

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE ANWAR ZAHEER JAMALI, CJ

MR. JUSTICE AMIR HANI MUSLIM

MR. JUSTICE SH. AZMAT SAEED

MR. JUSTICE MANZOOR AHMED MALIK

MR. JUSTICE FAISAL ARAB

**CIVIL PETITIONS NO.842 OF 2016, 3331, 3332,
3674 & 3777 OF 2015, 06, 32, 211, 278, 417, 1263,
1306, 1335, 1353, 1503 AND 1541 OF 2016**

(On appeal from the judgment dated 26.01.2016 Lahore High Court, Rawalpindi Bench in WP No.05/2016, judgment dated 14.10.2015 of the Peshawar High Court, Peshawar passed in WP No.2915/ 2015, judgment dated 14.10.2015 of the Peshawar High Court, Peshawar passed in WP No.2979 of 2015, order dated 09.12.2015 of the Peshawar High Court, Peshawar passed in WP No.3219-P/2015, order dated 09.12.2015 of the Peshawar High Court, Peshawar passed in WP No.3076-P/2015, order dated 09.12.2015 of the Peshawar High Court, Peshawar passed in WP No.(HCP) No.3878-P/2015), order dated 23.12.2015 of the Peshawar High Court, Peshawar passed in WP No.4433-P/2015, order dated 27.01.2016 of the Lahore High Court, Rawalpindi Bench passed in WP No.197/2016, order dated 19.01.2016 of the Peshawar High Court, Peshawar passed in WP No.133-P/2016, judgment dated 12.4.2016 of the Peshawar High Court, Peshawar passed in WP No.1048-P/2016. judgment dated 12.4.2016 of the Peshawar High Court, Peshawar passed in WP No.1184-P/2016, judgment dated 12.4.2016 of the Peshawar High Court, Peshawar passed in WP No.1190-P/2016, order dated 19.01.2016 of the Lahore High Court, Rawalpindi Bench passed in WP No.117/2016, judgment dated 12.4.2016 of the Peshawar High Court, Peshawar passed in WP No.1271-P/2016, order dated 12.5.2016 of the Lahore High Court, Bahawalpur Bench passed in WP No.3315 of 2016 respectively)

1. Said Zaman Khan v. Federation of Pakistan through Secretary Ministry of Defence, Government of Pakistan Superintendent HSP, Sahiwal (In CP No.842/2016)
2. Mst. Bacha Liaqa v. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad and others (In CP No.3331/2015)

3. Mst. Anwar Bibi v. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad and others (In CP No.3332/2015)
4. Ali-ur-Rehman v. Government of Pakistan through Secretary Defence, Ministry of Defence Rawalpindi and others (In CP No.3674/2015)
5. Mst. Nek Maro v. Special Military Court and others (In CP No.3777/2015)
6. Sakhi Muhammad v. Special Military Court and others (In CP No.06/2016)
7. Sher Alam v. The Superintendent, District Jail Timergarah, District Dir Lower and others (In CP No.32/2016)
8. Mashooqa Bibi v. The Superintendent, District Jail Temergara District Dir Lower (In CP No.211/2016)
9. Mr. Javed Iqbal Ghauri v. Federation of Pakistan through Secretary Ministry of Defence, Rawalpindi and others (In CP No.278/2016)
10. Mohibullah v. Government of Pakistan through Secretary Defence Ministry of Defence, Rawalpindi and others (In CP No.417/2016)
11. Fazal Ghaffar v. The State through Deputy Attorney General for Pakistan and others (In CP No.1263/2016)
12. Mst. Zarba Khela v. Federation of Pakistan through Secretary Defence, Islamabad (In CP No.1306/2016)
13. Ajab Gul v. Federation of Pakistan through Secretary, Ministry of Interior, Islamabad and others (In CP No.1335/2016)

14. Aqsan Mahboob v. Federation of Pakistan through Secretary, Ministry of Defence, Government of Pakistan (In CP No.1353/2016)
15. Khan Afsar Khan v. SHO Police Station Bugnotar, District Abboottabad and others (In CP No.1503/2016)
16. Hafiz Muhammad Sadiq v. Government of Pakistan through Secretary Defence, Ministry of Defence and others (In CP No.1541/2016)

For the Petitioners

- Ms. Asma Jahanghir, ASC
: Ch. Akhtar Ali, AOR
(in CPs Nos.3331/2015, 3332/2015, 32, 211, 1335 & 1503/2016)
- Abdul Latif Afridi, Sr. ASC
and Khalid Anwar Afridi, ASC
(in CPs Nos.3674, 3777/2015 & 278/2016)
- Malik Muhammad Akram, ASC
Ch. Akhtar Ali, AOR
(in CP No.842/2016)
- Mr. Mehmood Raza, ASC
Ch. Akhtar Ali, AOR
(in CP No.417/2016)
- Sahibzada Ahmed Raza Khan Qasuri,
Sr. ASC
Mr. Ahmed Nawaz Ch. AOR (Absent)
(in CP No.1263/2016)
- Mr. Khalid Anwar Afridi, ASC
Haji Muhammad Zahir Shah, AOR
(in CP No.06/2016)
- Mr. Laiq Khan Swati, ASC
Syed Razaqat Hussain Shah, AOR
(in CP No.1306/2016)
- Col (R) Muhammad Akram, ASC
Ch. Akhtar Ali, AOR
(in CP No.1353/2016)
- Sardar Muhammad Shahzad
Khan Dhukhan, ASC
Syed Razaqat Hussain Shah, AOR
(in CP No.1541/2016)

- For Federation (On Court's notice) : Mr. Ashtar Ausaf Ali, AGP
Syed Attique Shah, Addl. AGP
Mr. Sajid Ilyas Bhatti, DAG
assisted by
Barrister Asad Rahim Khan,
Consultant to AGP
Major Asad, JAG Branch
(in all cases)
- For Govt. of KPK : Mian Arshad Jan, Addl. AG
Mr. Tahir Saleem, SHO, Bagnoter
(in CP No.1503/2016)
Mr. Iqbal Ahmed Durrani,
Standing Counsel, FATA
- Date of hearing : 13th, 14th and 20th June, 2016

JUDGMENT

SH. AZMAT SAEED, J.- This judgment is proposed to decide Civil Petitions for Leave to Appeal Nos.842 of 2016, 3331, 3332, 3674 and 3777 of 2015, 06, 32, 211, 278, 417, 1263, 1306, 1335, 1353, 1503 and 1541 of 2016.

2. Civil Petition for Leave to Appeal No.842 of 2016 is directed against the Order dated 26.01.2016 of the learned Lahore High Court, Rawalpindi Bench, whereby a Constitutional Petition i.e. Writ Petition bearing No.5 of 2016, filed by Mst. Momin Taj, mother of the present Petitioner, was dismissed.

3. The brief facts as narrated in the Petition are that the Petitioner was allegedly taken into custody by the Military Intelligence on 10.12.2014 from Kurri Road, Rawalpindi and despite best efforts his whereabouts

could not be ascertained by his family. In October, 2015, the family of the Petitioner was informed through an unknown telephonic call that the Petitioner was confined in Adyala Jail, Rawalpindi and he had been awarded a death sentence by a Field General Court Martial (FGCM). The Petitioner's Appeal filed through the Jail before the Court of Appeal, constituted under the Pakistan Army Act, 1952 as well as his Mercy Petition to the Chief of Army Staff, was rejected. Thereafter, the Petitioner sent a Mercy Petition through the Jail to the President of Pakistan, which is allegedly pending.

4. In the above backdrop, the Petitioner's mother (Mst. Momin Taj) challenged his conviction by invoking the Constitutional Jurisdiction of the learned Lahore High Court, Rawalpindi Bench by filing Writ Petition No.5 of 2016, which has been dismissed vide the Order impugned dated 26.01.2016. However, instead of Petitioner's mother, he himself has approached this Court by filing the instant Civil Petition for Leave to Appeal.

5. Civil Petition for Leave to Appeal No.3331 of 2015 is directed against the judgment dated 14.10.2015, passed by the learned Peshawar High

Court, whereby a Constitutional Petition i.e. Writ Petition No.2915 of 2015, filed by the present Petitioner, was dismissed.

6. The brief facts necessary for disposal of the instant Petition are that the Petitioner invoked the Constitutional Jurisdiction of the learned Peshawar High Court, Peshawar through Writ Petition bearing No.2915 of 2015, contending therein that his son Haider Ali was taken into custody on 21.09.2009 when he was a student of Class 10 on being produced by the Petitioner's husband before the Law Enforcement Agencies, as directed. It was contended that the Petitioner was not informed about the whereabouts of her son Haider Ali. Eventually through a news item in the daily Mushriq dated 03.4.2015, it was discovered that her son Haider Ali had been convicted by a FGCM and sentenced to death. Through the Writ Petition, the conviction and sentence of the Petitioner's son was called into question. The said Petition was heard and eventually dismissed vide judgment dated 14.10.2015, which has been impugned through the instant Civil Petition for Leave to Appeal.

7. Civil Petition for Leave to Appeal No.3332 of 2015 is directed against the impugned judgment dated 14.10.2015 of the learned Peshawar High Court, Peshawar, whereby Constitutional Petition i.e. Writ Petition No.2979 of 2015, filed by the present Petitioner, was dismissed.

8. The brief facts of the instant case are that the Petitioner filed a Constitutional Petition before the learned Peshawar High Court, Peshawar contending therein that the Petitioner's son Qari Zahir Gul was taken into custody by the Law Enforcement Agencies on 27.04.2011 from an Internal Displaced Persons (IDPs) Camp, whereafter his whereabouts were kept secret from the present Petitioner. In the above circumstances, his other son Waheed Gul filed Writ Petition No.815-P of 2012 and later Writ Petition No.1976 of 2014 before the learned Peshawar High Court seeking production of Qari Zahir Gul. During course of the aforesaid proceedings, it was contended that, it was disclosed by the Respondents that the Petitioner's son had been detained under Actions (In Aid of Civil Power) Regulations, 2011. Subsequently, in April, 2015, the Petitioner through the

press learnt that his son Qari Zahir Gul had been tried by a FGCM and convicted and sentenced to death.

9. In the above backdrop, the said Constitutional Petition i.e. Writ Petition No.2979 of 2015, was filed by the Petitioner challenging the conviction and sentence of his son Qari Zahir Gul awarded by the FGCM. The wife of Qari Zahir Gul had also brought the matter before this Court by filing Constitution Petition No.50 of 2015, which was disposed of vide Order dated 07.10.2015 by directing her to approach the learned Peshawar High Court. Eventually, the learned Peshawar High Court dismissed the aforesaid Constitutional Petition filed by the present Petitioner vide the impugned judgment dated 14.10.2015.

10. Civil Petition for Leave to Appeal No.3674 of 2015 is directed against the impugned Order dated 09.12.2015 of the learned Peshawar High Court, Peshawar, whereby a Constitutional Petition i.e. Writ Petition No.3219-P of 2015, filed by the present Petitioner, was dismissed.

11. The brief facts necessary for a just decision of the instant case are that the Petitioner filed a Constitutional Petition i.e. Writ Petition No.3219-P of

2015, stating therein that he is an ex-army personnel whose son namely, Atteeq-ur-Rehman was missing for the last eight months and he tried to locate his son but in vain. The Petitioner in this regard has also lodged FIR No.369 dated 06.12.2014, under Section 365, 324/34 PPC at Police Station, Nowshera Cantt. However, on 14.08.2015, he came to know through a news item published in different newspapers that his said son along with others has been tried by a FGCM on the charge of attacking the Army Public School, Peshawar on 16.12.2014 and had been sentenced to death.

12. With the above contentions, the Petitioner filed Constitutional Petition i.e. Writ Petition No.3219-P of 2015 before the learned Peshawar High Court, challenging the conviction and sentence awarded to the Petitioner's son Atteeq-ur-Rehman and also seeking an order for the production of the said Convict. The said Writ Petition was dismissed by the learned Peshawar High Court vide Order dated 09.12.2015. Hence, this Civil Petition for Leave to Appeal.

13. Civil Petition for Leave to Appeal No.3777 of 2015 is directed against the Order dated 09.12.2015 of the learned Peshawar High Court, Peshawar, whereby a

Constitutional Petition i.e. Writ Petition bearing No.3076-P of 2015, filed by the present Petitioner, was dismissed.

14. The brief facts as narrated in the instant Petition are that the Petitioner is the mother of one Taj Muhammad alias Rizwan, who was allegedly picked-up from his house by some personnel of the Law Enforcement Agencies accompanied by the local police of Pishtakhara Police Station on 07.02.2015. The male members of the family searched for Taj Muhammad alias Rizwan but could not discover his whereabouts. It was contended that the said Taj Muhammad alias Rizwan neither had a criminal history nor he or his family was associated with any banned or terrorist organization, except that in the year 2007, Taj Muhammad, in the company of one Nazeer of the same tribe, visited South Waziristan, where he stayed in Wana for 40 days.

15. Eventually, it was contended that, through a news item dated 14.08.2015, it was discovered that the son of the Petitioner (Taj Muhammad alias Rizwan) had been tried and convicted by a FGCM and sentenced to death in the Army Public School's case.

16. The Petitioner challenged the such conviction by invoking the Constitutional jurisdiction of the learned Peshawar High Court, Peshawar through Writ Petition No.3076-P of 2015, which was dismissed vide the Order impugned dated 09.12.2015.

17. Civil Petition for Leave to Appeal No.6 of 2016 is directed against the impugned Order dated 09.12.2015 of the learned Peshawar High Court, Peshawar, whereby a Constitutional Petition i.e. Writ Petition bearing No.4019-P of 2015, filed by the present Petitioner, was dismissed.

18. The brief facts as narrated in this Petition are that the Petitioner is the father of one Qari Zubair Mohammad, who was allegedly picked up from his house by Army personnel and Intelligence Agencies, accompanied by the local police on 16.08.2009. In respect of his disappearance, the Petitioner filed an application before the Commission of Inquiry of Enforced Disappearance (COIOED), to locate and recover his son. The COIOED inquired into the matter and gave direction to lodge an FIR against the responsible police officials. After lodging the FIR, the police officials were brought to trial by the Senior Civil Judge/Judicial

Magistrate, Nowshera, and a formal charge was framed. However, subsequently the proceedings were stopped under Section 249 Cr.P.C. on 07.07.2012.

19. Eventually, through the Internet on 10.11.2015, it was disclosed that Qari Zubair Mohammad had been tried and convicted by a FGCM and sentenced to death.

20. The Petitioner challenged such conviction by invoking the Constitutional jurisdiction of the learned Peshawar High Court, Peshawar, through Writ Petition No.4019-P of 2015, which has been dismissed vide the impugned Order dated 09.12.2015.

21. Civil Petition for Leave to Appeal No.32 of 2016 is directed against the impugned Order dated 09.12.2015 of the learned Peshawar High Court, Peshawar, whereby a Constitutional Petition i.e. Writ Petition (HCP) No.3878-P of 2015, filed by the present Petitioner, was dismissed.

22. The brief facts as narrated in the instant Petition are that the nephew of the Petitioner, namely, Jameel ur Rehman was taken into custody by the Intelligence Agencies in the year 2014. Eventually, through a news item published on 22.09.2015 in Daily

Aaj, it was disclosed that Jameel ur Rehman had been tried and convicted by a FGCM and sentenced to death.

23. The Petitioner challenged such conviction by invoking the Constitutional jurisdiction of the learned Peshawar High Court, Peshawar through Writ Petition (HCP) No.3878-P of 2015, which has been dismissed vide the Order impugned dated 09.12.2015.

24. Civil Petition for Leave to Appeal No.211 of 2016 is directed against the impugned Order dated 23.12.2015 of the learned Peshawar High Court, Peshawar, whereby a Constitutional Petition i.e. Writ Petition bearing No.4433-P of 2015, filed by the present Petitioner, was dismissed.

25. The brief facts as narrated in the instant Petition are that the brother of the Petitioner, namely, Aslam Khan, was taken into custody by the security forces about 4-5 years ago, while he was returning from Afghanistan after visiting his relatives, and was shifted to an unknown destination. The whereabouts of Aslam Khan remained unknown.

26. In due course, it was contended, that through a news item published in the Daily Aaj, Peshawar, dated 22.09.2015, it was revealed that the Petitioner's brother

Aslam Khan had been tried and convicted by a FGCM and sentenced to death.

27. The Petitioner challenged such conviction by invoking the constitutional jurisdiction of the learned Peshawar High Court, Peshawar through Writ Petition No.4433-P of 2015, which was dismissed *in limine* vide the Order impugned dated 23.12.2015, upholding the conviction and sentence awarded to the said Aslam Khan.

28. Civil Petition for Leave to Appeal No.278 of 2016 is directed against the impugned Order dated 27.01.2016 of the learned Lahore High Court, Rawalpindi Bench, whereby a Constitutional Petition i.e. Writ Petition bearing No.197 of 2016, filed by the present Petitioner, was dismissed.

