Advocates |
| <i>Election Commission of Pakistan by:</i> | M/s Imran Arif Ranjha, Legal Advisor and Bushra Rasheed, Deputy Director (Law) with Muhammad Iqbal, Returning Officer, NA-122, Lahore-VI   |
| <i>Respondent No.2:</i>                    | Barrister Abdul Qudoos Sohal and Muhammad Ramzan Chaudhary, Advocate   |

**MUHAMMAD TARIQ NADEEM, J:** – Through this appeal filed in terms of section 63 of the Elections Act, 2017, the appellant has called in question the *vires* of order dated 30.12.2023, penned down by the Returning Officer of NA-122, Lahore-VI, Lahore, whereby nomination papers filed by the appellant were rejected.

2. Facts in brief, leading to the institution of instant appeal, are that the appellant submitted nomination papers to contest the forthcoming General Elections of National Assembly from the constituency of NA-122, Lahore-VI, Lahore. Respondent No.2 filed objections against the nomination papers of appellant and after hearing both the parties as well as scanning the documents of appellant, the Returning Officer concerned

rejected the nomination papers *vide order* dated 30.12.2023 with the following observations: -

*“13. Arguments advanced by the counsels of the Objector & the Respondent heard and the record and documents produced have carefully been examined. So, far as the first Objection on the proposer namely Mr. Muneeb ur Rehman is concerned as per section 60 (1) of the Act, 2017 a voter of the constituency may propose or second the name of a qualified person to be a candidate for member for that constituency. In the instant case, the proposer is not a voter in NA-122 and the bare reading of the section 62 (9)(d)(ii) provides as under.-*

*"The Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial nature and may allow any such defect to be remedied forthwith, including an error in regard to the name, serial number in the electoral roll or other particulars of the candidate or his proposer or seconder so as to bring them in conformity with the Corresponding entries in the electoral roll.*

*14. The ibid law clearly established that omissions of a clerical nature can only be remedied. However, defects, which are substantial in nature, cannot be remedied. The non-existence of a proposer in the electoral roll of NA-122 is a substantial defect which cannot be remedied. The Hon'ble Lahore High Court, Lahore in a reported judgment 2022 CLC 463 titled as "Jamshaid Iqbal Cheema vs the Election Appellate Turbinal and 19 others", unequivocally established as under:-*

*"Mere residing in an area or having a temporary or permanent residence in any part of electoral area of a constituency was not a determinative factor to term a person as voter within the meaning of Elections Act, 2017---*

*Provisions relating to proposer and seconder of a candidate in Elections Act, 2017, were mandatory in nature and any defect in respect thereof in nomination, was a defect of substantial nature, and the same could not be cured at subsequent stage and nomination papers invalid on such account could not be allowed to be validated afterwards in exercise of powers either by Returning Officer or even by Appellate Tribunal.*

*15. So far as the action of the Election Commission regarding de-limitation is concerned the jurisdiction of the undersigned is barred. The section 62(6) of the Election Act, 2017 describes as under:-*

*"The returning officer shall not inquire into the correctness or validity of any entry in the electoral roll"*

16. Further, the Respondents also prayed for the change of proposer and offered two fresh proposers from the constituency. This point has also been dealt by the August Supreme Court of Pakistan in a reported judgement, PLD 2016 SC 944 Tariq Nadeem Shafi vs Shuja Butt and other, the instant point has been settled in the following manner:

*"Nomination papers ---Proposer/seconded of a candidate not a voter from the constituency from which the candidate was contesting such defect was of a substantial nature--- Returning Officer and the Appellate authority were barred from correcting a defect of such substantial nature"*

17. The counsel of the Respondent argued that conviction of the Respondent is not relating to the offence of moral turpitude. The para 38 of the order dated 05.08.2023 passed by the Additional Session Judge (West), Islamabad describes the conviction as under: -

*"He has been found guilty of corrupt practices by hiding the benefits he accrued from national exchequer willfully and intentionally. He cheated while providing information about gifts, he obtained from Toshakhana which later proved to be false and inaccurate. His dishonesty has been established beyond doubt".*

18. The judgment of Additional Session Judge (West), Islamabad establishes that the conviction of the Respondent is related to the offence of moral turpitude and the candidature of the Respondent is hit by Article 63 (1)(h) of the Constitution of the Islamic Republic of Pakistan. Moreover, the conviction has not been suspended or set aside by any competent court of law till to date. Furthermore, the notification of disqualification of the Respondent dated 08.08.2023 is not confined to the extent of NA-45 Kurram-I. The language of the *ibid* notification is very clear which describes that as a consequence, Mr. Imran Ahmed Khan Niazi has become disqualified under Article 63(1)(h) of the Constitution of the Islamic Republic of Pakistan read with section 232 of the Act, 2017. Therefore, Mr. Imran Ahmed Khan Niazi is disqualified for a period of five years. This notification dated 08.08.2023 has also not been suspended or set aside by any competent court of law.

