

injury to the persons of the opponent party; therefore, to prove the active participation of the convict-appellant in the occurrence the report of FSL, in respect of the crime weapon recovered on the pointation of the convict and empties recovered at the spot, was required, but regrettably the prosecution failed to discharge its duty as the same have not been sent to FSL for verification. We agree with the argument of the learned counsel for the complainant that mere relationship of witnesses with the complainant is not sufficient to discredit their testimony if otherwise such witnesses are found to be the witnesses of truth; the learned counsel for the convict-appellant has also not pointed out any major contradictions in the statements of the witnesses, thus, in view of the peculiar facts of the case, we do not entirely brush aside the direct evidence, but at the same time the mitigation discussed hereinabove also cannot be ignored lightly. After scrutinizing the record, we have arrived at the conclusion that although, it is not a case of acquittal, but the evidence collected by the prosecution to prove the active participation of the convict-appellant in the occurrence is also not of such standard on the basis of which the major penalties can be awarded to him. The convict has already served out the major portion of the sentence awarded to him by the trial Court. In presence of the mitigating factor discussed in the preceding paragraphs, there hardly remains any need to discuss the other points involved in the matter as the findings on any of the points, will not change the fate of the case.

Thus, for the forgoing reasons, we partly accept the appeal filed by the

convict-appellant and while modifying the impugned judgments convert the sentences awarded to the convict-appellant, into the sentences already undergone. He shall be released from the custody forthwith if not required to be detained in connection with any other case. The cross appeal filed for enhancement of the sentences having no substance stands dismissed.

SA/5/SC(AJ&K) Sentence reduced.

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2021 Y L R 1150

[Sindh]

*Before Muhammad Ali Mazhar and  
Agha Faisal, JJ*

Prince MUHAMMAD FAHAD  
THAHEEM and others---Petitioners

versus

FEDERATION OF PAKISTAN  
and others---Respondents

Constitutional Petitions Nos. D-760, D-806, D-815, D-840, D-841, D-846, D-848, D-852, D-854, D-855, D-876, D-969, D-1144, D-1278, 1455, 1457, D-1586, D-1826, D-1870, D-2023, D-2151, D-2633, D-2661, D-2854, D-3609, D-5618, D-5619, D-5620 to D-5624, D-5876 and D-7718 of 2018, heard on 29th January, 2019\*.

*Sindh Arms Act (V of 2013)---*

*---Ss.3, 6 & 14---Sindh Arms Rules, 2018, R. 3.8---Arms licence---Renewal---  
Petitioners were licence holders of*

Received in 2021.

*prohibited bore arms and were aggrieved of notification issued by Federal Government suspending such licences---Validity---Notification whereby suspension of prohibited bore category of arms was communicated had withdrawn/lifted vide subsequent notification dated 13.12.2018, and the matter was resolved in view of S.6 of Sindh Arms Act, 2013---If licences of petitioner had expired then they had to take recourse for their renewal---Applications would be renewed by National Database and Registration Authority and processed in accordance with law after prescribed scrutiny was to be undertaken by Home Department in such regard---Constitutional petition was allowed, in circumstances. [pp. 1154, 1155] A & B*

Mohsin Qadir Shahwani for Petitioners, assisted by Hamid Ali Memon (in C.Ps. Nos.D-760, D-1278, D-1457, D-1870, D-2151, D-841 and D-876 of 2018).

Rana Sakhavat Ali for Petitioners (in C.Ps. Nos. D-2661 and D-2023 of 2018).

Abdul Moiz Jaferi for Petitioners (in C.P. No.D-840 of 2018).

Zaeem Hyder holding brief for Abid S. Zuberi for Petitioners along with Muhammad Munir Khan (in C. P. No.D-852 of 2018).

Aamir Mansoob Qureshi for Petitioners along with Zahid Abdul Kadir (in C.P. No. D-1455 of 2018).

Azmat Tufail and Mustafa Asad for Petitioners (in C.P. No.D-7718 of 2018).

Jamshed Malik for Petitioners (in C.Ps. Nos. D-848 and D-1144 of 2018).

Zulfiqar Ali Khan Jalbani for Petitioners (in C.P. No. D-5876 of 2018).

Akhtar Hussain and M. Masood for Petitioner (in C.P. No.D-969 of 2018).

Liaquat Ali Khan for Petitioners (in C.P. No.D-1826 of 2018).

Syed Mureed Ali Shah for Petitioners (in C. Ps. Nos.D-806 and D-855 of 2018).

Amar Naseer and Muhammad Asif Siddiqui for Petitioners (in C.P. No.D-5618 to D-5624 of 2018).

Mamoon Chaudhry for Petitioners (in C.P. No.D-846 of 2018).

None present for Petitioners (in C.Ps. Nos.D-854, D-1586, D-3609, D-2633 and D-2854 of 2018).

Jawad Dero, A.A.G.

Ghulam Akbar Lashari, State Counsel.