29. The brief facts as narrated in this Petition are that the son of the Petitioner, namely, Muhammad Ghauri went missing on 07.01.2010. In respect of his disappearance, the Petitioner filed an application on 21.01.2010 in the concerned Police Station and FIR No.107 dated 16.02.2011 was registered at the Police Station Shalimar, Islamabad. In order to procure the recovery of his son, the Petitioner invoked the

Constitutional jurisdiction of the learned Lahore High Court, Rawalpindi Bench as well as this Court. The Petitioner also approached the COIOED but to no avail. Eventually, it was disclosed that the Petitioner's son was confined in the Internment Center, Lakki Marwat.

30. In due course, it was contended, that through a news item dated 01.01.2016, it was revealed that the Petitioner's son Muhammad Ghauri had been tried by a FGCM and sentenced to death.

31. The Petitioner challenged such conviction by invoking the Constitutional jurisdiction of the learned Lahore High Court, Rawalpindi Bench through Writ Petition No.197 of 2016, which has been dismissed vide the Order impugned dated 27.01.2016.

32. Civil Petition for Leave to Appeal No.417 of 2016 is directed against the impugned Order dated 19.01.2016 of the learned Peshawar High Court, Peshawar, whereby a Constitutional Petition i.e. Writ Petition bearing No.133-P of 2016, filed by the present Petitioner, was dismissed.

33. The brief facts as narrated in the instant Petition are that the younger brother of the Petitioner, namely, Tahir, was arrested on 23.02.2014 from Lahore.

On 03.09.2015, the Petitioner came to know through a news item published in the daily Mashriq, Peshawar that his brother has been convicted by a FGCM at Peshawar and awarded a death sentence. Earlier the Petitioner's father invoked the Constitutional jurisdiction of the learned Islamabad High Court by filing a Constitutional Petition i.e. Writ Petition bearing No.2788 of 2015, seeking information regarding the whereabouts of Tahir and to meet him, which was disposed of on 18.09.2015. In order to meet his said brother who it was discovered was confined in District Jail, Peshawar, the Petitioner invoked the jurisdiction of the learned Peshawar High Court, Peshawar through Writ Petition bearing No.3468-P of 2015, whereupon a direction was issued to the Respondents to act in accordance with the law and the Petitioner was permitted to meet his brother.

34. In the above backdrop, the Petitioner challenged the conviction of his brother by invoking the Constitutional Jurisdiction of the learned Peshawar High Court, Peshawar, through a Constitutional Petition i.e. Writ Petition No.133-P of 2016, which was dismissed vide the Order impugned dated 19.01.2016.

35. Civil Petition for Leave to Appeal No.1263 of 2016 is directed against the impugned judgment dated 12.04.2016 of the learned Peshawar High Court, Peshawar, whereby a Constitutional Petition i.e. Writ Petition bearing No.1048-P of 2016, filed by the present Petitioner, was dismissed.

36. The brief facts as narrated in the Petition are that the Petitioner voluntarily surrendered himself before the Army Authorities on 27.12.2009 and was confined at Internment Center, Gulibagh. Neither any FIR nor any criminal case was registered against him. On 16.03.2016, the Petitioner's family came to know through various newspapers that the Petitioner along with some others has been awarded death sentence by the FGCM and the Chief of Army Staff has given assent to the death warrants of all the said Convicts, including the Petitioner.

37. In the above backdrop, the Petitioner challenged his conviction and sentence by invoking the Constitutional jurisdiction of the learned Peshawar High Court, Peshawar through Writ Petition No.1048-P of 2016, which has been dismissed vide the impugned judgment dated 12.04.2016.

38. Civil Petition for Leave to Appeal No.1306 of 2016 is directed against the impugned judgment dated 12.04.2016 of the learned Peshawar High Court, Peshawar, whereby a Constitutional Petition i.e. Writ Petition No.1184-P of 2014, filed by the present Petitioner, was dismissed.

39. The brief facts of the case, as narrated in this Petition are that on 20.11.2014, the Petitioner's son namely, Fateh Khan was allegedly arrested by the Law Enforcement Agencies from Sarband, Peshawar. The whereabouts of her son, despite hectic efforts, could not be discovered. The Petitioner in this regard approached the Police Station Sarband, Peshawar, for registration of the FIR in November, 2014 but could not succeed.

40. Being aggrieved of the conduct of the police and the Political Agent, she sent an application to the learned Chief Justice, Peshawar High Court, who took up the action and repeatedly directed the concerned quarters to record the statement of the Complainant and submit a report. It is alleged that neither the police recorded her statement nor submitted any comments, in this behalf.

41. On 25.03.2016, she received information through the Political Agent, Barah that her son would be hanged on 30.03.2016.

42. In view of the above, the Petitioner invoked the Constitutional jurisdiction of the learned Peshawar High Court by filing the above said Constitutional Petition, which was dismissed vide impugned judgment dated 12.04.2016. Hence, this Civil Petition for Leave to Appeal.

43. Civil Petition for Leave to Appeal No.1335 of 2016 is directed against the impugned judgment dated 12.04.2016 of the learned Peshawar High Court, Peshawar, whereby Writ Petition No.1190-P of 2016, filed by the present Petitioner, was dismissed.

44. The brief facts necessary for disposal of this Petition are that the Petitioner, who is the brother of Convict Taj Gul stated in his Petition that in the year 2011, his brother was handed over by the elders of the locality to the Law Enforcement Agencies as directed and thereafter, he was shifted to some unknown place and later detained/confined at Internment Center, Paitham, Swat, where he was allowed visits by his relatives and the last such visit took place in the year

2015. Subsequently, through the print media, the Petitioner came to know about the confirmation of death sentence awarded to his brother by the FGCM.

45. The Petitioner invoked the Constitutional jurisdiction of the learned Peshawar High Court, Peshawar, by challenging the said conviction and sentence awarded to the Convict through the Writ Petition bearing No.1190-P of 2016, which was dismissed through the judgment impugned dated 12.04.2016. Hence, this Civil Petition for Leave to Appeal.

46. Civil Petition for Leave to Appeal No.1353 of 2016 is directed against the impugned Order dated 19.01.2016 of the learned Lahore High Court, Rawalpindi Bench, whereby a Constitutional Petition i.e. Writ Petition No.117 of 2016, filed by the mother of the Petitioner was, dismissed *in limine*.

47. The brief facts of this case as narrated in this Petition are that allegedly on 14.07.2014 the son of the Petitioner namely, Aksan Mehboob disappeared from Lahore. The Petitioner tried her best to locate her son but in vain. Subsequently, through the print media, it was revealed that on 18.07.2014 the Petitioner's son

had been killed alongwith another terrorist in an encounter near Raiwind. She tried unsuccessfully to get the dead body from the Law Enforcement Agencies. On 22.07.2014, she came to know that her son was alive and in the custody of the Military Intelligence. She tried to meet her son but failed. On 01.01.2016, it was discovered through a press release issued by the Inter-Services Public Relations (ISPR) that her son had been convicted and sentenced to death by a FGCM and such sentence had been confirmed by the Chief of Army Staff.

48. The Petitioner invoked the Constitutional jurisdiction of the learned Lahore High Court, Rawalpindi Bench, challenging her son's conviction and sentence by filing a Constitutional Petition i.e. Writ Petition No.117 of 2016, which was dismissed by the learned High Court vide the Order impugned dated 19.01.2016. Hence, this Civil Petition for Leave to Appeal.

49. Civil Petition for Leave to Appeal No.1503 of 2016 is directed against the impugned judgment dated 12.04.2016 of the learned Peshawar High Court, Peshawar, whereby a Constitutional Petition i.e. Writ

Petition bearing No.1271-P of 2016, filed by the present Petitioner, was dismissed.

50. The brief facts as narrated in the instant Petition are that the Petitioner is the father of the Convict, namely, Nasir Khan, who was allegedly taken into custody by the security forces on 03.07.2014 from Harno Azizabad and shifted to an unknown destination. Thereafter, a daily diary dated 08.07.2014 was recorded by Respondent No.1 i.e. SHO, Police Station Bugnotar, District Abbottabad in respect of the disappearance of Nasir Khan. Subsequently, the Petitioner invoked the Constitutional jurisdiction of the learned Peshawar High Court, Abbottabad Bench by filing Writ Petition bearing No.268 of 2016, which was dismissed, being not pressed, pursuant to the progress report, submitted by Respondent No.1. It was eventually discovered that the Petitioner's son has been convicted under the Pakistan Army Act, 1952.

51. The Petitioner challenged such conviction by invoking the Constitutional jurisdiction of the learned Peshawar High Court, Peshawar through Writ Petition No.1271-P of 2016, which was dismissed vide the judgment impugned dated 12.04.2016.

52. Civil Petition for Leave to Appeal No.1541 of 2016 is directed against the impugned Order dated 12.05.2016 of the learned Lahore High Court, Bahawalpur Bench, whereby a Constitutional Petition i.e. Writ Petition No.3315 of 2016, filed by the present Petitioner, was dismissed, being not maintainable.

53. The brief facts, as narrated in the instant Petition are that the Petitioner's son namely Muhammad Arbi was falsely involved in a criminal case FIR No.39 of 2014 dated 07.02.2014, under Section 365-B PPC registered with Police Station Nowshehra Jadeed, District Bahawalpur but was acquitted in the said case and was never involved in any other case. However, through print media, the Petitioner discovered that his son has been convicted and sentenced to death by a "Military Court" on the basis of alleged confession.

54. It appears that the Petitioner had earlier invoked the jurisdiction of this Court by filing a Constitutional Petition, which was returned by the Office vide Order dated 22.02.2016, being not maintainable and with a direction to seek his remedy before an appropriate forum.

55. The Petitioner filed a Constitutional Petition i.e. Writ Petition No.3315 of 2016 before the learned Lahore High Court, Bahawalpur Bench, challenging the said conviction and sentence of his son, which was dismissed vide the Order impugned dated 12.05.2016. Hence, this Civil Petition for Leave to Appeal.

56. In the aforementioned Civil Petitions for Leave to Appeal, the convictions and sentences awarded by the FGCMs to various Convicts have been called into question. No doubt, the learned counsel for the Petitioners advanced some arguments, which were case specific, yet the main thrust of their contentions was on a legal plane and common in all these Civil Petitions for Leave to Appeal

57. In this behalf, it was contended by the learned counsels for the Petitioners that the Convicts in the instant cases have been subjected to a secret trial without access to legal assistance, having been deprived of the right to be represented by a Legal Practitioner of their own choice in violation of rights so guaranteed by Articles 10 and 10A of the Constitution of the Islamic Republic of Pakistan, 1973. Thus, the procedure adopted and followed denuded the proceedings of the

requirements of a “fair trial” and “due process”. It was further contended that even otherwise, the Fundamental Rights of the Convicts guaranteed under Articles 10 and 10A of the Constitution have thus been violated and the trials were also not in consonance with Article 4 of the Constitution. It was added that the Rules applicable i.e. the Pakistan Army Act Rules, 1954, were violated to the prejudice of the Convicts, as a consequence whereof, the trials and the convictions were illegal and invalid. Reference, in this behalf, was made to Rules 23 and 24 as well as Rules 81 to 87 of the Pakistan Army Act Rules, 1954. It was further contended that the Convicts were deprived of their rights to produce evidence in their defence or to cross-examine the prosecution witnesses. It was further added that sufficient time and opportunity to prepare the defence was not provided in terms of Rule 23 of the Pakistan Army Act Rules, 1954. The learned counsels for the Petitioners next added that the trials were conducted more than three years after the alleged occurrence in violation of the bar contained in Section 91 of the Pakistan Army Act, 1952, hence, the said trials were without jurisdiction.

58. It was also contended by the learned counsels for the Petitioners that in respect of the alleged occurrences for which the Convicts were tried and sentenced, no FIR was ever registered. It was added that the Convicts were kept in illegal detention for years on end and the proceedings of the FGCMs, were a *mala fide* attempt to cover up such illegalities. The convictions are based primarily on the alleged confessions before the Judicial Magistrates, which were not recorded in accordance with the law and the Convicts were handed back to the Law Enforcement Agencies after recording the alleged confessions. Furthermore, the Convicts were kept in the Internment Centers under the Actions (in aid of Civil Power) Regulation, 2011 and the very *vires* thereof are *sub judice* before this Court for being, *inter alia*, in violation of Articles 10 and 10A of the Constitution.

59. It was added that no pre-trial proceedings were conducted, which is a requirement under the Pakistan Army Act, 1952, nor such summary of evidence was provided to the accused nor has been made available to their counsels or has been presented

to this Court establishing beyond any doubt that the Pakistan Army Act Rules, 1954, have been violated.

60. The learned counsels further contended that the privilege has been claimed with regard to the record of the trials, which is not permissible under the law with respect to criminal proceedings in view of the judgments, reported as Mohtarma Benazir Bhutto v. The President of Pakistan through the Secretary to the President (1992 SCMR 1357 & PLD 1992 SC 492) and Muhammad Uris v. Government of Sindh through Secretary, Revenue Department, Board of Revenue, Hyderabad and 2 others (1998 CLC 1359).

61. An issue was also raised with regard to the selection of the cases for trial by the FGCMs in respect of the matters at hand. In this behalf, it is contended, no objective criteria exists nor was employed and nothing is on the record to illustrate the basis for the selection of these cases for trial by the FGCMs.

62. It was further contended that the Convict Haider Ali (in Civil Petition for Leave to Appeal No.3331 of 2015) was a juvenile at the time of the alleged occurrence, hence, could not be tried by the FGCM especially as the factum of his age stood established

through documentary evidence placed before the learned High Court, which has been ignored.

63. It is the case of the Petitioners that the aforesaid failures in the mode and method of the trial renders the same illegal and unconstitutional and the convictions and sentences awarded without jurisdiction, *coram non judice* and suffering from *mala fides*, therefore, the learned High Court as well as this Court were not only vested with the jurisdiction to entertain, examine and adjudicate upon the contentions raised on behalf of the Petitioners but also to set aside the convictions and sentences awarded by the FGCMs in the instant cases notwithstanding the bar contained in Article 199(3) of the Constitution especially in view of the interpretation thereof as set forth in the various judgments of this Court. The learned counsels also complained that they were handicapped by their limited access to the record of the trials.

64. The learned DAG for Pakistan has controverted the contentions raised on behalf of the Petitioners by contending that the Convicts and the offences for which they were tried in each and everyone of the cases at hand were subject to the Pakistan Army

Act, hence, the convictions could not be challenged before the learned High Court in exercise of its jurisdiction conferred under Article 199 of the Constitution in view of Sub Article (3) thereof. It is added that it is settled law that the jurisdiction of the High Court and this Court is limited, in this behalf, to the cases of *coram non judice*, without jurisdiction and *mala fides* and the contentions raised on behalf of the Petitioners do not fall in any of three categories. It was further contended that no objection was raised or established on record that the FGCMs in question were not legally constituted in accordance with the law so as to render the convictions and sentences handed down *coram non judice*. The learned DAG further added that no *mala fide* had been alleged against the Members of the FGCMs nor such *mala fides* have been pleaded with the requisite particularity or *ex facie* established on the record. It was added that it has been conclusively held by a Larger Bench of this Court in the case, reported as District Bar Association, Rawalpindi and others v. Federation of Pakistan and others (PLD 2015 SC 401) that the Convicts in view of the offences for which they were accused, were subject to the Pakistan Army Act

and the FGCMs constituted under the said Act were vested with the jurisdiction to try the Convicts and sentence them, hence, the convictions and sentences awarded are not without jurisdiction.

65. The learned DAG for Pakistan also contended that each and every Convict was given full opportunity to defend himself. The option to engage a Legal Practitioner of their own choice was afforded and upon failure to take advantage of such option, an Officer was deputed to defend them in terms of the Pakistan Army Act Rules, 1954. The procedure, as provided in the Pakistan Army Act and the Rules framed thereunder was meticulously followed in letter and spirit and no specific deviation therefrom have been pointed out by the Petitioners. The learned DAG stated that the convictions are the result of a "fair trial", which were held in accordance with the law i.e. the Pakistan Army Act and the Rules framed thereunder without in any manner transgressing against any of the provision of the Constitution or violating any right guaranteed thereby. It is added that the aforesaid Convicts not only admitted their guilt but in fact boasted of their "exploits" of waging war against Pakistan and killing innocent

civilians and the Members of the Law Enforcement Agencies, yet as required by the Pakistan Army Act, their pleas of guilty were altered to not guilty, and evidence produced by the prosecution to establish the charges against them. It was further contended that full access was given to the learned counsels for the Petitioners under the Orders of this Court to examine the record of the trials in question, subject only to the constraints necessitated by the concern for safety and security of the Members of the FGCMs and the witnesses in accordance with the provisions of Section 2-C of the Pakistan Army Act. The learned DAG further contended that reference to Section 91 of Pakistan Army Act is misconceived, as the provisions thereof were inapplicable to the offences for which the Convicts in the instant cases have been tried and sentenced.