19. In the light of the above discussion, the allegations/objections levelled by the Objector Mian Naseer Ahmed against the Respondent Imran Ahmed Khan Niazi are legal and substantial in nature and has finally succeeded in making out a case against the Respondent. Consequently, the nomination papers of the Respondent from NA-122 stands rejected."

3. Aggrieved by the order dated 30.12.2023, the appellant has filed the instant appeal with the prayer for setting aside the impugned order and acceptance of his nomination papers.

4. It is *inter alia* contended by learned counsel for the appellant that the Returning Officer concerned has based the impugned order on wrong legal premises. Further argued that the observation of Returning Officer that Muneeb-ur-Rehman, proposer of appellant, is not a voter member of constituency NA-122, is erroneous one, because, in preliminary delimitation report the name of appellant's proposer was available in the voter list of constituency NA-122 and even in final delimitation report, appellant's proposer was a voter-member of the said constituency, but thereafter a revised final delimitation report was issued on 15.12.2023, which is available at Page-200 of this appeal and in the light of revised final delimitation report, the vote of Muneeb-ur-Rehman, proposer of appellant, was shifted from the constituency of NA-122 to NA-120. Mr. Uzair Karamat Bhindari, learned counsel for the appellant, vociferously argued that no gazette notification pertaining to the revised final delimitation report has been published, in this way, the proposer of appellant should be deemed to be a voter member of constituency NA-122 and not of NA-120. He has also drawn the attention of this Tribunal towards section 21(4) of the Elections Act, 2017 and has placed reliance upon the dictum laid by the Supreme Court of Pakistan in Civil Petition No.4305 of 2023 titled as "Gul Khan and others v. Saeed-ur-Rehman and others" decided on 18.12.2023. To meet with next ground qua rejection of nomination papers of the appellant, learned counsel has argued that although the appellant has been convicted under section 174 of the Elections Act, 2017, and sentenced to undergo simple imprisonment for three years with fine of Rs.1,00,000/-, but his case does not fall within the ambit of Article 63(1)(h) of the Constitution of Islamic Republic of Pakistan, 1973, because, his case is not that of moral turpitude. Further contended that the sentence of the appellant has been suspended from the Islamabad High Court, Islamabad, *vide* order dated 28.08.2023, but this aspect has not been taken into consideration by the

Returning Officer while passing the impugned order. Lastly, learned counsel for the appellant passionately stressed upon the point that the Election Commission of Pakistan lacks the authority to disqualify the appellant for a period of five years. In the end, learned counsel supplicated that the appeal may be accepted and while setting aside the impugned order dated 30.12.2023 passed by the Returning Officer concerned, nomination papers of the appellant be also accepted.

5. On the other hand, learned Legal Advisor for the Election Commission of Pakistan assisted by learned counsel for respondent No.2, while controverting the submissions made by learned counsel for the appellant, has tried to defend the impugned order. They have emphasized on the point that Muneeb-ur-Rehman, proposer of appellant, is not a voter-member of constituency NA-122 and so far as the revised final delimitation report is concerned, neither appellant nor his proposer or anybody else has challenged the same before any forum. They further argued that judgment of the Supreme Court of Pakistan in Civil Petition No.4305 of 2023 titled as “Gul Khan and others v. Saeed-ur-Rehman and others” rendered on 18.12.2023 (referred by learned counsel for the appellant) is a Judgment in Personam and not a Judgment in Rem, because, the same has been passed in respect of delimitation of two constituencies of Baluchistan. Further argued that the appellant is a convicted person and his case squarely falls within the scope of Article 63(1)(h) of the Constitution of Islamic Republic of Pakistan, 1973, because, he has been convicted in a case of moral turpitude. They further contended that there is a hell of difference between the suspension of sentence and suspension of conviction and suspension of sentence does not mean that the appellant has been acquitted of the charge from the appellate court. Learned Legal Advisor for Election Commission of Pakistan has forcefully argued that the Election Commission of Pakistan has legally disqualified the appellant and the order in this respect still holds the field. Lastly, they have prayed for the dismissal of instant appeal.

6. I have heard the learned counsel for the appellant as well as learned Legal Advisor for Election Commission of Pakistan assisted by learned counsel for respondent No.2 and have perused the record with their eminent assistance.

7. It evinces from the record that the nomination papers of the appellant have been rejected by the Returning Officer concerned on the following three grounds: -

- a) that Muneeb-ur-Rehman, proposer of appellant, is not a voter-member of NA-122;
- b) that the appellant has been convicted and sentenced by the court of law; and
- c) that the appellant has been disqualified by the Election Commission of Pakistan for a period of five years.