Amanullah Zardari, Deputy Secretary (Focal Person), Home Department.

Date of hearing: 29th January, 2019.

### JUDGMENT

MUHAMMAD ALI MAZHAR, J.---In all aforesaid petitions, the petitioners have challenged the Notification No. 15/51/2017- Arms (PB) issued by Ministry of Interior, Government of Pakistan in exercise of powers conferred under section 12(1)(b) of the Pakistan Arms Ordinance, 1965, whereby, the Federal Government had suspended all arms licenses of automatic

weapons within prohibited bore category issued by Ministry of Interior with exception of licenses issued to Law Enforcement Agencies and Government Organization. For the ease of reference, the Notification dated 26.12.2017 is reproduced as under:-

GOVERNMENT OF PAKISTAN  
MINISTRY OF INTERIOR

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Islamabad, the 26th December 2017

NOTIFICATION

In exercise of powers conferred under section 12(1)(b), the Pakistan Arms Ordinance 1965 the Federal Government in the larger public interest, hereby, suspends all arms licenses of automatic weapons within Prohibited Bore category issued by Ministry of Interior with the exception of licenses issued to Law Enforcement Agencies and Government Organizations.

2. The above mentioned licensees are further directed to get their weapons converted into non-automatic weapons from authorized armourers/arms manufacturers/ arms dealers and get it verified by office of concerned District Police Officer (DPO)/Deputy Commissioner/ District Coordination Officer/ District Magistrate/ Political Agent by 31st January, 2018. The licensees may, thereafter approach NADRA for issuance of new Non-prohibited bore licenses for the converted weapons in lieu of Prohibited bore licenses; OR

Deposit their automatic weapons with respective Deputy Commissioner/ District Coordination Officer/ District Magistrate/ Political Agent at a compensation price of Rs.50,000/- (fifty thousand only) per automatic rifle and Rs.20,000/- (twenty thousand only) per automatic pistol / handgun.

3. Failure to comply with above options will entail cancellation of said licenses after 31-01-2018.

4. The ban on issuance of Non-Prohibited Bore Arms Licenses is lifted with immediate effect.

No. 15/51/2017-Arms (PB).

Sd.

(Ch. Faisal Idrees)  
Section Officer (Arms)

2. Learned counsel for the petitioners collectively argued that prior to 18th Amendment of the Constitution the subject of arms, fire-arms and ammunition was provided in entry No. 17 of the concurrent legislative list. After 18th amendment both legislative and executive authority in relation to the subject has been transferred to the provincial government. It was further argued that the impugned notification of the Federal Government neither extend to the provinces nor applicable to the petitioners in the Province of Sindh. It was further argued that after 18th amendment the subject of arms and ammunition has lost its federal character and stands transformed to a provincial subject in respect whereof appropriate legislation has already been enacted.

3. During pendency of these petitions, an interim order was passed, whereby, learned Division Bench of this court restrained the respondents from taking any adverse action against the petitioners pursuant to the aforesaid Notification. However, it has been brought to our notice that the Ministry of Interior, Government of Pakistan has issued another Notification No. 15/37/2018-Arms(PB) dated 13th December, 2018 in exercise of powers conferred by clause (b) of subsection (1) of section 12 of the Pakistan Arms Ordinance, 1965 and in supersession of the Notification dated 26.12.2017 (Impugned Notification) whereby the Federal Government has notified that all arms licenses of automatic weapons/ prohibited bore are now treated to be valid. The ban imposed on issuance of non prohibited bore arms license was also lifted with immediate effect. For the ease of reference the Notification dated 13.12.2018 is also reproduced as under:-

GOVERNMENT OF PAKISTAN  
MINISTRY OF INTERIOR

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Islamabad, the 13th December 2018

NOTIFICATION

S.R.O. (I)/2018.---In exercise of powers conferred by clause (b) of sub-section (1) of section 12 of the Pakistan Arms Ordinance, 1965 (XX of 1965), in supersession of its Notification No. 15/ 51/2017-Arms (PB), dated the 26th December, 2017, the Federal Government is pleased to notify that all arms licenses of automatic weapons within Prohibited Bore suspended vide the aforementioned

Notification are now treated to be valid.

2. The ban on issuance of arms licenses for Prohibited Bore category to the extent of General Officers or equivalent, officers or other ranks of the Military in accordance with Army Regulations (Instructions) 2000, is hereby lifted.

3. The ban imposed on issuance of Non Prohibited Bore Arms license is lifted with immediate effect.

[No. 15/37/2018-Arms (PB)].

Sd.

(Muhammad Umair)  
Section Officer (Arms)

4. Learned Assistant Attorney General relying on both notifications argued that vide the earlier notification dated 26.12.2017 the ban was imposed and the licenses of prohibited bore were suspended but vide the subsequent Notification dated 13.12.2018 the ban was lifted; so in nutshell after withdrawal of the suspension through aforesaid Notification, it is a matter now between the provincial government and the licensees and Sindh Government may deal with such licenses in accordance with their own law.