66. With regard to Convict, Haider Ali (in Civil Petition for Leave to Appeal No.3331 of 2015), it was contended by the learned DAG that he was not a juvenile at the time of the occurrence. During the proceedings before the learned High Court, the relevant record was examined by the learned High Court, which recorded its satisfaction with regard to the age of the

Convict and he being a major at the time of the occurrence. Even otherwise, the Pakistan Army Act has an overriding effect over any other law, in this behalf, in view of Section 4 of the Pakistan Army (Amendment), Act, 2015.

67. The learned Deputy Attorney General for Pakistan added that pre-trial proceedings were conducted and the summary of evidence recorded, as is evident from the record of the trial by the FGCMs. It was added that the Pakistan Army Act and the Rules framed thereunder were followed in letter and spirit, however, any deviation therefrom does not vitiate the trial in view of Rule 132. Furthermore, neither the learned High Court nor this Court in exercise of their respective constitutional jurisdiction can examine or set aside the trial only on the ground that the procedure was not followed. In his behalf, reliance was placed on the judgments, reported as Brig. (Retd) F.B. Ali and another v. The State (PLD 1975 SC 506), Muhammad Din and others v. The State (PLD 1977 SC 52), Mrs. Shahida Zahir Abbasi and 4 others v. President of Pakistan and others (PLD 1996 SC 632) and District Bar Association, Rawalpindi and others v. Federation of Pakistan and

others (PLD 2015 SC 401). With regard to Articles 10 and 10A of the Constitution, 1973, it was contended that since the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment Act), 2015, has been incorporated in the First Schedule of Article 8, therefore, the provisions thereof and proceedings conducted thereunder are immune from challenge on the ground of any alleged violation of the Fundamental Rights, including Articles 10 and 10A of the Constitution and the benefit thereof is not available to the Convicts in the instant cases.

68. Heard. Available record perused.

69. The instant Civil Petitions for Leave to Appeal are directed against the various Judgments/Orders of the different learned High Courts, whereby Writ Petitions calling into question the convictions and sentences of individuals awarded by the FGCMs were dismissed. The Convicts in respect whereof the Constitutional Petitions had been filed before the learned High Courts were all civilians, who were tried by FGCM purportedly in view of the Constitution (Twenty-first Amendment) Act (Act I of 2015) read with the Pakistan Army (Amendment) Act (Act II of 2015). The

Constitutionality of the Twenty-first Amendment as well as the Pakistan Army (Amendment) Act of 2015, were called into question before this Court and a Larger Bench by majority of 11 to 6 held the aforesaid Twenty-first Constitutional Amendment and the Pakistan Army (Amendment) Act, 2015, not to be *ultra vires* the Constitution vide judgment, reported as District Bar Association, Rawalpindi and others (*supra*).

70. In the proceedings culminating in the impugned Judgments/Orders, the jurisdiction of the learned High Courts under Article 199 of the Constitution, had been invoked. The said Article contains a non-obstantive provision i.e. sub-article (3) thereof, which reads as under:

"(3) An order shall not be made under clause (1) on application made by or in relation to a person who is a member of the Armed Forces of Pakistan, or who is for the time being subject to any law relating to any of those Forces, in respect of his terms and conditions of service, in respect of any matter arising out of his service, or in respect of any action taken in relation to him as a member of the Armed Forces of Pakistan or as a person subject to such law."

(emphasis supplied)

71. A bare perusal of the aforesaid provision would suggest that *prima facie* a High Court in exercise of its jurisdiction under Article 199(1) of the Constitution

cannot pass any order in respect of any person who even for the time being is subject to any law pertaining to the Armed Forces with regard to any action taken under such law. The Pakistan Army Act, 1952, is one of the laws applicable to the Armed Forces of Pakistan. The jurisdiction of the learned High Courts with regard to the exercise of the powers of Judicial Review with respect to trial by the FGCM under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, and the convictions and sentences handed down thereunder were also examined in the case of District Bar Association, Rawalpindi and others (supra). This Court considered, *inter alia*, the ratio of the previous judgments of this Court, reported as The State v. Zia-ur-Rahman and others (PLD 1973 SC 49), Brig. (Retd) F.B. Ali and another v. The State (PLD 1975 SC 506), Federation of Pakistan and another v. Malik Ghulam Mustafa Khar (PLD 1989 SC 26), Mrs. Shahida Zahir Abbas and 4 others v. President of Pakistan and others (PLD 1996 SC 632), Ex.Lt. Col. Anwar Aziz (PA-7122) v. Federation of Pakistan through Secretary, Ministry of Defence, Rawalpindi and 2 others (PLD 2001 SC 549), Mst. Tahira Alams and another v.

Islamic Republic of Pakistan through Secretary, Ministry of Interior, Islamabad and another (PLD 2002 SC 830), Federation of Pakistan and others v. Raja Muhammad Ishaque Qamar and another (PLD 2007 SC 498), Ghulam Abbas Niazi v. Federation of Pakistan and others (PLD 2009 SC 866), Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan through Secretary and others (PLD 2010 SC 61), Secretary, Ministry of Religious Affairs and Minorities and 2 others v. Syed Abdul Majid (1993 SCMR 1171), Begum Syed Azra Masood v. Begum Noshaba Moeen and others (2007 SCMR 914), Syed Rashid Ali and others v. Pakistan Telecommunication Company Ltd and others (2008 SCMR 314), Federation of Pakistan through Secretary Defence and others v. Abdul Basit (2012 SCMR 1229), Rana Muhammad Naveed and another v. Federation of Pakistan through Secretary M/o Defence (2013 SCMR 596), Karamat Ali v. State (PLJ 1976 SC 341) and Ex.PJO-162510 Risaldar Ghulam Abbas v. Federation of Pakistan through Secretary, Ministry of Defence, Government of Pakistan, Rawalpindi and others (PLJ 2013 SC 876).

The settled law as gleaned from the aforesaid judgments was reiterated in the following terms:

"171. In view of the above, there can be no manner of doubt that it is a settled law that any order passed or sentence awarded by a Court Martial or other Forums under the Pakistan Army Act, 1952, included as amended by the Pakistan Army (Amendment) Act, 2015, is subject to the Judicial Review both by the High Courts and this Court, *inter alia*, on the ground of coram-non-judice, without jurisdiction or suffering from mala fides including malice in law. This would also hold true for any decision selecting or transferring a case for trial before a Court Martial. ..."

(emphasis supplied)

72. Before the contentions of the learned counsels for the Petitioners in the context of the available record with regard to the individual's case can be examined, it would perhaps be appropriate to ascertain the extent and contours of the jurisdiction of Judicial Review available with the learned High Courts under Article 199 of the Constitution in such like matters.

73. The grounds on the basis whereof a challenge can be thrown to the proceedings taken, convictions and sentences awarded by the FGCM have been specified hereinabove so as to include the grounds of *coram non judice*, without jurisdiction or suffering from *mala fides*, including malice in law only.

An overview of the judicial pronouncements on the point reveals that the expression *coram non judice* is usually employed in conjunction with the expression "without jurisdiction" and occasionally as synonymous therewith. However, in Black's Law Dictionary, Ninth Edition, the term *coram non judice* has been defined as follows:

"Coram non judice (**kor**-em non **joo**-di-see). [Latin "not before a judge"] **1.** Outside the presence of a judge. **2.** Before a judge or court that is not the proper one or that cannot take legal cognizance of the matter."

Hamoodur Rahman, C.J., as he then was, in the judgment of this Court, reported as Chittaranjan Cotton Nulls Ltd v. Staff Union (1971 PLC 499) very succinctly observed as follows:

"Where the Court is not properly constituted at all the proceedings must be held to be *coram non judice* and, therefore, non-existent in the eye of law. There can also be no doubt that in such circumstances. ..."

74. Thus, it appears that the *coram non judice* in fact is perhaps a fatal flaw germane to the very constitution of the judicial forum rendering its proceedings non-est in the eye of law. Though a forum may be vested with the jurisdiction yet its actions may be invalid, if such forum has been set up in clear and

absolute violation of the law applicable in this behalf. The purpose of undertaking this exercise is not to circumscribe or limit the jurisdiction of the learned High Court but to amplify the same.

75. The other expression which needs to be dilated upon, in this behalf, is "*mala fides* including malice in law". The expression "*mala fides*" has been explained in great detail by this Court in the judgment, reported as The Federation of Pakistan through the Secretary, Establishment Division, Government of Pakistan, Rawalpindi v. Saeed Ahmad Khan and others (PLD 1974 SC 151), in the following terms:

"*Mala fides*" literally means "in bad faith". Action taken in bad faith is usually action taken maliciously in fact, that is to say, in which the person taking the action does so out of personal motives either to hurt the person against whom the action is taken or to benefit oneself. Action taken in colourable exercise of powers, that is to say, for collateral purposes not authorised by the law under which the action is taken or action taken in fraud of the law are also *mala fide*. It is necessary, therefore, for a person alleging that an action has been taken *mala fide* to show that the person responsible for taking the action has been motivated by any one of the considerations mentioned above. A mere allegation that an action has been taken wrongly is not sufficient to establish a case of *mala fides*, nor can a case of *mala fides* be established on the basis of universal malice against a particular class or section of the people. ..."

In the above-said judgment, it was also observed as follows:

"In order to establish a case of *mala fides*, some such specific allegation is necessary and it must be supported by some *prima facie* proof to justify the Court to call upon the other side to produce evidence in its possession."

A similar view was also taken by this Court in the cases, reported as Abdul Baqi Baluch v. Government of Pakistan through the Cabinet Secretary, Rawalpindi (PLD 1968 SC 313).

In the case, reported as Abdul Rauf and others v. Abdul Hamid Khan and others (PLD 1965 SC 671), this Court observed as follows:

"... A *mala fide* act is by its nature an act without jurisdiction. No Legislature when it grants power to take action or pass an order contemplates a *mala fide* exercise of power. A *mala fide* order is a fraud on the statute. It may be explained that a *mala fide* order means one which is passed not for the purpose contemplated by the enactment granted the power to pass the order, but for some other collateral or ulterior purposes."

In the case, reported as Zafar-ul-Ahsan v. The Republic of Pakistan (through Cabinet Secretary, Government of Pakistan) (PLD 1960 SC 113) this Court held as follows:

"... If an appellate authority is provided by the statute the omissions or irregularity alleged will be a matter for that authority, and not, as rightly observed by the High Court, for a Court of law. Of course where the proceedings are taken *mala fide* and the statute is used merely as a cloak to cover an act which in fact is not taken though it purports to have been taken under the statute, the order will not, in accordance with a long line of decisions in England and in this sub-continent, be treated as an order under the statute."

This Court in the case, reported as Government of West Pakistan and another v. Begum Agha Abdul Karim Shorish Kashmiri (PLD 1969 SC 14) observed as follows:

"... It is not to be turned into a roving enquiry permitting the detenu to hunt for some ground to support his case of *mala fides* nor should an enquiry be launched upon merely on the basis of vague and indefinite allegations. *Mala fide* must be pleaded with particularity and once one kind of *mala fide* is alleged, the detenu should not be allowed to adduce proof of any other kind of *mala fide*."

76. Malice in law is a term distinct from *mala fides* of fact. In this behalf, reference may be made to the Black's Law Dictionary, Ninth Edition, where "implied malice" has been defined as follows:

"Implied malice. Malice inferred from a person's conduct. – Also termed *constructive malice*; *legal malice*; *malice in law*. Cf. *actual malice*."

(emphasis supplied)

Bayley, J. in Bromage v. Prosser (4 B. & C. 255)

observed:

"... Malice in common acceptance means ill-will against a person, but in its legal sense it means a wrongful act, done intentionally, without just cause or excuse. ..."

77. These observations were quoted with approval

by the House of Lords in the case of Allen v. Flood (1897

A.C. 1) where Lord Watson said:

".... The root of the principle is that, in any legal question, malice depends, not upon evil motive which influenced the mind of the actor, but upon the illegal character of the act which he contemplated and committed. ..."

78. The House of Lords in its judgment, reported

as Shearer and another v. Shields (1914 A.C. 808) held

as follows:

"Between malice in fact and malice in law there is a broad distinction which is not peculiar to any particular system of jurisprudence. A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far as the state of his mind is concerned, he acts ignorantly, and in that sense innocently."

79. The aforesaid has been quoted with approval

by the Indian Supreme Court in the judgment, reported

as Addl. Distt. Magistrate, Jubalpur v. Shivakant Shukla (AIR 1976 SC 1207) and by the Lahore High Court in the judgment, reported as Mian Manzoor Ahmad Wattoo v. Federation of Pakistan and 3 others (PLD 1997 Lahore 38).

80. Muhammad Haleem, J., as he then was, in the case reported as Haji Hashmatullah and 9 others vs. Karachi Municipal Corporation and 3 others (PLD 1971 Karachi 514), observed as follows:

"... An order in violation of law is *mala fide* in law, though actual malice may not be present in the mind of the authority passing the order."

81. The Supreme Court of India in the case, reported as State of Andhra Pradesh and others v. Goverdhanlal Pitti (AIR 2003 SC 1941) held as under:

"12. The legal meaning of malice is "ill-will or spite towards a party and any indirect or improper motive in taking an action". This is sometimes described as "malice in act". "Legal malice" or "malice in law" means "something done without lawful excuse". In other words, 'it is an act done wrongfully and willfully without reasonable or probable cause, and not necessarily an act done from ill feeling and spite'. It is a deliberate act in disregard of the rights of others. (See Words and Phrases legally defined in Third Edition, London Butterworths 1989.)"

82. All judicial and quasi-judicial forums for that matter even the Executive Authorities exercise only the powers conferred upon them by law so as to fulfill the mandate of such law and to achieve its declared and self-evident purpose. However, where any action is taken or order passed not with the intention of fulfilling its mandate or to achieve its purpose but is inspired by a collateral purpose or instigated by a personal motive to wrongfully hurt somebody or benefit oneself or another, it is said to suffer from malice of facts. In such cases, the seat of the malice or bad faith is the evil mind of the person taking the action be it spite or personal bias or ulterior motive. Mere allegations, in this behalf, do not suffice. Malice of fact must be pleaded and established at least *prima facie* on record through supporting material.

83. All persons purporting to act under a law are presumed to be aware of it. Hence, where an action taken is so unreasonable, improbable or blatantly illegal that it ceases to be an action countenanced or contemplated by the law under which it is purportedly taken malice will be implied and act would be deemed to suffer from malice in law or constructive malice. Strict

proof of bad faith or collateral propose in such cases may not be required.

84. Having explored the concept of malice in law to the extent of its most liberal connotation, we cannot lose sight of the fact that the jurisdiction exercised by the learned High Court, in this behalf, has to be navigated through a non-obstantive provision in the Constitution i.e. Article 199(3), reproduced herein above. In this behalf, it may perhaps be appropriated to refer the note of caution expressed in the judgment of this Court, reported as Chief Justice of Pakistan Iftikhar Muhammad Chaudhry v. President of Pakistan through Secretary and others (PLD 2010 SC 61), wherein it has been observed as follows:

"... This is settled principle of law that constitutional protection and immunity of judicial review in performance of constitutional duty cannot be extended to the mala fide acts and actions, therefore distinction must be drawn between malice in fact and malice in law for the purpose of interpretation of the relevant provision of the Constitution or a statute so that an impression must not be created that such provision has been amended, altered or reconstituted which may make the same redundant. The Supreme Court has always been careful and conscious in interpreting the Constitution so as in a manner that it may not create chaos or conflict or

make the provision ineffective or nullified."

85. This Court in the specific context of challenging the sentences and convictions awarded by the FGCM in the case, reported as Ex-gunner Muhammad Mushtaq and another v. Secretary Ministry of Defence through Chief of Army Staff and others (2015 SCMR 1071), after examining the previous case law on the subject, observed as follows:

"9. ... Neither the order passed by the Field General Court Martial is a case of no evidence nor the evidence led by the prosecution is insufficient. There is sufficient material available to prove the guilt of the appellants. In absence of any *mala fide* on the part of the prosecution, the conviction and sentences awarded to the appellants by the Field General Court Martial cannot be stamped to be *coram non iudice*. ..."

86. In the case reported as Ex. Lt.-Col. Anwar Aziz (PA-7122) v. Federation of Pakistan through Secretary, Ministry of Defence, Rawalpindi and 2 others (PLD 2001 SC 549), it was held as under:

"8. This Court can interfere only in extraordinary cases involving question of jurisdictional defect when proceedings before that forum become *coram non iudice* or *mala fide*. ..."