8. So far as first ground for the rejection of appellant's nomination papers is concerned, it is the stance of appellant that according to final delimitation report, the name of his proposer Muneeb-ur-Rehman was reflecting as a voter-member of constituency NA-122, but thereafter while issuing revised final delimitation report, his name was excluded from the voter-list of this constituency with *mala fide*. In this regard, I have observed that the revised delimitation report was issued by the Election Commission of Pakistan prior to the submission of nomination papers. Besides, it is an admitted position in this case that nobody including the appellant and his proposer has challenged the revised final delimitation report. In this way, the observation of Returning Officer concerned that the appellant has not been proposed by a valid voter-member of constituency NA-122 as a contesting candidate from this constituency was a valid ground for rejection of his nomination papers. Guidance in this respect has been sought from the cases titled as "Jamshed Iqbal Cheema v. The Election Appellate Tribunal and 19 others" (2022 CLC 463), "Jamshed Iqbal Cheema v. The Returning Officer, NA-133 and others" (2023 MLD 132), "Nadeem Shafi v. Tariq Shuja Butt and others" (PLD 2016 Supreme Court 944) and "Rana

**Muhammad Tajammal Hussain v. Rana Shaukat Mahmood**” (PLD 2007 Supreme Court 277).

9. I have also considered the contention of learned Legal Advisor for Election Commission of Pakistan that the judgment of the Supreme Court of Pakistan passed in Civil Petition No.4305 of 2023 titled as “Gul Khan and others v. Saeed-ur-Rehman and others” on 18.12.2023 is not applicable to the case of the appellant, because the judgment passed therein was a judgment in personam and not a judgment in rem. The word judgement in rem and personam has not been specifically defined in the Qanun-e-Shahadat Order, 1984. The study of these two concepts with reference to the order pertains to the relevancy of previous judgement. The word rem or personam has not been used in Article 55 of the Order, however, the term is defined in Black’s Law Dictionary in the following words: -

*“The judgement in ‘personam or inter parties’ is a judgement against a particular person as distinguished from a judgment against a thing or a right or status, whereas the term ‘judgement in rem’ has been defined as an adjudication pronounced upon the status of some particular things or subject-matter by a Tribunal having competent Authority. Such a judgement is binding upon all persons insofar as their interests in the property are concerned.”*

The word judgement in rem and judgement in personam has remained subject of discussion of the courts from time to time. The first authoritative judgement in this regard was delivered by the Supreme Court of Pakistan in case-law titled as “Pir Bakhsh represented by his legal heirs and others v. The Chairman, Allotment Committee and others” (PLD 1987 SC 145). Subsequently, this judgement has been followed by the august court in another reported case “Muhammad Sohail and 2 others v. Government of N.W.F.P. and others” (1996 SCMR 218). The Supreme Court of Pakistan while discussing the present two concepts in detail has observed as under:-

*“Judgment in personam or inter parties. A judgment against a particular person, as distinguished from a judgment against a thing or a right or status.*

*Judgment in rem. An adjudication pronounced upon the status of some particular thing or subject-matter, by a tribunal having competent Authority.*

The Supreme Court of Pakistan while quoting commentary from the Monir Digest on Evidence Act has held as under:

*Monir in his 'Principles and Digest of the Law of Evidence' at page 563, gives the import of these terms as under:--*

*'The point adjudicated upon in a judgment in rem is always as to the status of the res and is conclusive against the world as to that status, whereas in a judgment in personam the point, whatever it may be, which is adjudicated upon, it not being as to the status of the res, is conclusive only between parties or privies. A decision in rem not merely declares the status of the person or thing, but ipso facto renders it such as it is declared.*

*Section 41 of the Evidence Act does not use the term 'judgment in rem', but it incorporates the law on the subject of judgments in rem, and makes them relevant not only against strangers but also conclusive of certain matters such as whether a person was entitled to a legal character or to any specific thing not as against any specified person but absolutely.*

These words have also been remained subject of discussion of the Division Bench of the Karachi High Court in its pronouncement reported as "Abdul Jabbar v. Administrator Abandoned Project Organization and others" (PLD 2004 Karachi 260) wherein the court while giving the derivation of the words from Latin jurisdiction has discussed the principle of rem and personam as under:

*"The terms "in rem" and "in personam" are of Roman Law used in connection with actio, that is, actio on rem and actio in personam to denote the nature of actions, and with disappearance of the Roman forms of Procedure, each of the two terms "in rem" and "in personam" to tagged with the word judgments to denote the end-products of actions rem and actions in personam. Thus, according to the civil law an action which a claim of ownership was made against all other persons action in rem and the judgment pronounced in such action judgment in rem and binding upon all persons whom the Court competent to bind, but if the claim was made against a particular person or persons, it was an action in personam and the decree was a decree in personam and binding only upon the particular person or persons against whom the claim was preferred or persons who were privies to them.*