5. Learned Addl. Advocate General though supported the arguments of learned Assistant Attorney General but he has further argued on the instructions of Deputy Secretary, Home Department that government has already framed the Rules to deal the matters with regard to the licenses of prohibited and/or non-prohibited bore.

6. On 03.03.2013 the Sindh Arms Act, 2013 was promulgated by the Government of Sindh in which under Section 3 clause (f) "licensing authority" means an officer or authority empowered to grant or renew licenses under the rules, whereas, the definition of government under the definition clause means the government of Sindh. Section 6 of this Act germane to prohibition of acquisition, possession, manufacture or sell of prohibited arms or ammunition which is reproduced as under:-

**6. No person shall -**

(a) acquire, possess or carry; or

(b) manufacture, sell, transfer, convert, repair, or test; or

(c) expose or offer for sale or transfer or possess for sale, transfer, conversion, repair, or test,

any prohibited arms or prohibited ammunition unless he has been exclusively authorized by Government, in this behalf.

Provided that all the arms licences for prohibited bore weapons issued under the provisions of Pakistan Arms Act, 1965, to the extent of Province of Sindh, shall continue to remain valid until reviewed and cancelled under this Act.

7. It is clearly provided under section 6 that no person shall acquire, possess or carry any prohibited arms or prohibited ammunition unless he has been exclusively authorized by the government

in this behalf. The proviso attached to this section further amplifies that all arms license or prohibited bore weapons issued under the provisions of Pakistan Arms Ordinance, 1965 to the extent of Province of Sindh, shall continue to remain valid until reviewed and cancelled under this Act. Whereas, under Section 41 of the same Act it is provided that the provision of Pakistan Arms Ordinance, 1965 in its application to the Province of Sindh except the provisions relating to manufacturer including conversion, export or import of arms and ammunition which are hereby repealed.

8. Since the notification whereby the suspension of prohibited bore category of arms was communicated has been withdrawn/ lifted vide the subsequent notification dated 13.12.2018, therefore for all intents and purposes, the matter has virtually been resolved, particularly in view of Section 6 of the Sindh Arms Act, 2013. Learned counsel for the petitioners in one voice argued that though the notification has been withdrawn by the Federal Government but the fact remains that if the licenses of the petitioners have expired then obviously the petitioners have to take recourse for their renewal.

9. Under Section 3 of the Sindh Arms Act, 2013 it is provided that no person shall acquire, possess, or carry any firearm and ammunition unless a licence is issued to him in accordance with the provisions of this Act and the Rules. Whereas, under section 14 the duration and renewal of license is provided. However, in subsection (2) it is provided that every licence shall unless the licensing authority for cogent reasons to be recorded in writing decides otherwise, be renewable for the same period for

which the licence was originally granted and shall be so renewable from time to time. A corresponding Rule 3.8 in the Sindh Arms Rules, 2018 framed by the Government of Sindh under Section 39 of the Sindh Arms Act, 2013 pertains to the validity of license and renewal which is also reproduced as under for ready reference:-

**Rule. 3.8 Valid of license and renewal.**

Validity period of an arms license shall be for one, three, or five calendar years at discretion of the licensing authority. Every arms license shall, unless renewed in the following manner, remain valid for one, three or five years from the date of issuance. Subject to the payment of fee as specified under Rule 5.1, a license may be renewed within three calendar months of the date of expiry without late fee/penalty. Where a license is not renewed within five years of its expiry, it shall be deemed to have been cancelled, unless the licensing authority on an application decides otherwise.

10. At this juncture, Deputy Secretary, Home Department submits that there is a NADRA desk/facility at the premises of the Home Department, where all license holders may submit their applications for renewal. The applications shall be renewed by NADRA as was always the case, and then the applications shall be processed in accordance with law after the prescribed scrutiny to be undertaken by the Home Department in

such regard. All aforesaid petitions are disposed of in the above terms. Office is directed to place copy of this order in all connected petitions. B

MH/M-40/Sindh Order accordingly.

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2021 Y L R 1155

[High Court (AJ&K)]

Before Muhammad Sheraz Kiani, J

Malik MUHAMMAD AZEEM---  
Appellant

versus

Mst. SAHIRA BIBI  
and 8 others---Respondents

Civil Appeal No. 188 of 2015, decided on  
27th August, 2020.

**(a) Islamic law---**

----Gift--- Validity--- Scope--- Appellant filed suit for declaration and permanent injunction along with possession claiming therein that he was owner to the extent of his share 3/4th and widow of deceased to the extent of her share i.e. 1/4th from the total land and that the gift deeds procured by the defendants were obtained through exercise of undue influence---Courts below dismissed the suit---Validity---Contention of appellant, that one of the defendants was not close relative of the deceased, hence, the gift deed in his favour was liable to be cancelled, had no value in the eyes of law, as the appellant had failed to refer any law which provided that gift deed could only be executed in favour of close relatives---Other contention of appellant that at the time of execution of gift deed