87. Again after an overview of the case law on the subject, this Court in the case of Ghulam Abbas v.

Federation of Pakistan through Secretary, Ministry of

Defence and others (2014 SCMR 849), held as follows:

6. ... It would further be seen that the High Court in its constitutional jurisdiction is not a Court of Appeal and hence is not empowered to analyze each and every piece of evidence in order to return a verdict. In this regard its jurisdiction would be limited to scanning the evidence in order to ensure that the accused has been given a fair trial. Indeed, in the case of Sabur Rehman v. The Government of Sindh (supra) it was observed by this Court (majority view), "That in some of the decided cases it has been held that if a finding is based on no evidence it will be a case of without jurisdiction but again the basic question is as to whether the High Court in exercise of constitutional jurisdiction or this Court while hearing an appeal arising out of a refusal of the High Court to set aside the conviction can take upon itself the role of an Appellate Court to reappraise the entire evidence on record and to analyze it and then to conclude that it is a case of no evidence in order to render the conviction as without jurisdiction. In my humble opinion, this is not permissible. The High Court, after going through the record, was satisfied that it was not a case of no evidence. In our view, the approach of the High Court was correct that it had not reappraised the evidence and had not analyzed the same in the judgment as it was not hearing a regular appeal". We would respectfully agree with the majority view in the instant case but would hasten to add that where a finding is perverse or based on no evidence at all, then certainly the High Court in exercise of its constitutional jurisdiction could interfere."

"7. Consequently, in order to do full justice to the petitioner, we have with

the assistance of learned Advocate Supreme Court, gone through the evidence and we do not find that either it is a case of no evidence or that evidence led by the prosecution was insufficient to convict the petitioner. Indeed, the victim has himself very candidly described the petitioner's forced sexual encounter when he committed the unnatural offence. This has been corroborated by the medical evidence on record."

88. In the case reported as Ex. Lt.-Col. Anwar Aziz (PA-7122) (*supra*), it was held as under:

"6. As per record it is noticed that petitioner had candidly admitted the jurisdiction of Field General Court Martial, the trial Court; and that of the Court of Appeals, the Appellate Court. Admittedly he did not challenge the jurisdiction of the Army Courts at any stage. He voluntarily surrendered to their jurisdiction and remained silent and contested the proceedings fully. It was after exhausting the remedies available to him according to the Act, he resorted to the Constitutional jurisdiction of the High Court without any legal justification. The learned counsel of the petitioner frankly conceded that during the hearing of the petition before the High Court the petitioner had accepted the jurisdiction of Army Courts and failed to convince that the conviction was either mala fide or coram non judice or without jurisdiction. The petitioner being member of Armed Forces was thus rightly tried, convicted and sentenced by the properly constituted forums under the Act, as such his case does not attract the question of public importance."

89. In the case of Mushtaq Ahmed and others v. Secretary, Ministry of Defence through Chief of Air and Army Staff and others (PLD 2007 SC 405), against the convictions and sentences awarded by the FGCM, the contention raised pertaining to the “merits” of the case was rejected in the following terms:

"33. In this behalf it may be noted that these are the questions which relate to the merits of the case. Further more, during the trial no such objection was raised on behalf of the appellants, therefore, the same is not entertainable for want of jurisdiction of the High Court, as concluded herein above."

90. From the above law as declared through various precedents, it can be gathered that any proceedings taken, convictions and sentences awarded by the FGCM can be called into question on the ground of *mala fides* of fact i.e. being tainted with bias or bad faith or taken for a collateral purpose or inspired by a personal motive to hurt a person or benefit oneself or another. The mere allegation that an action has been taken wrongly is not sufficient to establish *mala fide* of facts. Specific allegations of the collateral purpose or an ulterior motive must be made and proved to the satisfaction of the Court.

91. A challenge can also be thrown on the independent ground of malice in law or constructive or implied malice for which purpose it is sufficient to establish that the action complained of was not only illegal but so unreasonable and improbable that it cannot be said to be contemplated or countenanced by the law whereunder such action has purportedly been taken. It would include an act done wrongfully and willfully without reasonable or probable justification. Unlike cases of malice in fact evil intention need not necessarily exist or required to be proved. Any action suffering from *mala fides* of fact or malice in law constitutes a fraud upon the law and is without jurisdiction.

92. Similarly, if there is a fundamental legal flaw in the constitution of the forum (in our case FGCM) the actions taken thereby would be *coram non iudice*, hence, also without jurisdiction.

93. It may be noted that the actions complained of can even otherwise be without jurisdiction, a separate and independent ground available to challenge the sentences and convictions of the FGCM, therefore, it must necessarily be examined whether the FGCM had

the jurisdiction over the person tried and the offence for which such trial has taken place and to ascertain existence or otherwise of any other defect or a gross illegality in the exercise of jurisdiction denuding the same of validity.

However, we cannot lose sight of the non-obstantive provision [in the Constitution i.e. Article 199(3)] impeding the exercise the powers of Judicial Review by the High Court under Article 199 of the Constitution. Consequently, the boundaries of the available jurisdiction cannot be pushed so as to negate and frustrate the said provision of the Constitution. An exception to the rule barring exercise of jurisdiction cannot be extended so as to defeat and destroy the rule itself. It is by now a well settled proposition of law, as is obvious from the judgments of this Court, referred to and reproduced hereinabove, that the powers of Judicial Review under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, against the sentences and convictions of the FGCM is not legally identical to the powers of an Appellate Court. The evidence produced cannot be analyzed in detail to displace any reasonable or probable conclusion drawn

by the FGCM nor can the High Court venture into the realm of the "merits" of the case. However, the learned High Court can always satisfy itself that it is not a case of no evidence or insufficient evidence or the absence of jurisdiction.

94. It is in the above backdrop, the contentions of the learned counsels in respect of each individual's case at hand needs to be examined.

95. Subject matter of Civil Petition for Leave to Appeal No.842 of 2016 is the conviction and sentence awarded to a civilian Said Zaman Khan (Convict) son of Said Nawas Khan by a FGCM convened under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015. The Convict was accused of several counts of the commission of offences of being a Member of a known religiously motivated terrorist organization and attacking, alongwith others, the Armed Forces of Pakistan, while armed with deadly weapons and thereby causing death of several Army personnel. The place of occurrence, it is alleged, was North Waziristan.

The Convict was accused of the commission of an offence under clause 2(1)(d)(iii) of the Pakistan Army Act,

1952, as incorporated by the Pakistan Army (Amendment) Act, 2015. Hence, by operation of law became subject to the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, in view of Section 2(1) thereof, therefore, the Convict became liable to be dealt with under the Pakistan Army Act, including by way of trial thereunder by a FGCM.

The offence of which the Convict was accused is obviously punishable under the ordinary law of the lands triable by a Criminal Court, hence, constituted a "civil offence" as defined by sub-section (3) of Section 8 and liable to be tried by the FGCM in view of the provisions of Section 59 of the said Act.

It may be noted that no new offence has been created and only a change of Forum has been brought about by the Pakistan Army (Amendment) Act, 2015. The date of occurrence has no real significance. The offence in question as noted above is a "civil offence", as defined in Sections 8(3) of the Pakistan Army Act, and was thus not only triable by the FGCM *per-se* but also regardless of the date when the offence was committed, as is clear not only from the First Proviso to Section 2(1)(d)(iii) but also Section 59(4) of the Pakistan Army

Act, which is reproduced hereunder for ease of reference:

59. Civil Offences.—(4) Notwithstanding anything contained in this Act or in any other law for the time being in force a person who becomes subject to this Act by reason of his being accused of an offence mentioned in clause (d) of sub-section (1) of section 2 shall be liable to be tried or otherwise dealt with under this Act for such offence as if the offence were an offence against this Act and were committed at a time when such person was subject to this Act; and the provisions of this section shall have effect accordingly.”

96. From the aforesaid it appears that in view of the nature of the offences of which, the Convict was accused of, he became subject to the Pakistan Army Act and thus liable to be tried by the FGCM, for such offences regardless of the fact where he became subject to the Pakistan Army Act or when the offence was committed. Therefore, the FGCM was vested with the jurisdiction to proceed against the Convict. Hence, the conviction and sentence cannot be held to be without jurisdiction on this account especially, as the learned counsel for the Petitioner was unable to point out any jurisdictional defect, in this behalf. Furthermore, during the course of the trial, the Convict did not object to the

jurisdiction of the FGCM, when granted an opportunity to do so, as is evident from the record.

97. The learned counsels for the Petitioners complained of limited access to the record of the proceedings conducted by the FGCM. We cannot ignore the fact that in view of the peculiar nature of the offences for the commission whereof the Convicts have been accused, it was imperative that efforts should be made to ensure the security and safety of the Members of the FGCM, witnesses produced, the Prosecuting and the Defending Officers and the Interpreters. Such sensitivity necessitated by the existing extra-ordinary circumstances has been reflected in Section 2-C of the Pakistan Army Act, incorporated through a subsequent Amending Act dated 19.11.2015. In the instant cases through specific Order passed by this Court, all the learned counsels were permitted to examine the record of the proceedings of the FGCM, which has been made available to this Court. It has also been noticed that at no point of time after the confirmation of the sentence by the FGCM, any application was filed to the Competent Authority for the supply of the copies of the proceedings, if so required, in terms of Rule 130 of the

Pakistan Army Act Rules, 1954. Such applications were not even moved during the pendency of the proceedings before the High Courts or even before this Court. In the circumstances, we are not persuaded that any prejudice has been caused to the Petitioners, in this behalf.

98. At no point of time during the course of trial by the FGCM or the pendency of the proceedings before the High Court or even before this Court any allegation of specific *mala fides* of fact were made against the Members of the FGCM. It is not the case of the Petitioners that any Member of the FGCM either had any personal bias against the Convict or established on record that any proceeding or conviction by the FGCM was the result of any evil intention of any Member thereof or otherwise conducted in bad faith for a collateral purpose. It has been noticed that during the course of proceedings, the Convict was specifically inquired from as to whether he had any objection against any Member of the FGCM. He responded in the negative, which fact is apparent from the record of the proceedings. In the above circumstances, no case for *mala fides* of fact has been made out. Consequently, the

conviction and sentence of the Convict cannot be set aside on the ground of *mala fides* of fact.

99. It is not the case of the Petitioner that the FGCM was not duly convened and constituted in terms of the Pakistan Army Act, 1952, as amended. No illegality or infirmity, in this behalf, was pointed out or noticed. In the circumstances, the conviction and sentence cannot be said to be *coram non iudice*.

100. The learned counsels for the Petitioners, by relying upon Article 10 sub-article (2) of the Constitution, contended that the trial before the FGCM was vitiated as the Convict was not defended by a Civil Defence Counsel or Legal Practitioner of his own choice.

101. The convict was tried under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015. This Court in its judgment in the case of District Bar Association, Rawalpindi and others (*supra*) has held that the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, was validly and effectively incorporated through the Amendment in the First Schedule to the Constitution, as a consequence whereof, the provisions thereof cannot be called into question on the ground of

being in violation of the Fundamental Rights guaranteed under the Constitution in view of Article 8 sub-article (3).

Be that as it may, it is, even otherwise, apparent from the record that prior to the commencement of the trial, the Convict was specifically asked by the FGCM whether he needed an adjournment to prepare his defence or to engage a Civil Defence Counsel. The Convict responded in the negative. In the above circumstances, a Defending Officer was appointed in terms of Rule 81 of the Pakistan Army Act Rules, 1954. Such a course of action is in accordance with the applicable law and the dictum of this Court, as laid down in the judgment, reported as Ex-Gunner Muhammad Mushtaq and another (*supra*). Thus, the contentions, in this behalf, are misconceived.

102. It was also urged on behalf of the Petitioner that the trial by the FGCM in the instant case was invalid in view of Section 91 of the Pakistan Army Act, 1952, as the period of more than three years had passed between the alleged occurrence and the commencement of the trial. The Convict, being subject to the Pakistan Army Act, 1952, was tried for the civil offence in terms of

Section 59. The provisions of Section 91 were thus not attracted, as a trial for a civil offence under Section 59 has been specifically excluded from the operation of Section 91 as is mentioned therein. Thus, the contentions of the learned counsel, in this behalf, cannot be accepted.

103. The nature and extent of the power of Judicial Review in matters arising from an action taken under the Pakistan Army Act, 1952, has by and large been settled by this Court through its various judgments, referred to above. It now stands clarified that neither the High Court nor this Court can sit in appeal over the findings of the FGCM or undertake an exercise of analyzing the evidence produced before it or dwell into the "merits" of the case. However, we have scanned the evidence produced and proceedings conducted by the FGCM. The Convict pleaded guilty to the charges, which were altered to not guilty by operation of the law. There was a judicial confession of the Convict before a learned Judicial Magistrate, which was proved in evidence by the said Judicial Magistrate, who appeared as a witness. Such confession was never retracted by the Convict. Other relevant evidence, including eye witnesses of the

occurrence was also produced. The prosecution witnesses made their statements on Oath and were cross-examined by the Defending Officer. Opportunity to produce evidence in defence was given, which was declined. The Convict was permitted to address the Court and made a statement, wherein he again admitted his guilt. In the above circumstances, it is not possible for us to conclude that it was a case of no evidence or insufficient evidence nor is it possible to hold that the conclusions drawn by the FGCM are blatantly unreasonable or wholly improbable.

104. A perusal of the record of the FGCM reveals that in order to ensure a fair trial and to protect the rights of the Convict, the relevant Rules were complied with. The Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. An Interpreter was appointed with the consent of the Convict in terms of Rule 91 of the Pakistan Army Act Rules, 1954. The nature of the offence for the commission whereof, the Convict was charged, was explained to him as too the possible sentence that would be awarded, as required by Rule 95. He was given an opportunity to prepare his defence

and engage Civil Defence Counsel, if he so desired, in terms of Rules 23 and 24. On his exercising the option not to do so, a Defending Officer was appointed in terms of Rule 81. He was given an opportunity to object to the constitution of the FGCM and to the Prosecutor as well as the Defending Officer, in terms of Section 104 and Rule 35 also. No objection, in this behalf, was raised. The Members of the FGCM, the Prosecutor, the Defending Officer and the Interpreter were duly sworn in, as required by Rules 36 and 37. The charge was formally framed to which incidentally, the Convict pleaded guilty. The evidence was recorded on Oath. An opportunity to cross-examine was granted, which was availed off and an opportunity was also given to produce evidence in defence in terms of Rule 142, which was declined. He was also allowed to record his own statement and to address the Court in terms of Rule 143 wherein he admitted his guilt. The sentence was passed, which has been confirmed in accordance with Section 130 and the Appeal therefrom was dismissed by the Competent Authority. It appears that the provisions of the Pakistan Army Act and the Rules framed thereunder, applicable to the trial at hand have not been

violated. Even otherwise, the procedural defects, if any, would not vitiate the trial in view of Rule 132 of the Pakistan Army Act Rules, 1954 nor did the High Court have the jurisdiction to enter into the domain of the procedural irregularities in view of the judgment, reported as Mrs. Shahida Zahir Abbasi and 4 others (*supra*), especially as no prejudice appears to have been caused to the Convict nor any such prejudice has been pointed out by the learned counsel or specifically pleaded before the High Court.

The contentions of the learned counsel with regard to the arrest and detention of the Convict are of little consequence and do not vitiate the trial by the FGCM, as has been held by this Court in the judgment, reported as Mrs. Shahida Zahir Abbasi and 4 others (*supra*).

105. The extraordinary circumstances necessitating the enactment of the 21st Constitutional Amendment Act and the Pakistan Army (Amendment) Act, 2015 are articulated in the Preambles thereof. The nature of the offence, the commission whereof the Convict in the instant case was accused is exactly the “mischief” sought to be suppressed by the aforesaid Enactments.

The selection of the instant case for trial by the FGCM reflects the due fulfillment of the mandate and purpose of the law. The learned counsel for the Petitioner was unable to make out even the semblance of a case that the selection process in this behalf was tainted with *mala fides* of facts or law or otherwise was without jurisdiction or *coram non judice*.

106. In view of the above, the Convict was subject to the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, and liable to be tried thereunder and the offence was also triable by the FGCM, hence, the proceedings are not without jurisdiction. No *mala fides* of fact were pleaded or proved on record. The conviction did not suffer from *coram non judice*. No case of malice in law has been made out. Consequently, no ground for interference with the impugned Order dated 12.05.2016 of the Lahore High Court, Bahawalpur Bench, has been made out. Accordingly, this Civil Petition for Leave to Appeal No.842 of 2016, being without merit is liable to be dismissed.

107. Civil Petition for Leave to Appeal No.3331 of 2015, arises from the conviction and sentence awarded

to a civilian Haider Ali alias Asmatullah (Convict) son of Zahir Shah by a FGCM, convened under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015. Haider Ali was accused of the offences of being Member of a known religiously motivated terrorist organization, who, alongwith others, attacked the Armed Forces of Pakistan, causing the death of Army personnel. He was also accused separately of kidnapping, attacking and causing the death of civilians and the officials of the Law Enforcement Agencies and for abetment in the killing of the civilians. He was also charged with the possession of arms, ammunitions and explosives.