*The point adjudicated upon in a judgment in rem is always as to the status of the res and is conclusive against the world as to that status, whereas in a judgment in personam the point, whatever it may be, which is adjudicated upon, it not being as to the status of the res, is conclusive only between parties or*



*privies. A decision in rem not merely declares the status of the person or thing, but ipso facto renders it such as it is declared; thus, a decree of divorce not only annuls the marriage, but renders the wife feme sole; adjudication in bankruptcy not only declares but constitutes the debtor bankrupt; a sentence in a prize Court not merely declares the vessel prize, but vests it in the captor.*

*Art. 41 of Qanun-e-Shahadat, 1984 does not use the term "judgment in rem", but it incorporates the law on the subject of judgments in rem, and makes them relevant not only against strangers but also conclusive of certain matters such as whether a person was entitled to a legal character' or to any specific thing not as against any specified person but absolutely."*

The Division Bench further elaborating the concept regarding judgement in rem as exception has held as under:

*Judgment in rem are an exception to the rule of law that no man should be bound by the decision. of a Court of Justice unless he or those under whom he claims were parties to the proceeding in which it was given, This rule of law is referable to the maxims of Roman Law namely, "Res inter alios judicata nullem inter alios prejudicium facit", of Res inter alios acta alteri nocere non debet". Such exception of the judgment in rem in the Roman Law was the foundation of the exception in English law. Art.55 of Qanun-e-Shahadat, 1984 is the foundation for the exception of judgment in rem in our corpus' juris. The reason why a judgment should not be used to the prejudice of a stranger is that he is denied the fundamental right to make a defence, or to examine or cross-examine witnesses or to appeal from a judgment which aggrieves him. This is the requirement of most manifest justice and good sense.*

The Supreme Court of Pakistan in judgement reported as "Justice Khurshid Anwar Bhinder and others v. Federation of Pakistan and another" (PLD 2010 Supreme Court 483) while citing the previous judgement has concluded as under:

*A judgment in rem which binds parties and non-parties alike as opposed to a judgment in personam which only affects the parties to a lis. The cases of Pir Bakhsh v. Chairman Allotment Committee (PLD 1987 SC 145) and Hameed Akhtar Niazi v. Secretary, Establishment Division (1996 SCMR 1185) have established the distinction between judgments in rem which apply to all regardless of whether they were parties or not and a judgment in personam which does not bind non-parties. It would be appropriate to mention here at this stage that the judgment of 31-7-2009 sought to be reviewed was a judgment in rem enunciating a legal principle. It, therefore, had the status of conclusiveness and finality and no person*

*can be allowed to challenge it merely for the reason that he was not a party in the case and had not been heard.*

The Supreme Court of India in reported cases **AIR 1983 SC 684** while citing the judgement of the Privy Council **AIR 1924 PC 126** has concluded as follows:

- (i) A judgment in rem e.g. judgments or orders passed in admiralty, probate proceedings, etc. would always be admissible irrespective of whether they are inter parties or not;*
- (ii) judgment in personam not inter parties are not at all admissible in evidence except for the three purposes mentioned above.*
- (iii) on a parity of aforesaid reasoning, the recitals in a judgment like findings given in appreciation of evidence made or arguments or genealogies referred to in the judgment would be wholly in admissible in a case where neither the plaintiffs nor the defendants were parties.*
- (iv) The probative value of documents which, however ancient they may be, do not disclose sources of their information or have not achieved sufficient notoriety, is precious little.*
- (v) Statements, declarations or depositions, etc., would not be admissible if they are post litem motam.*

Andhra Pradesh High Court in reported case **AIR 1959 AP 280** about the conclusiveness of judgement in such circumstance held as under: -

*“That judgments in personam cannot be construed as being conclusive against persons not parties thereto, is borne out by the scheme of the Indian Evidence Act from Sections 40 to 44. Only judgments referred to in Section 41 constitute conclusive proof of what they contain and Section 43 in terms provides that judgments not referred to in Sections 40, 41 and 42 are irrelevant unless the existence of such judgments is a fact in issue or relevant under some other provisions of the Act.”*

After perusing Article 55 of the Qanun-e-Shahadat Order, 1984, and considering the preceding discussion, it becomes evident that the said article comprises of two parts. The first part renders the final judgment, order, or decree of a competent court in the exercise of probate, matrimonial, admiralty, or insolvency jurisdiction relevant. The second part establishes the judgment as conclusive proof only in these specific matters. The judgement of the competent court can be considered conclusive only when it declares a legal character which it confers or takes away, accrued or ceased at the time of declaration in the judgement for that purpose. The judgement must be delivered by the

competent court having jurisdiction on subject matter. The said judgment is susceptible to challenge only on grounds specified in Article 58 of the Order *ibid* and not otherwise. The judgement in rem is conclusive against the world as to the status of the rest whereas judgement in personam is conclusive only between parties or privies. In the light of foregoing comprehensive discussion, I am convinced that the dictum laid by the Supreme Court of Pakistan in Civil Petition No.4305 of 2023 titled as “Gul Khan and others v. Saeed-ur-Rehman and others” decided on 18.12.2023 is confined only to delimitation of two constituencies of Baluchistan and it has no effect on the revised final delimitation of NA-122, Lahore-VI.

10. I have also given due consideration to the second ground qua the rejection of appellant’s nomination papers and in this context, I have observed that the appellant has been convicted under section 174 of the Elections Act, 2017, and sentenced to undergo simple imprisonment for 03-years with fine of Rs.1,00,000/-. In the above-noted case, the appellant has been found guilty of corrupt practices by willfully and intentionally hiding the benefits which he accrued from national exchequer and has cheated while providing information about gifts which he obtained from *Toshakhana* and which later on was proved to be false and inaccurate.

While rejecting the nomination papers of appellant, the Returning Officer concerned has noted that his case falls within the horizon of Article 63(1)(h) of the Constitution of Islamic Republic of Pakistan, 1973, however, learned counsel for the appellant has contended that the appellant has not been convicted for an offence which can be termed as of moral turpitude. To better appreciate this controversy, I deem it appropriate to have a glance over the above said Article, which is reproduced as infra:-

*“63(1) A person shall not be qualified to be elected or chosen as a member of Majlis-e-Shoora (Parliament) unless—*

- (a) .....*
- (b) .....*
- (c) .....*
- (d) .....*

- (e) .....
- (f) .....
- (g) .....
- (h) *he has been, on conviction for any offence involving moral turpitude, sentenced to imprisonment for a term of not less than two years, unless a period of five years has elapsed since his release; or*”

To my mind, moot-point in this regard is that whether conviction of appellant falls within the category of moral turpitude or not?

According to **Major Law Lexicon** the phrase “Moral Turpitude” is defined as infra:-

*“Anything done contrary to justice, honesty, principle, or good morals; an act of baseness, vileneess of depravity in private and social duties which a man owes to his fellowmen, or to society in general, contrary to accepted and customary rule of right and duty between man and man.”*

Similarly as per **Advanced Law Lexicon 4<sup>th</sup> edition, volume 3 at page 3126** the phrase “**Moral Turpitude**” is defined as

*“The expression ‘moral turpitude’ means anything done contrary to justice, honesty, modesty or good morals. It implies depravity and wickedness of character or disposition of the person charged with the particular conduct. Every false statement made by a person may not be moral turpitude, but it would be so if it discloses vileness or depravity in the doinf of any private and social duty which a person owes to his fellowmen or to the society in general.” [Baleshwar Singh v. District Magistrate, AIR 1959 All 71, 74]*

This phrase has also been defined in **Merriam-Webster Dictionary** as

*“An act or behavior that gravely violates the sentiment or accepted standard of the community”*  
*“A quality of dishonesty or other immorality that is determined by a court to be present in the commission of a criminal offense”*

And in **Black’s Law Dictionary** it is defined as;

*“Term that is applied to an offense or a crime that is illegal but also shows a person’s baseness and depravity”*

Similarly in the case-law titled as “*Imtiaz Ahmed Lali v. Returning Officer and 3 others*” [2008 P L C (C.S.) 934], the Supreme Court of Pakistan defined the phrase Moral Turpitude as under: -

*“The expression "moral turpitude" in the plain words means the act of baseness, vileness or the depravity in private and social*

*duties which man owes to his fellow man, or to society in general contrary to accepted and customary rule of right and duty between man and man.*

Moreover in the case-law titled as “Ghulam Hussain versus Chairman, P.O.F. Board, Wah Cantt and another” (2002 SCMR 1691), the Supreme Court of Pakistan also referred definitions of Moral Turpitude as under:-

*The expression "moral turpitude" has been explained in Words and Phrases, Permanent Edition 27-A, which is as follows:--*

*"In determining whether crime is one involving "moral turpitude", the test is whether the act denounced by the statute offend generally accepted moral code of mankind."*

*"Moral turpitude" is a vague term, and its meaning depends to some extent on the state of public morals; it is anything that is done contrary to justice, honesty, principle, or good morals; and act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man; it implies something immoral in itself, regardless of fact whether it is punishable by law."*