108. The learned counsel for the Petitioner at the very outset contended that the Convict Haider Ali was a minor at the time of the commission of the alleged offence, hence, could not be tried by the FGCM. The learned Deputy Attorney General for Pakistan not only disputed such assertion on the factual plane but also contended that the Pakistan Army Act, 1952, in view of Section 4 of the Pakistan Army (Amendment) Act, 2015, had an overriding effect over all the other laws. Be that as it may, the question of the age of Convict Haider Ali

was raised before the learned Peshawar High Court by the Petitioner. However, by way of the impugned judgment, the learned High Court was not satisfied that the Convict Haider Ali was a minor at any material point of time and understandably so, as the primary basis for such assertion was a Birth Certificate, purportedly pertaining to the Convict Haider Ali. The entry in the said Certificate regarding the birth of the Convict Haider Ali was inserted in the record on 05.08.2015, after the Writ Petition had been filed before the learned High Court and many decades after the alleged birth of the Convict Haider Ali. The other documents were private documents, having no evidentiary significance. We are not persuaded to interfere in the said findings.

109. The offences for which the Convict was charged were punishable under the ordinary law of the land triable by a Criminal Court, hence, constituted a "civil offence" in terms of Section 8(3) of the Pakistan Army Act, therefore, the offences were liable to be tried by the FGCM in view of Section 59 of the Pakistan Army Act, 1952. The offences for which the accused was charged fell within the purview of Section 2(1)(d)(iii) of the Pakistan Army Act, 1952, hence, in view of Section

2(1), the Convict, by operation of law was subject to the Pakistan Army Act. In the circumstances, the FGCM had the jurisdiction to try the Convict for the offences of which he was accused that too irrespective of the point of time when the offence was committed. It was also noticed that the Convict did not object to his trial by the FGCM, as is evident from the record of the proceedings. In the circumstances, the conviction and sentence awarded by the FGCM do not suffer from want of inherent jurisdiction.

110. The contention of the learned counsel for the Petitioner regarding the alleged lack of full access to the record is also misconceived as such access was given in terms of a specific Order passed by this Court. It has also been noticed that no application in terms of Rule 130 of the Pakistan Army Act Rules, 1954, was ever filed to the Competent Authority for the supply of copies of the proceedings of the FGCM at any point of time, not even when the matter was pending before the learned High Court or before this Court.

111. The Petitioner has neither pleaded nor proved on record with the requisite particularity that the Members of the FGCM or any of them had a personal

bias against the Convict or that the proceedings were conducted in bad faith for a collateral purpose. The record reveals that the Convict was given an opportunity to object to the Members of the FGCM but he did not raise any objection, in this behalf. In the circumstances, no case for *mala fides* of fact has been made out warranting interference by the learned High Court or by this Court.

112. The learned counsel for the Petitioner had contended that the Convict was not defended by a Civil Defence Counsel of his own choice before the FGCM. Reference, in this behalf, was made to Article 10(2) of the Constitution. The Convict was tried under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, which as per the judgment of this Court, reported as District Bar Association, Rawalpindi (*supra*), was validly and effectively incorporated in the First Schedule of the Constitution, hence, the provisions of the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, in view of Article 8(3) of the Constitution, are immune from challenge on the ground of being in violation of the Fundamental Rights,

including those guaranteed by Articles 10 and 10-A. Furthermore, the record reveals that the Convict did not claim to be defended by a Civil Defence Counsel, therefore, a Defending Officer was appointed in accordance with Rule 81 of the Pakistan Army Act Rules, 1954. Such a course of action is in consonance with the law, as has been held by this Court in the case of Muhammad Mushtaq and another (*supra*).

The contentions of the learned counsel with regard to the arrest and detention of the Convict are of little consequence and do not vitiate the trial by the FGCM, as has been held by this Court in the judgment, reported as Mrs. Shahida Zahir Abbasi and 4 others (*supra*).

113. Since the Convict was accused of civil offence and tried under Section 59 of the Pakistan Army Act, 1952, as amended, therefore, Section 91 of the Pakistan Army Act, was not applicable, as a consequence whereof, the period of time between the date of occurrence and the date of the trial has no material effect. The examination of the record of the FGCM reveals that all the procedural requirements, more particularly, the Rules that ensure a fair trial and

preclude prejudice to the accused were complied with. Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. The nature of the charge was explained to him. An interpreter was also appointed. The Convict chose not to engage a Civil Defence Counsel, hence, a Defending Officer was appointed. He was granted an opportunity to object to the Members of the FGCM, the Defending Officer and the Interpreter, who were all sworn in as required by the law. The charge was formally framed to which the Convict pleaded guilty, which was altered to not guilty. The prosecution witnesses were examined on Oath and subjected to cross-examination and an opportunity was given to produce evidence in his defence, which was declined. The Convict was allowed to make a statement, which was so recorded and the Convict again admitted his guilt. The sentence has been confirmed in accordance with the law.

114. Though the learned counsel for the Petitioner has not been able to point out any deviation from the Pakistan Army Act or the Rules framed thereunder in the conduct of the trial, yet, even otherwise, irregularity

if any, stood cured in view of Rule 132 of the Pakistan Army Act Rules, 1954, and furthermore, the matter of procedural irregularities is beyond the scope of the Constitutional jurisdiction of the learned High Court, as has been stated above.

115. It is settled law that while exercising the power of Judicial Review in the matters of this nature neither the learned High Court nor this Court can sit in appeal over the conclusion drawn by the FGCM or analyze the evidence produced before it. However, we have examined the record in the instant case, the Convict pleaded guilty to the charges framed against him. This was altered to not guilty in accordance with the law. The evidence, *inter alia*, included a judicial confession, which was proved by the learned Judicial Magistrate, who recorded the same and appeared as a witness before the FGCM. The Convict never retracted from his confession. The Convict, on his own, in his statement before the FGCM yet again admitted his guilt. In the circumstances, it cannot be said that the conclusions drawn by the FGCM are based on no evidence or insufficient evidence or are otherwise improbable or blatantly unreasonable. The learned counsel for the Petitioner has not been able to

persuade us that the conclusions drawn, conviction recorded and sentence passed are not as countenanced by the law. Hence, no case of malice in law has been made out.

116. The examination of the record also reveals that the FGCM was constituted and convened in accordance with the provisions of the Pakistan Army Act, 1952, and the Rules framed thereunder, hence, the conviction and sentence do not appear to be *coram non judice*.

117. In short, it appears from the record that the Convict being subject to the Pakistan Army Act was tried for the offences triable by the FGCM, which was convened and constituted in accordance with the law. No personal bias of any Member of the FGCM against the Convict has been established nor that the proceedings were *mala fides* or conducted in bad faith for a collateral purpose. The FGCM was validly convened and constituted, hence, the conviction and sentence was not *coram non judice*. It does not appear to be a case of no evidence or insufficient evidence nor the conclusions drawn are wholly unreasonable and improbable. No illegality in the conduct of the trial exists. The Law and

the Rules, more particularly, those protecting the rights of the accused were adhered to.

118. The extraordinary circumstances necessitating the enactment of the 21st Constitutional Amendment Act and the Pakistan Army (Amendment) Act, 2015 are articulated in the Preambles thereof. The nature of the offence, the commission whereof the Convict in the instant case was accused is exactly the “mischief” sought to be suppressed by the aforesaid Enactments. The selection of the instant case for trial by the FGCM reflects the due fulfillment of the mandate and purpose of the law. The learned counsel for the Petitioner was unable to make out even the semblance of a case that the selection process in this behalf was tainted with *mala fides* of facts or law or even otherwise was without jurisdiction or *coram non iudice*.

119. In this view of the matter, we find ourselves unable to interfere with the impugned judgment dated 14.10.2015 of the learned Peshawar High Court dismissing the Constitutional Petition i.e. Writ Petition No.2915 of 2015, challenging the conviction and sentence of the Convict.

120. Civil Petition for Leave to Appeal No.3332 of 2015, arises from the conviction and sentence awarded to a Civilian Qari Zahir Gul alias Qari (Convict) son of Rehmat Gul by a FGCM, convened under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015. Qari Zahir Gul was accused of the offences of being a Member of a known religiously motivated terrorist organization, who attacked the Armed Forces of Pakistan, causing the injuries to Army personnel. He was also accused separately of abducting persons for ransom and causing the death of civilians. He was also charged with receiving funds from local sources for illegal activities.

121. The offences for which the Convict was charged were punishable under the ordinary law of the land triable by a Criminal Court, hence, constituted a "civil offence" in terms of Section 8(3), therefore, the offences were liable to be tried by the FGCM in view of Section 59 of the Pakistan Army Act, 1952. The offences for which the accused was charged fell within the purview of Section 2(1)(d)(iii) of the Pakistan Army Act, 1952, hence, in view of Section 2(1), the Convict by operation of law was subject to the Pakistan Army Act.

In the circumstances, the FGCM had the jurisdiction to try the Convict for the offences of which he was accused, hence, the FGCM, was vested with the requisite jurisdiction, in this behalf, that too irrespective to the point of time when the offence was committed. It has also been noticed that the Convict did not object to his trial by the FGCM when afforded an opportunity to do so, as is evident from the record of the proceedings. In the circumstances, the conviction and sentence awarded by the FGCM do not suffer from want of inherent jurisdiction.

122. The examination of the record reveals that the FGCM was constituted and convened in accordance with the provisions of the Pakistan Army Act and the Rules framed thereunder, hence, the conviction and sentence do not appear to be *coram non iudice*.

123. The contention of the learned counsel for the Petitioner regarding the alleged lack of full access to the record is also misconceived as such access was given in terms of the specific order passed by this Court. It has also been noticed that no application was ever filed to the Competent Authority for the supply of copies of the proceedings of the FGCM in terms of Rule 130 of the

Pakistan Army Act Rules, 1954, at any point of time, not even when the matter was pending before the learned High Court or before this Court.

124. The Petitioner has neither pleaded nor proved on record with the requisite particularity that the Members of the FGCM or any of them had a personal bias against the Convict or that the proceedings were taken in bad faith for a collateral purpose. The record reveals that the Convict was given an opportunity to object to the Members of the FGCM but he did not raise any such objection. In the circumstances, no case of *mala fides* of fact has been made out warranting interference by the learned High Court or by this Court.

125. The learned counsel for the Petitioner had argued that the Convict was not defended by a Civil Defence Counsel of his own choice before the FGCM. In this behalf, reference was made to the Article 10(2) of the Constitution. The Convict was tried under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, which, as per the judgment of this Court, reported as District Bar Association, Rawalpindi and others (*supra*), was validly and effectively incorporated in the First Schedule of the

Constitution, hence, in view of Article 8(3) of the Constitution, the provisions of the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, are immune from challenge on the ground of being in violation of the Fundamental Rights, including those guaranteed by Articles 10 and 10-A. Furthermore, the record reveals that the Convict did not seek to be defended by a Civil Defence Counsel, therefore, a Defending Officer was appointed in accordance with Rule 81 of the Pakistan Army Act Rules, 1954. Such a course of action is in accordance with the law, as has been held by this Court in the case of Muhammad Mushtaq and another (*supra*).

The contentions of the learned counsel with regard to the arrest and detention of the Convict too are of little significance and do not vitiate the trial by the FGCM, as has been held by this Court in the judgment, reported as Mrs. Shahida Zahir Abbasi and 4 others (*supra*).

126. Since the Convict was accused of civil offence and tried under Section 59 of the Pakistan Army Act, 1952, as amended, therefore, Section 91 of the Army Act, was not applicable, as a consequence whereof, the period between the date of the occurrence and the date

of the trial has no material effect. The examination of the record of the FGCM reveals that all the procedural requirements, more particularly, the Rules that ensure a fair trial and preclude prejudice to the accused were complied with. Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. The nature of the charge was explained to him. An interpreter was also appointed. The Convict chose not to engage a Civil Defence Counsel, hence, a Defending Officer was appointed. He was granted an opportunity to object to the Members of the FGCM, the Defending Officer and the Interpreter, who were all sworn in according to the law. The charge was formally framed to which the Convict pleaded guilty, which was altered to not guilty. The prosecution witnesses were examined on Oath and subjected to cross-examination and an opportunity was given to produce evidence in his defence, which was declined. The Convict was allowed to make a statement, which was so recorded and the Convict again admitted his guilt. The sentence has been confirmed in accordance with the law.

127. Though the learned counsel for the Petitioner has not been able to point out any deviation from the Pakistan Army Act or the Rules framed thereunder in the conduct of the trial, yet, even otherwise, irregularity if any, stood cured in view of Rule 132 of the Pakistan Army Act Rules, 1954, and even otherwise, the matter of procedural irregularities is beyond the scope of the Constitutional jurisdiction of the learned High Court, as has been stated above.

128. It is settled law that in the exercise of its jurisdiction in the instant cases neither the learned High Court nor this Court can sit in appeal over the conclusion drawn by the FGCM or analyze the evidence produced before it. However, we have scanned the record of evidence produced and proceedings conducted by the FGCM. The Convict pleaded guilty to the charges framed against him, which was altered to not guilty in accordance with the law. The evidence, *inter alia*, included a judicial confession, which was proved by the learned Judicial Magistrate who recorded the same and appeared as a witness before the FGCM. The Convict never retracted from his confession. The Convict on his own in his statement before the FGCM yet again

admitted his guilt. In the circumstances, it cannot be said that the conclusions drawn by the FGCM are based on no evidence or insufficient evidence or are otherwise improbable and unreasonable. The learned counsel for the Petitioner has not been able to persuade us that the conclusions drawn, conviction recorded and sentence passed are not as countenanced by law. Hence, no case of malice in law has been made out.

129. In short, it appears from the record that the Convict being subject to the Pakistan Army Act was tried for the offences triable by the FGCM, which was convened and constituted in accordance with the law. No personal bias by any Member of the FGCM against the Convict has been established nor that the proceedings conducted were *mala fides* or conducted in bad faith for a collateral purpose. It does not appear to be a case of no evidence or insufficient evidence. No illegality in the conduct of the trial exists. The Law and the Rules, more particularly, those protecting the rights of the accused were adhered to. No case of malice in law or *coram non judice* was made out.

130. The extraordinary circumstances necessitating the enactment of the 21st Constitutional Amendment Act

and the Pakistan Army (Amendment) Act, 2015 are articulated in the Preambles thereof. The nature of the offence, the commission whereof the Convict in the instant case was accused is exactly the “mischief” sought to be suppressed by the aforesaid Enactments. The selection of the instant case for trial by the FGCM reflects the due fulfillment of the mandate and purpose of the law. The learned counsel for the Petitioner was unable to make out even the semblance of a case that the selection process in this behalf was tainted with *mala fides* of facts or law or even otherwise was without jurisdiction or *coram non judice*.

131. In this view of the matter, we are not persuaded to interfere with the impugned judgment dated 14.10.2015 of the learned Peshawar High Court dismissing the Constitutional Petition i.e. Writ Petition No.2979 of 2015, challenging the conviction and sentence of the Convict.

132. Civil Petition for Leave to Appeal No.3674 of 2015, arises from the conviction and sentence awarded to a Civilian Ateeq-ur-Rehman (Convict) alias Usman son of Ali Rehman by a FGCM, convened under the Pakistan Army Act, 1952, as amended by the Pakistan

Army (Amendment) Act, 2015. Ateeq-ur-Rehman was accused of the offences of being Member of a known religiously motivated terrorist organization, who, alongwith others, attacked the Army personnel/ employees of a Security Organization through suicide bombers and Vehicle Borne Explosive Device (VBIED) and thereby caused death of Army personnel and civilian, and in the like manner attacking an Education Institution. He was also accused of providing funds to a terrorist organization.

133. The offences for which the Convict was charged were punishable under the ordinary law of the land triable by a Criminal Court, hence, constituted a "civil offence" in terms of Section 8(3), therefore, the offences were liable to be tried by the FGCM in view of Section 59 of the Pakistan Army Act, 1952. The offences for which the accused was charged fell within the purview of Section 2(1)(d)(iii) of the Pakistan Army Act, 1952, hence, in view of Section 2(1), the Convict by operation of law was subject to the Pakistan Army Act. In the circumstances, the FGCM had the jurisdiction to try the Convict for the offences of which he was accused that too irrespective of the point of time when the

offence was committed. It was also noticed that the Convict did not object to his trial by the FGCM, as is evident from the record of the proceedings. In the circumstances, the conviction and sentence awarded by the FGCM do not suffer from want of inherent jurisdiction.

134. The contention of the learned counsel for the Petitioner regarding alleged lack of full access to the record is also misconceived as such access was given in terms of the specific Order passed by this Court. It has also been noticed that no application in terms of Rule 130 of the Pakistan Army Act Rules, 1954, was ever filed with the Competent Authority for the supply of copies of the proceedings of the FGCM at any point of time, not even when the matter was pending before the learned High Court or before this Court.

135. The Petitioner has neither pleaded nor proved on record with the requisite particularity that the Members of the FGCM or any of them had a personal bias against the Convict or the proceedings were conducted in bad faith for a collateral purpose. The record reveals that the Convict was given an opportunity to object the Members of the FGCM but he did not raise

any such objection. In the circumstances, no case for *mala fides* of fact has been made out warranting interference by the learned High Court or by this Court.

136. The learned counsel for the Petitioner contended that the Convict was not defended by a Civil Defence Counsel of his own choice before the FGCM. In this behalf, reference was made to the Article 10(2) of the Constitution. The Convict was tried under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, which as per the judgment of this Court, reported as District Bar Association, Rawalpindi and others (*supra*) was validly and effectively incorporated in the First Schedule of the Constitution, hence, the provisions of the Pakistan Army Act, 1952, as amended by Pakistan Army (Amendment) Act, 2015, in view of Article 8(3) of the Constitution, are immune from challenge on the ground of being in violation of the Fundamental Rights, including those guaranteed by Articles 10 and 10-A. Furthermore, the record reveals that the Convict did not seek to be defended by a Civil Defence Counsel, therefore, a Defending Officer was appointed in accordance with Rule 81 of the Pakistan Army Act Rules, 1954. Such a

course of action is in consonance with the law, as has been held by this Court in the case of Muhammad Mushtaq and another (*supra*).

The contentions of the learned counsel with regard to the arrest and detention of the Convict are of little consequence and do not vitiate the trial by the FGCM, as has been held by this Court in the judgment, reported as Mrs. Shahida Zahir Abbasi and 4 others (*supra*).

137. Since the Convict was accused of civil offence and tried under Section 59 of the Pakistan Army Act, 1952, as amended, therefore, Section 91 of the Pakistan Army Act, was not applicable, as a consequence whereof, the period of time between the occurrence and the trial has no material effect. The examination of the record of the FGCM reveals that all the procedural requirements, more particularly, the Rules that ensure a fair trial and preclude prejudice to the accused were complied with. Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. The nature of the charge was explained to him. An interpreter was also appointed. The Convict chose not to engage a Civil

Defence Counsel thus a Defending Officer was appointed. He was granted an opportunity to object to the Members of the FGCM, the Defending Officer as well as the Interpreter, who were all duly sworn in. The charge was formally framed to which the Convict pleaded guilty. Such plea was altered to not guilty. The prosecution witnesses were examined on Oath and subjected to cross-examination and an opportunity was also given to produce evidence in defence, which was declined. The Convict was allowed to make a statement, which was so recorded and the Convict again admitted his guilt. The sentence has been confirmed in accordance with the law.

138. Though the learned counsel for the Petitioner has not been able to point out any deviation from the Pakistan Army Act or the Rules framed thereunder in the conduct of the trial, yet, even otherwise, irregularity if any, stood cured in view of Rule 132 of the Pakistan Army Act Rules, 1954, and even otherwise, the matter of procedural irregularities is beyond the scope of the Constitutional jurisdiction of the High Court, as has been stated above.

139. It is settled law that while exercising the power of Judicial Review in such like cases neither the learned High Court nor this Court can sit in appeal over the conclusion drawn by the FGCM or analyze the evidence produced before it. However, we have scanned the record in the instant case. The Convict pleaded guilty to the charges framed against him. This was altered to not guilty in accordance with law. The evidence, *inter alia*, includes a judicial confession, which was proved by the learned Judicial Magistrate, who recorded the same while appearing as a witness before the FGCM. The Convict never retracted from his confession. The Convict on his own in his statement before the FGCM yet again admitted his guilt. In the circumstances, it cannot be said that the conclusions drawn by the FGCM are based on no evidence or insufficient evidence or are otherwise improbable or unreasonable. The learned counsel for the Petitioner has not been able to persuade us that the conclusion drawn, conviction recorded and sentence passed are not as countenanced by the law. Hence, no case of malice in law has been made out.

140. The examination of the record reveals that the FGCM was constituted and convened in accordance with

the provisions of the Pakistan Army Act and the Rules framed thereunder, hence, the conviction and sentence do not appear to be *coram non judice*.

141. In short, it appears from the record that the Convict, being a subject to the Pakistan Army Act was tried for the offences triable by the FGCM, which was convened and constituted in accordance with the law. No personal bias of any Member of the FGCM against the Convict has been established nor that the proceedings were *mala fides* or conducted in bad faith for a collateral purpose. It does not appear to be a case of no evidence or insufficient evidence nor the conclusions drawn blatantly unreasonable or wholly improbable. No illegality in the conduct of the trial exists. The Law and the Rules, more particularly, those protecting the rights of the accused were adhered to. No case of malice in law or *coram non judice* has been made out.

142. The extraordinary circumstances necessitating the enactment of the 21st Constitutional Amendment Act and the Pakistan Army (Amendment) Act, 2015 are articulated in the Preambles thereof. The nature of the offence, the commission whereof the Convict in the

instant case was accused is exactly the “mischief” sought to be suppressed by the aforesaid Enactments. The selection of the instant case for trial by the FGCM reflects the due fulfillment of the mandate and purpose of the law. The learned counsel for the Petitioner was unable to make out even the semblance of a case that the selection process in this behalf was tainted with *mala fides* of facts or law or even otherwise was without jurisdiction or *coram non iudice*.

143. In this view of the matter, we are not persuaded to interfere with the impugned Order dated 09.12.2015 of the learned Peshawar High Court dismissing the Constitutional Petition i.e. Writ Petition No.3219-P of 2015, challenging the conviction and sentence of the Convict.

144. In Civil Petition for Leave to Appeal No.3777 of 2015, a Civilian Taj Muhammad alias Rizwan son of Alaf Khan, was convicted and sentenced by a FGCM, convened under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, for the offences on several counts of being a Member of a known religiously motivated terrorist organization and attacking, alongwith others, the Armed Forces of

Pakistan and Law Enforcement Agencies and thereby causing death of several soldiers and officials. He was also charged of abetting an attack on an Educational Institution and separately of causing death of civilians.

145. The offences for which the Convict was charged were punishable under the ordinary law of the land triable by a Criminal Court, hence, constituted a "civil offence" in terms of Section 8(3) of the Pakistan Army Act, therefore, the offences were liable to be tried by the FGCM in view of Section 59 of the Pakistan Army Act, 1952. The offences for which the accused was charged fell within the purview of Section 2(1)(d)(iii) of the Pakistan Army Act, 1952, hence, in view of Section 2(1), the Convict by operation of law was subject to the Pakistan Army Act. In the circumstances, the FGCM had the jurisdiction to try the Convict for the offences of which he was accused that too irrespective of the point of time when the offence was committed. It has also been noticed that the Convict did not object to his trial by the FGCM, as is evident from the record of the proceedings. In the circumstances, the conviction and sentence awarded by the FGCM do not suffer from want of inherent jurisdiction.

146. The examination of the record reveals that the FGCM was constituted and convened in accordance with the provisions of the Pakistan Army Act and the Rules framed thereunder, hence, the conviction and sentence do not appear to be *coram non iudice*.

147. The contention of the learned counsel for the Petitioner regarding the alleged lack of full access to the record is also misconceived as such access was given in terms of a specific Order passed by this Court. It has also been noticed that no application in terms of Rule 130 of the Pakistan Army Act Rules, 1954, was ever filed to the Competent Authority for the supply of copies of the proceedings of the FGCM at any point of time, not even when the matter was pending before the learned High Court or before this Court.

148. The Petitioner has neither pleaded nor proved on record with the requisite particularity that the Members of the FGCM or any of them had a personal bias against the Convict or the proceedings have been conducted in bad faith for a collateral purpose. The record reveals that the Convict was given an opportunity to object to the Members of the FGCM but he did not raise any such objection. In the circumstances, no case

for *mala fides* of fact has been made out warranting interference by the learned High Court or by this Court.

149. The learned counsel for the Petitioner contended that the Convict was not defended by a Civil Defence Counsel of his own choice before the FGCM. In this behalf, reference was made to the Article 10(2) of the Constitution. The Convict was tried under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, which as per the judgment of this Court, reported as District Bar Association, Rawalpindi (*supra*), was validly and effectively incorporated in the First Schedule of the Constitution, hence, the provisions of the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, in view of Article 8(3) of the Constitution, are immune from challenge on the ground of being in violation of the Fundamental Rights, including those guaranteed by Articles 10 and 10-A. Furthermore, the record reveals that the Convict did not seek to be defended by a Civil Defence Counsel, therefore, a Defending Officer was appointed in accordance with Rule 81 of the Pakistan Army Act Rules, 1954. Such a course of action is in consonance

with the law, as has been held by this Court in the case of Muhammad Mushtaq and another (*supra*).

The contentions of the learned counsel with regard to the arrest and detention of the Convict are of little consequence and do not vitiate the trial by the FGCM, as has been held by this Court in the judgment, reported as Mrs. Shahida Zahir Abbasi and 4 others (*supra*).

150. Since the Convict was accused of civil offence and tried under Section 59 of the Pakistan Army Act, 1952, as amended, therefore, Section 91 of the Pakistan Army Act, was not applicable, as a consequence whereof, the period between the date of occurrence and the trial is of no material effect. The examination of the record of the FGCM reveals that all the procedural requirements, more particularly, the Rules that ensure a fair trial and preclude prejudice to the accused were complied with. Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. The nature of the charge was explained to him. An Interpreter was also appointed. The Convict chose not to engage a Civil Defence Counsel thus a Defending Officer was

appointed. He was granted an opportunity to object to the Members of the FGCM, the Defending Officer and the Interpreter, who were all duly sworn in. The charge was formally framed to which the Convict pleaded guilty. The plea was altered to not guilty. The prosecution witnesses were examined on Oath and subjected to cross-examination and an opportunity was given to produce evidence in his defence, which was declined. The Convict was allowed to make a statement, which was so recorded and the Convict again admitted his guilt. The sentence has been confirmed in accordance with the law.

151. Though the learned counsel for the Petitioner has not been able to point out any deviation from the Pakistan Army Act or the Rules framed thereunder in the conduct of the trial, yet, even otherwise, irregularity if any, stood cured in view of Rule 132 of the Pakistan Army Act Rules, 1954, and furthermore, the matter of procedural irregularities is beyond the scope of the Constitutional jurisdiction of the High Court, as has been stated above.

152. It is settled law that in exercise of the jurisdiction invoked neither the learned High Court nor

this Court can sit in appeal over the conclusion drawn by the FGCM or analyze the evidence produced before it. However, we have scanned the record in the instant case. The Convict pleaded guilty to the charges framed against him. The plea was altered to not guilty in accordance with the law. The evidence, *inter alia*, included a judicial confession, which was proved by the learned Judicial Magistrate, who recorded the same and appeared as a witness before the FGCM. The Convict never retracted from his confession. The Convict on his own in his statement before the FGCM yet again admitted his guilt. In the circumstances, it cannot be said that the conclusions drawn by the FGCM are based on no evidence or insufficient evidence or are otherwise improbable and wholly unreasonable. The learned counsel for the Petitioner has not been able to persuade us that the conclusion drawn, conviction recorded and sentence passed are not as countenanced by law. Hence, no case of malice in law has been made out.

153. In short, it appears from the record that the Convict, being subject to the Pakistan Army Act was tried for an offence triable by the FGCM, which was convened and constituted in accordance with the law.

No personal bias of any Member of the FGCM against the Convict has been established nor the proceedings were *mala fide* or conducted in bad faith for a collateral purpose. It does not appear to be a case of no evidence or insufficient evidence nor the conclusions drawn are blatantly unreasonable or improbable. No illegality in the conduct of the trial exists. The Law and the Rules, more particularly, those protecting the rights of the accused were adhered to. No case of malice in law or *coram non judice* was made out.

154. The extraordinary circumstances necessitating the enactment of the 21st Constitutional Amendment Act and the Pakistan Army (Amendment) Act, 2015 are articulated in the Preambles thereof. The nature of the offence, the commission whereof the Convict in the instant case was accused is exactly the “mischief” sought to be suppressed by the aforesaid Enactments. The selection of the instant case for trial by the FGCM reflects the due fulfillment of the mandate and purpose of the law. The learned counsel for the Petitioner was unable to make out even the semblance of a case that the selection process in this behalf was tainted with

mala fides of facts or law or even otherwise was without jurisdiction or *coram non iudice*.

155. In this view of the matter, we are not persuaded to interfere with the impugned Order of the learned Peshawar High Court dated 09.12.2015, dismissing the Constitution Petition challenging the conviction and sentence of the Convict.

156. Civil Petition for Leave to Appeal No.06 of 2016, arises from the conviction and sentence awarded to a Civilian Qari Zubair Muhammad alias Ameer Sahib (Convict) son of Sakhi Muhammad by a FGCM, convened under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015. Qari Zubair Muhammad was accused of the offences of being a Member of a known religiously motivated terrorist organization, who, alongwith others, attacked civilians and officials of the Law Enforcement Agencies, causing death and injuries. Qari Zubair Muhammad was also accused of using, alongwith others, Improvised Explosive Devices (IEDs), which resulted in the destruction of various shops. He was also accused of abetment in the use of explosives at a place of worship, causing the death and injuries to the Army personnel as

well as the civilians. He was also charged with the possession of arms, ammunitions and explosives.

157. The offences for which the Convict was charged were punishable under the ordinary law of the land triable by a Criminal Court, hence, constituted a "civil offence" in terms of sub-section (3) of Section 8 of the Pakistan Army Act, therefore, the offences were liable to be tried by the FGCM in view of Section 59 of the Pakistan Army Act, 1952. The offences for which the accused was charged fell within the purview of Section 2(1)(d)(iii) of the Pakistan Army Act, 1952, hence, in view of Section 2(1), the Convict by operation of law was subject to the Pakistan Army Act. In the circumstances, the FGCM had the jurisdiction to try the Convict for the offences of which he was accused that too irrespective of the point of time the offence was committed. It has also been noticed that the Convict did not object to his trial by the FGCM, as is evident from the record of the proceedings. In the circumstances, the conviction and sentence awarded by the FGCM do not suffer from want of inherent jurisdiction.

158. The contention of the learned counsel for the Petitioner regarding the alleged lack of full access to the

record is also misconceived as such access in this case was also given in terms of a specific Order passed by this Court. It has also been noticed that no application in terms of Rule 130 of the Pakistan Army Act Rules, 1954, was ever filed to the Competent Authority for the supply of copies of the proceedings of the FGCM at any point of time, not even when the matter was pending before the learned High Court or before this Court.

159. The Petitioner has neither pleaded nor proved on record with the requisite particularity that the Members of the FGCM or any of them had a personal bias against the Convict or the proceedings have been conducted in bad faith for a collateral purpose. The record reveals that the Convict was afforded an opportunity to object to the Members of the FGCM but he did not raise any such objection. In the circumstances, no case for *mala fides* of fact has been made out warranting interference by the learned High Court or by this Court.

160. The learned counsel for the Petitioner contended that the Convict was not defended by a Civil Defence Counsel of his own choice before the FGCM. In this behalf, reference was made to the Article 10(2) of

the Constitution. The Convict was tried under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, which as per the judgment of this Court, reported as District Bar Association, Rawalpindi and others (*supra*), was validly and effectively incorporated in the First Schedule of the Constitution, hence, in view of the Article 8(3) of the Constitution the provisions of the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, are immune from challenge on the ground of being in violation of the Fundamental Rights, including those guaranteed by Articles 10 and 10-A. Furthermore, the record reveals that the Convict did not seek to be defended by a Civil Defence Counsel, therefore, a Defending Officer was appointed in accordance with Rule 81 of the Pakistan Army Act Rules, 1954. Such a course of action is in consonance with the law, as has been held by this Court in the case of Muhammad Mushtaq and another. (*supra*).

The contentions of the learned counsel with regard to the arrest and detention of the Convict are of little consequence and do not vitiate the trial by the FGCM,

as has been held by this Court in the case of Mrs. Shahida Zahir Abbas and 4 others (*supra*).

161. Since the Convict was accused of civil offence and tried under Section 59 of the Pakistan Army Act, 1952, as amended, therefore, Section 91 of the Pakistan Army Act, was not applicable, as a consequence whereof, the period between the date of occurrence and the trial is of no material effect. The examination of the record of the FGCM reveals that all the procedural requirements, more particularly, the Rules that ensure a fair trial and preclude prejudice to the accused were complied with. Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. The nature of the charge was explained to him. An Interpreter was also appointed. The Convict chose not to engage a Civil Defence Counsel thus a Defending Officer was appointed. He was granted an opportunity to object to the Members of the FGCM, the Defending Officer and the Interpreter, who were all duly sworn in. The charge was formally framed to which the Convict pleaded guilty. The plea was altered to not guilty. The prosecution witnesses were examined on Oath and subjected to

cross-examination and an opportunity was given to produce evidence in his defence, which was declined. The Convict was allowed to make a statement, which was so recorded and the Convict again admitted his guilt. The sentence has been confirmed in accordance with the law.