*Above expression has also been explained in Legal Terms and Phrases (Judicially defined) by M. Ilyas Khan, Advocate, which is as follows:-- .*

*"The term moral turpitude is not defined anywhere but in general parlance it connotes anything done against justice, honesty, modesty or 'good morals. It is deprivation of character, and devoid of morality. "*

In the case-law titled as “Muhammad Shabbir Abbasi v. Abdur Rashid Mughal” (1984 CLC 270), Moral Turpitude was defined and referred by Lahore High Court as under;

*We have given our anxious consideration to this case. First and foremost, the main question that arises is what is meant by the expression "moral turpitude" with particular reference to the Punjab Local Government Ordinance, 1979, wherein this expression occurs.*

*7. Black's Law Dictionary, 5th Edition, page 910 defines moral turpitude as follows :--*

*"The act of baseness, vileness, or the depravity in private and social duties which man owes to his fellow man, or to society in general, contrary to accepted and customary rule of right and*

*duty between man and man. State v. Adkins, 40 Ohio App. 2d 473 ; 320 N. E. 2d 308, 311 ; 69 O.O. 2d 416. Act or behaviour that gravely violates moral sentiment or accepted moral standards of community and is a morally culpable quality held to be present in some criminal offences as distinguished from others. Lee v. Wisconsin State Bd. of Dental Examiners, 29 Wis-2d 330: 1.39 N. W. 2d 61,65. The quality of a crime involving grave infringement .of the moral sentiment of the community as distinguished from statutory mala prohibita. People v. Ferguson, 55 Miscellaneous 2d 711 ; 286 N.Y.S. 2d 976, 981.*

8. *This High Court in Saudagar Ali's case, whilst dealing with clause (c) of section 2, Part II of the Second Schedule to the Basic Democracies Order, XIX, which provided that a person could be disqualified if he was convicted for an offence involving moral turpitude and had been sentenced to imprisonment for a term of not less than six months in respect thereof, held that where a person sought to be disqualified had been prosecuted 'and convicted under Martial Law Regulation No. 49 on the charge that he was in possession of land obtained by fraudulent allotment to which he was not entitled and that he had failed to make a declaration in respect of the same, as required by the said Regulation, he was guilty of moral turpitude. The Court held that the expression moral turpitude, as generally understood, implied anything which was done contrary to the good principles of morality i. e. anything that injured the moral fiber of a person and lowered him down in moral values and that the offence of the petitioner in the circumstances did involve moral turpitude,*

9. *In Durga Singh's case, the Punjab High Court dealt with the case of a policeman found drunk at a public place and who had been convicted under section 34 of the Police Act, 1861, and examined the question whether the said conviction could be treated as involving moral turpitude. In dealing with the subject, Bishan Narain, J. held that the expression "moral turpitude" was rather a vague term and it could have different meanings in different contexts, but the term generally was taken to mean conduct contrary to justice, honesty, modesty or good morals and contrary to what a person owed to his fellow man or to society in general. The learned Judge in the said case found that the conviction of the policeman involved moral turpitude.*

The phrase Moral Turpitude was also referred by the Peshawar High Court in the case titled as “Zaheer Ul Islam Abbasi v. Umar Ayub Khan and 5 others” (PLD 2003 Pesh. 27) as infra;

*It is of utmost importance to remember that expression "moral turpitude or delinquency" is not to receive a narrow construction. Whether conduct proved against an advocate is contrary to honesty, or opposed to good morals, or is unethical, it may be safely held that it involves moral turpitude. A wilful and callous disregard, for interests of client may, in a proper*

*case, be characterized as conduct unbecoming an advocate. In re: P. Advocate, (1963) 2 SGJ 708 at p.711, AIR 1963 SO 1313 (p.581) Q:*

*"TURPITUDE--In its ordinary sense, inherent baseness or vileness of principle or action; shameful wickedness: depravity--In its legal sense, every thing done contrary to justice, honesty-modesty or good morals---An action showing gross depravity --- Traders and General Ins. Co. v. Russell, Tex. Civ. App., 99 S.W.2d, 1079, 1084."*

*MORAL TURPITUDE--The term "moral turpitude" being a vague expression, it may have different meanings in different context--The term has generally been taken to mean to be a conduct contrary to justice, honesty, modesty, or good morals and contrary to what a man owes to a fellow man or to society in general---It has never been held that gravity of punishment is to be considered in determining whether misconduct involves moral turpitude or not--Even if words "involving moral turpitude" are held to be implied in "conviction on a criminal charge" in proviso to Article 31(2) it is clear that if a member of police force is guilty of having been found drunk at a public place or to have become habituated to liquor and if he is convicted by a criminal Court, then his conviction should be held as involving moral turpitude--Durga Singh v. State of Punjab AIR 1957 Punjab 97 at page 98—*