162. Though the learned counsel for the Petitioner has not been able to point out any deviation from the Pakistan Army Act or the Rules framed thereunder in the conduct of the trial, even otherwise, irregularity if any, stood cured in view of Rule 132 of the Pakistan Army Rules Act, 1954, and furthermore, the matter of procedural irregularities is beyond the scope of the Constitutional jurisdiction of the High Court, as has been stated above.

163. It is now settled law that in exercise of the jurisdiction invoked neither the learned High Court nor this Court can sit in appeal over the conclusion drawn by the FGCM or analyze the evidence produced before it. However, we have scanned the record in the instant case. The Convict pleaded guilty to the charges framed against him. The plea was altered to not guilty in accordance with the law. The evidence, *inter alia*,

included a judicial confession, which was proved by the learned Judicial Magistrate, who recorded the same and appeared as a witness before the FGCM. The Convict never retracted from his confession. The Convict in his statement before the FGCM yet again admitted his guilt. In the circumstances, it cannot be said that the conclusions drawn by the FGCM are based on no evidence or insufficient evidence or are otherwise wholly unreasonable and improbable. The learned counsel for the Petitioner has not been able to persuade us that the conclusion drawn, conviction recorded and sentence passed are not as countenanced by the law. Hence, no case of malice in law has been made out.

164. The examination of the record reveals that the FGCM was constituted and convened in accordance with the provisions of the Pakistan Army Act and the Rules framed thereunder. No violation of the law, in this behalf, was pointed out at the bar. Hence, the conviction and sentence do not appear to be *coram non judice*.

165. In short, it appears from the record that the Convict, being subject to the Pakistan Army Act was tried for the offences triable by the FGCM, which was convened and constituted in accordance with the law.

No personal bias of any Member of the FGCM against the Convict has been established nor that the proceedings conducted were *mala fide* or conducted in bad faith for a collateral purpose. It does not appear to be a case of no evidence or insufficient evidence nor the conclusions drawn blatantly unreasonable or improbable. No illegality in the conduct of the trial exists. The Law and the Rules, more particularly, those protecting the rights of the accused were adhered to. No case of malice in law or *coram non judice* has been made out.

166. The extraordinary circumstances necessitating the enactment of the 21st Constitutional Amendment Act and the Pakistan Army (Amendment) Act, 2015 are articulated in the Preambles thereof. The nature of the offence, the commission whereof the Convict in the instant case was accused is exactly the “mischief” sought to be suppressed by the aforesaid Enactments. The selection of the instant case for trial by the FGCM reflects the due fulfillment of the mandate and purpose of the law. The learned counsel for the Petitioner was unable to make out even the semblance of a case that the selection process in this behalf was tainted with

mala fides of facts or law or even otherwise was without jurisdiction or *coram non iudice*.

167. In this view of the matter, we are not persuaded to interfere with the impugned Order dated 09.12.2015 of the learned Peshawar High Court dismissing the Constitutional Petition i.e. Writ Petition No.4019-P of 2015, challenging the conviction and sentence of the Convict.

168. The subject matter of Civil Petition for Leave to Appeal No.32 of 2016, is the conviction and sentence awarded to a Civilian namely Jameel ur Rehman (Convict) son of Sher Rehman by a FGCM, convened and constituted under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015. Jameel ur Rehman was accused of the offences of being a Member of a known religiously motivated terrorist organization and attacking the Armed Forces of Pakistan, causing death and injuries to Army personnel. He was also accused of kidnapping the officials of the Law Enforcement Agencies and further causing death and injuries to civilians and abetting in use of explosive.

169. The offences for which the Convict was charged were punishable under the ordinary law of the

land triable by a Criminal Court, hence, constituted a "civil offence" in terms of Section 8(3) of the Pakistan Army Act, therefore, the offences were liable to be tried by the FGCM in view of Section 59 of the Pakistan Army Act, 1952. The offences for which the accused was charged fell within the purview of Section 2(1)(d)(iii) of the Pakistan Army Act, 1952, hence, in view of Section 2(1), the Convict by operation of law was subject to the Pakistan Army Act. In the circumstances, the FGCM had the jurisdiction to try the Convict for the offences of which he was accused that too irrespective of the point of time when the offence was committed. It has also been noticed that the Convict did not object to his trial by the FGCM, as is evident from the record of the proceedings. In the circumstances, the conviction and sentence awarded by the FGCM do not suffer from want of inherent jurisdiction.

170. The contention of the learned counsel for the Petitioner regarding the alleged lack of full access to the record is also misconceived as such access was granted to the learned counsel for the Petitioner in terms of the specific Order passed by this Court. It has also been noticed that no application in terms of Rule 130 of the

Pakistan Army Act Rules, was ever filed to the Competent Authority for the supply of copies of the proceedings of the FGCM 1954 at any point of time, not even when the matter was pending before the learned High Court or before this Court.

171. The examination of the record reveals that the FGCM was constituted and convened in accordance with the provisions of the Pakistan Army Act and the Rules framed thereunder, hence, the conviction and sentence do not appear to be *coram non judice*.

172. The Petitioner has neither pleaded nor proved on record with the requisite particularity that the Members of the FGCM or any of them had a personal bias against the Convict or the proceedings were taken in bad faith for a collateral purpose. The record reveals that the Convict was given an opportunity to object to the Members of the FGCM but he did not raise any such objection. In the circumstances, no case for *mala fides* of fact has been made out warranting interference by the learned High Court or by this Court.

173. The learned counsel for the Petitioner had further argued that the Convict was not defended by a Civil Defence Counsel of his own choice before the

FGCM. In this behalf, reference was made to Article 10(2) of the Constitution. The Convict was tried under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, which as per the judgment of this Court, reported as District Bar Association, Rawalpindi and others (*supra*), was validly and effectively incorporated in the First Schedule of the Constitution, hence, in view of the Article 8(3) of the Constitution, the provisions of the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, are immune from challenge on the ground of being in violation of the Fundamental Rights, including those guaranteed by Articles 10 and 10-A. Furthermore, the record reveals that the Convict did not seek to be defended by a Civil Defence Counsel, therefore, a Defending Officer was appointed in accordance with Rule 81 of the Pakistan Army Act Rules, 1954. Such a course of action is in consonance with the law, as has been held by this Court in the case of Muhammad Mushtaq and another (*Supra*).

The contentions of the learned counsel with regard to the arrest and detention of the Convict too are of little significance and do not vitiate the trial by the FGCM, as

has been held by this Court in the judgment, reported as Mrs. Shahida Zahir Abbasi and 4 others (*supra*).

174. Since the Convict was accused of civil offence and tried under Section 59 of the Pakistan Army Act, 1952, as amended, therefore Section 91 of the Pakistan Army Act, was not applicable, as a consequence whereof, the period between the date of occurrence and the date of trial has no material effect. The examination of the record of the FGCM reveals that all the procedural requirements, more particularly, the Rules that ensure a fair trial and preclude prejudice to the accused were complied with. Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. The nature of the charge was explained to him. An Interpreter was also appointed. The Convict chose not to engage a Civil Defence Counsel, hence, a Defending Officer was appointed. He was granted an opportunity to object to the Members of the FGCM, the Defending Officer and the Interpreter, who were all duly sworn in. The charge was formally framed to which the Convict pleaded guilty, which was altered to not guilty. The prosecution witnesses were examined on Oath and subjected to

cross-examination and an opportunity was given to produce evidence in his defence, which was declined. The Convict was allowed to make a statement, which was so recorded and the Convict again admitted his guilt. The sentence has been confirmed in accordance with the law.

175. Though the learned counsel for the Petitioner has not been able to point out any deviation from the Pakistan Army Act or the Rules framed thereunder in the conduct of the trial, yet, even otherwise, irregularity if any, stood cured in view of Rule 132 of the Pakistan Army Act Rules, 1954 and, furthermore, the matter of procedural irregularities is beyond the scope of the Constitutional jurisdiction of the High Court, as has been stated above.

176. It is now settled law that in exercise of its jurisdiction in the instant case neither the learned High Court nor this Court can sit in appeal over the conclusion drawn by the FGCM or analyze the evidence produced before it. However, we have scanned the record of evidence produced and proceedings conducted by the FGCM. The Convict pleaded guilty to the charges framed against him, which was altered to not guilty in

accordance with the law. The evidence, *inter alia*, included a judicial confession, which was proved by the learned Judicial Magistrate, who recorded the same and appeared as a witness before the FGCM. The Convict never retracted from his confession. The Convict on his own in his statement before the FGCM yet again admitted his guilt. In the circumstances, it cannot be said that the conclusions drawn by the FGCM are based on no evidence or insufficient evidence or are otherwise unreasonable and improbable. The learned counsel for the Petitioner has not been able to persuade us that the conclusion drawn, conviction recorded and sentence passed are not as countenanced by law. Hence, no case of malice in law has been made out.

177. In short, it appears from the record that the Convict, being subject to the Pakistan Army Act was tried for the offences triable by the FGCM, which convened and constituted in accordance with the law. No personal bias by any Member of the FGCM against the Convict has been established nor that the proceedings conducted were *mala fide* or conducted in bad faith for a collateral purpose. It does not appear to be a case of no evidence or insufficient evidence. No

illegality in the conduct of the trial exists. The Law and the Rules, more particularly, those protecting the rights of the accused were adhered to.

178. The extraordinary circumstances necessitating the enactment of the 21st Constitutional Amendment Act and the Pakistan Army (Amendment) Act, 2015 are articulated in the Preambles thereof. The nature of the offence, the commission whereof the Convict in the instant case was accused is exactly the “mischief” sought to be suppressed by the aforesaid Enactments. The selection of the instant case for trial by the FGCM reflects the due fulfillment of the mandate and purpose of the law. The learned counsel for the Petitioner was unable to make out even the semblance of a case that the selection process in this behalf was tainted with *mala fides* of facts or law or even otherwise was without jurisdiction or *coram non judice*.

179. In this view of the matter, we are not persuaded to interfere with the impugned Order of the learned Peshawar High Court dated 09.12.2015, dismissing the Constitutional Petition i.e. Writ Petition (HCP) No.3878-P of 2015, challenging the conviction and sentence of the Convict.

180. In Civil Petition for Leave to Appeal No.211 of 2016, a Civilian Aslam Khan (Convict) son of Rozi Khan was convicted and sentenced by a FGCM convened and constituted under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, for the offences of being a Member of a known religiously motivated terrorist organization and attacking, alongwith others, the officials of the Law Enforcement Agencies and causing the death and injuries to them. He was separately accused of attacking and causing the death and injuries to civilians. The Convict was charged with six separate offences. He pleaded guilty to all of such charges. However, such pleas were altered to not guilty by operation of the law. After recording of evidence, the Convict was found not guilty in respect of two of such charges, both pertaining to causing the death and injuries to civilians. However, he was found guilty of the remaining four charges.

181. The offences for which the Convict was charged were punishable under the ordinary law of the land triable by a Criminal Court, hence, constituted a "civil offence" in terms of Section 8(3), therefore, the offences were liable to be tried by the FGCM in view of

Section 59 of the Pakistan Army Act, 1952. The offences for which the accused was charged, fell within the purview of Section 2(1)(d)(iii) of the Pakistan Army Act, 1952, hence, in view of Section 2(1), the Convict by operation of law was subject to the Pakistan Army Act. In the circumstances, the FGCM had the jurisdiction to try the Convict for the offences of which he was accused that too irrespective of the point of time the offence was committed. It has also been noticed that the Convict did not object to his trial by the FGCM, as is evident from the record of the proceedings. In the circumstances, the conviction and sentence awarded by the FGCM do not suffer from want of inherent jurisdiction.

182. The contention of the learned counsel for the Petitioner regarding the alleged lack of full access to the record is also misconceived as such access was given in terms of a specific Order passed by this Court. It has also been noticed that no application in terms of Rule 130 of the Pakistan Army Act Rules, 1954, was ever made to the Competent Authority for the supply of copies of the proceedings of the FGCM at any point of time, not even when the matter was pending before the learned High Court or before this Court.

183. The Petitioner has neither pleaded nor proved on record with the requisite particularity that the Members of the FGCM or any of them had a personal bias against the Convict or the proceedings were taken in bad faith for a collateral purpose. The record reveals that the Convict was given an opportunity to object to the Members of the FGCM but he did not raise any such objection. In the circumstances, no case for *mala fides* of fact has been made out warranting interference by the learned High Court or by this Court.

184. The learned counsel for the Petitioner had argued that the Convict was not defended by a Civil Defence Counsel of his own choice before the FGCM. In this behalf, reference was made to the Article 10(2) of the Constitution. The Convict was tried under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, which as per the judgment of this Court, reported as District Bar Association, Rawalpindi and others (*supra*) was validly and effectively incorporated in the First Schedule of the Constitution, hence, the provisions of the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, in view of the Article 8(3) of the

Constitution, are immune from challenge on the ground of being in violation of the Fundamental Rights, including those guaranteed by Articles 10 and 10-A. Furthermore, the record reveals that the Convict did not seek to be defended by a Civil Defence Counsel, therefore, a Defending Officer was appointed in accordance with Rule 81 of the Pakistan Army Act Rules, 1954. Such a course of action is in consonance with the law, as has been held by this Court in the case of Muhammad Mushtaq and another (*supra*).

185. Since the Convict was accused of civil offence and tried under Section 59 of the Pakistan Army Act, 1952, as amended, therefore, Section 91 of the Pakistan Army Act, was not applicable, as a consequence whereof, the period between the date of the occurrence and the date of the trial has no material effect. The examination of the record of the FGCM reveals that all the procedural requirements, more particularly, the Rules that ensure a fair trial and preclude prejudice to the accused were complied with. Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. The nature of the charge was explained to him. An

interpreter was also appointed. The Convict chose not to engage a Civil Defence Counsel, hence, a Defending Officer was appointed. He was granted an opportunity to object to the Members of the FGCM, the Defending Officer as well as the Interpreter, who were all duly sworn in. The charge was formally framed to which the Convict pleaded guilty. Such plea was altered to not guilty. The prosecution witnesses were examined on Oath and subjected to cross-examination and an opportunity was granted to produce evidence in defence, which was declined. The Convict was allowed to make a statement, which was so recorded and the Convict again admitted his guilt. The sentence has been confirmed in accordance with the law.

The contentions of the learned counsel with regard to the arrest and detention of the Convict too are of little significance and do not vitiate the trial by the FGCM, as has been held by this Court in the judgment, reported as Mrs. Shahida Zahir Abbasi and 4 others (*supra*).

186. Though the learned counsel for the Petitioner has not been able to point out any deviation from the Pakistan Army Act or the Rules framed thereunder in the conduct of the trial, yet, even otherwise, irregularity

if any, stood cured in view of Rule 132 of the Pakistan Army Act Rules, 1954 and, even otherwise, the matter of procedural irregularities is beyond the scope of the Constitutional jurisdiction of the High Court, as has been stated above.

187. It is settled law that in exercise of the jurisdiction in the instant case neither the learned High Court nor this Court can sit in appeal over the conclusion drawn by the FGCM or analyze the evidence produced before it. However, we have scanned the record of the evidence and proceedings conducted by the FGCM. The Convict pleaded guilty to the charges framed against him, which was altered to not guilty in accordance with the law. The evidence, *inter alia*, included a judicial confession, which was proved by the learned Judicial Magistrate, who recorded the same and appeared as a witness before the FGCM. The Convict never retracted from his confession. The Convict on his own in his statement before the FGCM yet again admitted his guilt. In the circumstances, it cannot be said that the conclusions drawn by the FGCM are based on no evidence or insufficient evidence nor even otherwise, improbable and unreasonable. The learned

counsel for the Petitioner has not been able to persuade us that the conclusion drawn, conviction recorded and sentence passed are not as countenanced by law. Hence, no case of malice in law has been made out.

188. The examination of the record reveals that the FGCM was constituted and convened in accordance with the provisions of the Pakistan Army Act and the Rules framed thereunder, hence, the conviction and sentence do not appear to be *coram non judice*.

189. In short, it appears from the record that the Convict, being subject to the Pakistan Army Act was tried for the offences triable by the FGCM, which was convened and constituted in accordance with the law. No personal bias of any Member of the FGCM against the Convict has been established nor that the proceedings were *mala fides* or conducted in bad faith for a collateral purpose. It does not appear to be a case of no evidence or insufficient evidence nor the conclusions drawn blatantly unreasonable or wholly improbable. No illegality in the conduct of the trial exists. The Law and the Rules, more particularly, those protecting the rights of the accused were adhered to. No case of malice in law or *coram non judice* was made out.

190. The extraordinary circumstances necessitating the enactment of the 21st Constitutional Amendment Act and the Pakistan Army (Amendment) Act, 2015 are articulated in the Preambles thereof. The nature of the offence, the commission whereof the Convict in the instant case was accused is exactly the “mischief” sought to be suppressed by the aforesaid Enactments. The selection of the instant case for trial by the FGCM reflects the due fulfillment of the mandate and purpose of the law. The learned counsel for the Petitioner was unable to make out even the semblance of a case that the selection process in this behalf was tainted with *mala fides* of facts or law or even otherwise was without jurisdiction or *coram non judice*.