*Law Lexicon with Legal Maxims revised by Hon'able Justice, M. C. Desai Ex-Chief Justice, Allahabad High Court, published by LawPublishers (India) Private Ltd. -- Allahabad.*

*17. The examination of the above mentioned definitions and meaning of expression "moral turpitude" lead us to a conclusion that the action of a person would fall under the ambit of "moral turpitude" if his action injures, his moral fibre, lowers him down in moral values, it involves an act of inherent baseness in private, social or public duties which one owes to his fellow man, to his society, to his country, his institutions and his Government.*

Based on the analysis of the aforementioned definitions and the meaning of the term "moral turpitude," I can conclude that an action can be considered "moral turpitude" if it violates a person's moral fiber, diminishes his moral standards, or involves an act of inherent baseness in fulfilling one's private, social, or public obligations to one's fellow citizens, society, country, institutions, and government. In this way, I am quite convinced that the second ground resulting into rejection of appellant's nomination paper is also within the domain of law.

11. So far as the contention of learned counsel for the appellant that the sentence of appellant has been suspended from the Islamabad High Court, Islamabad, *vide* order dated 28.08.2023, for the reason, his nomination papers should be accepted is concerned, I have noticed that although sentence of the appellant has been suspended by the Islamabad High Court, Islamabad, but his conviction is still intact. After going through the averments of appeal, it manifests that the conviction of the appellant has not been suspended by the Islamabad High Court, Islamabad as his application for the said purpose was dismissed and against the order regarding dismissal of his application, the appellant has filed Crl. Petition No.1501 of 2023, which is pending before the Supreme Court of Pakistan. In addition to this, the difference between these two phrases is drawn as under;

| <b>CONVICTION</b>   | <b>SENTENCE</b>  |
|---|--|
| A <b>Conviction</b> refers to the outcome of a criminal trial. It is the act of proving or declaring a person guilty of a crime.  | A <b>Sentence</b> , on the other hand, is the formal declaration by a court imposing a punishment on the person convicted of a crime.  |
| <ul style="list-style-type: none"> <li>➤ A <b>Conviction</b> is a result of the verdict of a judge and/or jury. In contrast, a Sentence is typically ordered by a judge.</li> <li>➤ The term Conviction is traditionally defined as the <b>outcome of a criminal prosecution that culminates in a judgment</b> that the defendant is guilty of the crime charged.</li> <li>➤ Dictionaries define the term Conviction as <b>the state of being found or proven guilty or the act of proving or declaring a person guilty</b> of a crime. Convictions are associated with criminal proceedings, as opposed to civil proceedings. The ultimate goal of the prosecution is to secure a Conviction by proving beyond reasonable doubt that the defendant committed the crime.</li> </ul> | <ul style="list-style-type: none"> <li>➤ The court cannot order a <b>Sentence</b> unless the person has been found guilty or convicted. Therefore, a Conviction must precede a Sentence.</li> <li>➤ Traditionally, the term Sentence is defined as the judicial determination and pronouncement of a punishment to be imposed on a person convicted of a crime. When we hear the term Sentence, particularly in a legal context, we automatically think of a prison or jail sentence.</li> <li>➤ This is not incorrect as a Sentence may include punishment in the form of incarceration.</li> </ul> |
| <ul style="list-style-type: none"> <li>➤ The fact of officially being found to be guilty of a particular crime, or the act of officially finding someone guilty. <b>CAMBRIDGE DICTIONARY</b></li> </ul>   | <ul style="list-style-type: none"> <li>➤ A punishment given by a judge in court to a person or organization after they have been found guilty of doing</li> </ul>  |



|   |   |
|---|---|
| <ul style="list-style-type: none"> <li>➤ The act or process of finding a person guilty of a crime especially in a court of law.<br/><b>MERRIAMWEBSTER</b></li> <li>➤ The act of finding somebody guilty of a crime in court; the fact of having been found guilty.<br/><b>OXFORD LEARNERS DICTIONARY</b></li> <li>➤ A decision in a court of law that someone is guilty of a crime, or the process of proving that someone is guilty.<br/><b>LONGMANDICTIONARY</b></li> <li>➤ The act of proving that a person is guilty of a crime in a court of law.<br/><b>THE BRITANICA DICTIONARY</b></li> </ul> | <p>something wrong.<br/><b>CAMBRIDGE DICTIONARY</b></p> <ul style="list-style-type: none"> <li>➤ One formally pronounced by a court or judge in a criminal proceeding and specifying the punishment to be inflicted upon the convict.<br/><b>MERRIAMWEBSTER</b></li> <li>➤ In a law court, a sentence is the punishment that a person receives after they have been found guilty of a crime.<br/><b>COLLINS DICTIONARY.</b></li> <li>➤ An authoritative decision; a judicial judgment or decree, especially the judicial determination of the punishment to be inflicted on a convicted criminal.<br/><b>DICTIONAR.COM</b></li> </ul> |
|---|---|

The underlying distinction between suspension of sentence and suspension of conviction was dilated upon by the Supreme Court of Pakistan in case titled as “Nasir Mehmood and another v. Umar Sajid and others” (2019 SCMR 382), relevant portion whereof is mentioned below: -

*“...we find that the suspension of the sentence awarded to the appellant would have no consequence on the conviction of the appellant which is complete as soon as the person charged has been found guilty by a Court of competent jurisdiction. As noted above, it is the conviction of the accused which is relevant in the context of Article 63(1)(h) of the Constitution and section 27(2)(i) of the PLGA. The suspension of sentence would have no consequence on the conviction of the appellants for the purposes of being qualified to contest either the local bodies elections or the elections for the Legislative Assemblies. Unless the conviction is specifically suspended by the Appellate Court by assigning cogent reasons therefor, or the Appeal of the Appellant is ultimately allowed and his conviction as well as sentence are set aside by the Appellate Court, the conviction of the Appellant would continue to hold the field and the disqualification incurred by him, by reason of this conviction, shall remain intact.”*

Similarly in the case of “Abdul Kabir v. The State” (PLD 1990 Supreme Court 823), the Supreme Court of Pakistan articulated such difference as under;

*“A conviction is complete as soon as the person charged has been found guilty by a Court of competent jurisdiction. During the pendency of an appeal, appellate Court may suspend the sentence under section. 426, Cr.P.C. So execution of sentence of petitioner is suspended and not his . conviction which remains operative till it is set aside by the higher appellate Courts. Pendency of the appeal for decision does not ipso facto mean that the conviction is wiped out: The appellate Court has no authority under section 426 to suspend the conviction. Conviction and sentence connote two different terms. Conviction means proving or finding guilty. Sentence is punishment awarded to a person convicted in criminal trial. Conviction is followed by sentence. It cannot be accepted as principle of law that till matter is finally disposed of by Supreme Court against convicted person, the conviction would be considered as held in abeyance. This interpretation is not in consonance with the spirit of law and against logical coherence. The suspension of sentence is only a concession to an accused under section 426, Cr.P.C. but it does not mean that the conviction is erased.”*

Also in another case titled as “Ch. Zahid iqbal Versus Returning Officer NA-162 (Sahiwal--III) and 3 others” (2013 CLC 1856), it has been observed as under;

*“We, therefore, hold that there is distinction between conviction and sentence. Suspension of sentence does not mean automatic suspension of conviction also. There is however no bar on the power of the Appellate Court under section 426 to suspend sentence and also suspend the conviction in appropriate cases where an application is moved before such court if the adverse consequences of maintaining such conviction are brought to the notice of the Appellate Court and a specific prayer in this regard.”*

From the above discussion, it is abundantly clear that there is no order of any court of competent jurisdiction qua the suspension of appellant’s conviction. In such framework of events, the spirit of criminal jurisprudence clearly sounds that the suspension of sentence under section 426 Cr.P.C and suspension of conviction are poles apart. In this behalf, it would be worth to mention here that conviction attains finality upon the determination of guilt by a Court of competent jurisdiction. During the pendency of an appeal, the appellate court, pursuant to section 426 Cr.P.C. may suspend the execution of the

appellant's sentence. It is imperious to note that the suspension pertains solely to the sentence and not the conviction, which remains operative until set aside by higher appellate courts. The mere pendency of an appeal does not automatically nullify the conviction. Section 426 Cr.P.C does not empower the appellate court to suspend the conviction; rather, it is a discretionary measure extended to the accused. Therefore, the suspension of sentence does not imply the expungement of the underlying conviction. Thus suspension of the sentence imposed on the appellant would not affect the completed conviction, which arises upon the determination of guilt by a court of competent jurisdiction and that conviction still hold the field.

12. Last point for the rejection of nomination papers of the appellant was that the appellant has been disqualified by the Election Commission of Pakistan for a period of five years. In this context, it is noteworthy that the decision of Election Commission of Pakistan regarding disqualification of the appellant is still in field and has not been got set aside from the competent fora.

13. Aftermath of the above discussion is that the order impugned has been found to be speaking and well-reasoned and cannot be termed as illegal or without lawful authority, hence, this appeal is devoid of any substance and the same is hereby **dismissed**.

*(Muhammad Tariq Nadeem)*  
*Judge / Election Tribunal*

*APPROVED FOR REPORTING*

*(Muhammad Tariq Nadeem)*  
*Judge / Election Tribunal*

*Announced, dictated, prepared*  
*& signed on 10.01.2024.*