191. In this view of the matter, we are not persuaded to interfere with the impugned Order dated 23.12.2015 of the learned Peshawar High Court, dismissing the Constitutional Petition i.e. Writ Petition No.4433-P of 2015, challenging the conviction and sentence of the Convict.

192. Civil Petition for Leave to Appeal No.278 of 2016, arises from the conviction and sentence awarded to a Civilian Muhammad Ghauri (Convict) son of Javed

Iqbal by a FGCM, convened under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015. Muhammad Ghauri was accused of the offences of being a Member of a known religiously motivated terrorist organization, who, alongwith others, abetted in the use of explosives at a place of worship, causing the death and injuries to civilians. He was also accused of possession of arms, ammunitions and explosives.

193. The offences for which the Convict was charged were punishable under the ordinary law of the land triable by a Criminal Court, hence, constituted a "civil offence" in terms of Section 8(3) of the Pakistan Army Act, therefore, the offences were liable to be tried by the FGCM in view of Section 59 of the Pakistan Army Act, 1952. The offences for which the accused was charged fell within the purview of Section 2(1)(d)(iii) of the Pakistan Army Act, 1952, hence, in view of Section 2(1), the Convict by operation of law was subject to the Pakistan Army Act. In the circumstances, the FGCM had the jurisdiction to try the Convict for the offences of which he was accused that too irrespective of the point of time the offence was committed. It was also noticed

that the Convict did not object to his trial by the FGCM, as is evident from the record of the proceedings. In the circumstances, the conviction and sentence awarded by the FGCM do not suffer from want of inherent jurisdiction.

194. The examination of the record reveals that the FGCM was constituted and convened in accordance with the provisions of the Pakistan Army Act and the Rules framed thereunder, hence, the conviction and sentence do not appear to be *coram non judice*.

195. The contention of the learned counsel for the Petitioner regarding alleged lack of full access to the record is also misconceived as such access was given in the instant case too in terms of a specific Order passed by this Court. It has also been noticed that no application in terms of Rule 130 of the Pakistan Army Act Rules, 1954, was ever made to the Competent Authority for the supply of copies of the proceedings of the FGCM at any point of time, not even when the matter was pending before the learned High Court or before this Court.

196. The Petitioner has neither pleaded nor proved on record with the requisite particularity that the

Members of the FGCM or any of them had a personal bias against the Convict or the proceedings were conducted in bad faith for a collateral purpose. The record reveals that the Convict was given an opportunity to object to the Members of the FGCM but he did not raise any such objection. In the circumstances, no case for *mala fides* of fact has been made out warranting interference by the learned High Court or by this Court.

197. The learned counsel for the Petitioner next contended that the Convict was not defended by a Civil Defence Counsel of his own choice before the FGCM. In this behalf, reference was made to Article 10(2) of the Constitution. The Convict was tried under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, which as per the judgment of this Court, reported as District Bar Association, Rawalpindi and others (*supra*), was validly and effectively incorporated in the First Schedule of the Constitution, hence, in view of Article 8(3) of the Constitution, the provisions of the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, are immune from challenge on the ground of being in violation of the Fundamental Rights, included

those guaranteed by Articles 10 and 10-A. Furthermore, the record reveals that the Convict did not seek to be defended by a Civil Defence Counsel, therefore, a Defending Officer was appointed in accordance with Rule 81 of the Pakistan Army Act Rules, 1954. Such a course of action is in consonance with the law, as has been held by this Court in the case of Muhammad Mushtaq and another (*supra*).

The contentions of the learned counsel with regard to the arrest and detention of the Convict are of little consequence and do not vitiate the trial by the FGCM, as has been held by this Court in the judgment, reported as Mrs. Shahida Zahir Abbasi and 4 others (*supra*).

198. Since the Convict was accused of civil offence and tried under Section 59 of the Pakistan Army Act, 1952, as amended, therefore, Section 91 of the Pakistan Army Act, was not applicable, as a consequence whereof, the period of time between the occurrence and the trial has no material effect.

199. The examination of the record of the FGCM reveals that all the procedural requirements, more particularly, the Rules that ensure a fair trial and

preclude prejudice to the accused were complied with. Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. The nature of the charge was explained to him. An Interpreter was also appointed. The Convict chose not to engage a Civil Defence Counsel thus a Defending Officer was appointed. He was granted an opportunity to object to the Members of the FGCM, the Defending Officer and the Interpreter, who were all duly sworn in. The charge was formally framed to which the Convict pleaded guilty. Such plea was altered to not guilty. The prosecution witnesses were examined on Oath and subjected to cross-examination and an opportunity was given to produce evidence in defence, which was declined. The Convict was allowed to make a statement, which was so recorded and the Convict again admitted his guilt. The sentence has been confirmed in accordance with the law.

200. Though the learned counsel for the Petitioner has not been able to point out any deviation from the Pakistan Army Act or the Rules framed thereunder in the conduct of the trial, yet, even otherwise, irregularity if any, stood cured in view of Rule 132 of the Pakistan

Army Rules Act, 1954 and, even otherwise, the matter of procedural irregularities is beyond the scope of the Constitutional jurisdiction of the High Court, as has been stated above.

201. It is well settled law that while exercising the jurisdiction of Judicial Review in such like cases neither the learned High Court nor this Court can sit in appeal over the conclusion drawn by the FGCM or analyze the evidence produced before it. However, we have scanned the record in the instant case. The Convict pleaded guilty to the charges framed against him, which was altered to not guilty in accordance with law. The evidence, *inter alia*, included a judicial confession, which was proved by the learned Judicial Magistrate, who recorded the same while appearing as witness before the FGCM. The Convict never retracted from his confession. The Convict, on his own, in his statement before the FGCM, yet, again admitted his guilt. In the circumstances, it cannot be said that the conclusions drawn by the FGCM are based on no evidence or insufficient evidence or are otherwise, improbable or unreasonable. The learned counsel for the Petitioner has not been able to persuade us that the conclusion drawn,

conviction recorded and sentence passed are not as countenanced by law. Hence, no case of malice in law has been made out.

202. In short, it appears from the record that the Convict, being subject to the Pakistan Army Act was tried for the offences triable by the FGCM, which was convened and constituted in accordance with the law. No personal bias of any Member of the FGCM against the Convict has been established nor that the proceedings were *mala fide* or conducted in bad faith for a collateral purpose. It does not appear to be a case of no evidence or insufficient evidence nor the conclusions drawn are blatantly unreasonable or wholly improbable. No illegality in the conduct of the trial exists. The Law and the Rules, more particularly, those protecting the rights of the accused were adhered to. No case of malice in law or *coram non judice* was made out.

203. The extraordinary circumstances necessitating the enactment of the 21st Constitutional Amendment Act and the Pakistan Army (Amendment) Act, 2015 are articulated in the Preambles thereof. The nature of the offence, the commission whereof the Convict in the instant case was accused is exactly the “mischief”

sought to be suppressed by the aforesaid Enactments. The selection of the instant case for trial by the FGCM reflects the due fulfillment of the mandate and purpose of the law. The learned counsel for the Petitioner was unable to make out even the semblance of a case that the selection process in this behalf was tainted with *mala fides* of facts or law or even otherwise was without jurisdiction or *coram non judice*.

204. In this view of the matter, we are not persuaded to interfere with the impugned Order of the learned Lahore High Court, Rawalpindi Bench, dated 27.01.2016, dismissing the Constitutional Petition i.e. Writ Petition No.197 of 2016, challenging the conviction and sentence of the Convict.

205. Civil Petition for Leave to Appeal No.417 of 2016, arises from the conviction and sentence awarded to a Civilian Tahir (Convict) son of Mir Shah Jahan by a FGCM, convened under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015. The said Tahir was accused of the offences of being a Member of a known religiously motivated terrorist organization, who, alongwith others, attacked the Frontier Constabulary, causing the death and injuries to

the personnel of the said Law Enforcement Agency. Tahir was also accused of attacking, alongwith others, the prison at Bannu. He was further charged of attacking, alongwith others, the Frontier Constabulary Fort Jani Khel.

206. The offences for which the Convict was charged were punishable under the ordinary law of the land triable by a Criminal Court, hence, constituted a "civil offence" in terms of sub-section (3) of Section 8 of the Pakistan Army Act, therefore, the offences were liable to be tried by the FGCM in view of Section 59 of the Pakistan Army Act, 1952. The offences for which the accused was charged fell within the purview of Section 2(1)(d)(iii) of the Pakistan Army Act, 1952, hence, in view of Section 2(1), the Convict by operation of law was subject to the Pakistan Army Act. In the circumstances, the FGCM had the jurisdiction to try the Convict for the offences of which he was accused that too irrespective of the point of time when the offence was committed. It has also been noticed that the Convict did not object to his trial by the FGCM, as is evident from the record of the proceedings. In the circumstances, the conviction and

sentence awarded by the FGCM do not suffer from want of inherent jurisdiction.

207. The contention of the learned counsel for the Petitioner regarding alleged lack of full access to the record is also misconceived as such access was given in terms of a specific Order passed by this Court. It has also been noticed that no application in terms of Rule 130 of the Pakistan Army Act Rules, 1954, was ever made to the Competent Authority for the supply of copies of the proceedings of the FGCM at any point of time, not even when the matter was pending before the learned High Court or before this Court.

208. The Petitioner has neither pleaded nor proved on record with the requisite particularity that the Members of the FGCM or any of them had a personal bias against the Convict or the proceedings were taken in bad faith for a collateral purpose. The record reveals that the Convict was given an opportunity to object to the Members of the FGCM but he did not raise any such objection. In the circumstances, no case for *mala fides* of fact has been made out warranting interference by the learned High Court or by this Court.

209. The learned counsel for the Petitioner had argued that the Convict was not defended by a Civil Defence Counsel of his own choice before the FGCM. In this behalf, reference was made to the Article 10(2) of the Constitution. The Convict was tried under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, which as per the judgment of this Court, reported as District Bar Association, Rawalpindi and others (*supra*) was validly and effectively incorporated in the First Schedule of the Constitution, hence, the provisions of the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, in view of Article 8(3) of the Constitution, are immune from challenge on the ground of being in violation of the Fundamental Rights, included those guaranteed by Articles 10 and 10-A. Furthermore, the record reveals that the Convict did not seek to be defended by a Civil Defence Counsel, therefore, a Defending Officer was appointed in accordance with Rule 81 of the Pakistan Army Act Rules, 1954. Such a course of action is in consonance with the law, as has been held by this Court in the case of Muhammad Mushtaq and another (*supra*).

The contentions of the learned counsel with regard to the arrest and detention of the Convict too are of little significance and do not vitiate the trial by the FGCM, as has been held by this Court in the judgment, reported as Mrs. Shahida Zahir Abbasi and 4 others (*supra*).

210. Since the Convict was accused of civil offence and tried under Section 59 of the Pakistan Army Act, 1952, as amended, therefore, Section 91 of the Pakistan Army Act, was not applicable, as a consequence whereof, the period between the date of occurrence and the date of trial has no material effect. The examination of the record of the FGCM reveals that all the procedural requirements, more particularly, the Rules that ensure a fair trial and preclude prejudice to the accused were complied with. Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. The nature of the charge was explained to him. An Interpreter was also appointed. The Convict chose not to engage a Civil Defence Counsel, hence, a Defending Officer was appointed. He was granted an opportunity to object to the Members of the FGCM, the Defending Officer and the Interpreter, who were all duly sworn in. The charge

was formally framed to which the Convict pleaded guilty. Such plea altered to not guilty. The prosecution witnesses were examined on Oath and subjected to cross-examination and an opportunity was given to produce evidence in his defence, which was declined. The Convict was allowed to make a statement, which was so recorded and the Convict again admitted his guilt. The sentence has been confirmed in accordance with the law.

211. Though the learned counsel for the Petitioner has not been able to point out any deviation from the Pakistan Army Act or the Rules framed thereunder in the conduct of the trial, yet, even otherwise, irregularity if any, stood cured in view of Rule 132 of the Pakistan Army Rules Act, 1954, and furthermore, the matter of procedural irregularities is beyond the scope of the Constitutional jurisdiction of the High Court, as has been stated above.

212. It is settled law that in exercise of the jurisdiction in the instant case neither the learned High Court nor this Court can sit in appeal over the conclusion drawn by the FGCM or analyze the evidence produced before it. However, we have scanned the

record of evidence produced and proceedings conducted by the FGCM. The Convict pleaded guilty to the charges framed against him, which was altered to not guilty in accordance with the law. The evidence, *inter alia*, included a judicial confession, which was proved by the learned Judicial Magistrate, who recorded the same and appeared as a witness before the FGCM. The Convict never retracted from his confession. The Convict, on his own, in his statement before the FGCM, yet, again admitted his guilt. In the circumstances, it cannot be said that the conclusions drawn by the FGCM are based on no evidence or insufficient evidence or even otherwise improbable and unreasonable. The learned counsel for the Petitioner has not been able to persuade us that the conclusion drawn, conviction recorded and sentence passed are not as countenanced by law. Hence, no case of malice in law has been made out.

213. The examination of the record reveals that the FGCM was constituted and convened in accordance with the provisions of the Pakistan Army Act and the Rules framed thereunder, hence, the conviction and sentence do not appear to be *coram non judice*.

214. In short, it appears from the record that the Convict, being subject to the Pakistan Army Act was tried for the offences triable by the FGCM, which was convened and constituted in accordance with the law. No personal bias of any Member of the FGCM against the Convict has been established nor that the proceedings were *mala fide* or conducted in bad faith for a collateral purpose. It does not appear to be a case of no evidence or insufficient evidence nor the conclusions drawn are blatantly unreasonable or wholly improbable. No illegality in the conduct of the trial exists. The Law and the Rules, more particularly, those protecting the rights of the accused were adhered to. No case of malice in law or *coram non judice* was made out.

215. The extraordinary circumstances necessitating the enactment of the 21st Constitutional Amendment Act and the Pakistan Army (Amendment) Act, 2015 are articulated in the Preambles thereof. The nature of the offence, the commission whereof the Convict in the instant case was accused is exactly the “mischief” sought to be suppressed by the aforesaid Enactments. The selection of the instant case for trial by the FGCM reflects the due fulfillment of the mandate and purpose

of the law. The learned counsel for the Petitioner was unable to make out even the semblance of a case that the selection process in this behalf was tainted with *mala fides* of facts or law or even otherwise was without jurisdiction or *coram non judice*.

216. In this view of the matter, we are not persuaded to interfere with the impugned Order of the learned Peshawar High Court dated 19.01.2016, dismissing the Constitutional Petition i.e. Writ Petition No.133-P of 2016, challenging the conviction and sentence of the Convict.

217. In Civil Petition for Leave to Appeal No.1263 of 2016, a Civilian Fazal-e-Ghaffar alias Abdul Afazal Qari (Convict) son of Shehzada was convicted and sentenced by a FGCM convened and constituted under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, for the offences of being a Member of a known religiously motivated terrorist organization and attacking, alongwith others, the Armed Forces of Pakistan, causing the death and injuries to Army personnel. Fazal-e-Ghaffar alias Abdul Afazal Qari was also charged of planting explosive devices at the roadside to kill Army personnel and also of having been

found in possession of a suicide jacket and explosive material.

218. The offences for which the Convict was charged were punishable under the ordinary law of the land triable by a Criminal Court, hence, constituted a "civil offence" in terms of sub-section (3) of Section 8 of the Pakistan Army Act, therefore, the offences were liable to be tried by the FGCM in view of Section 59 of the Pakistan Army Act, 1952. The offences for which the accused was charged fell within the purview of Section 2(1)(d)(iii) of the Pakistan Army Act, 1952, hence, in view of Section 2(1), the Convict, by operation of law was subject to the Pakistan Army Act. In the circumstances, the FGCM had the jurisdiction to try the Convict for the offences of which he was accused that too irrespective of the point of time when the offence was committed. It was also noticed that the Convict did not object to his trial by the FGCM, as is evident from the record of its proceedings. In the circumstances, the conviction and sentence awarded by the FGCM do not suffer from want of inherent jurisdiction.

219. The contention of the learned counsel for the Petitioner regarding alleged lack of full access to the

record is also misconceived as such access was given in the instant case too, in terms of the specific Order passed by this Court. It has also been noticed that no application in terms of Rule 130 of the Pakistan Army Act rules, 1954, was ever made to the Competent Authority for the supply of copies of the proceedings of the FGCM at any point of time nor even when the matter was pending before the learned High Court or before this Court.

220. The Petitioner has neither pleaded nor proved on record with the requisite particularity that the Members of the FGCM or any of them had a personal bias against the Convict or the proceedings were conducted in bad faith for a collateral purpose. The record reveals that the Convict was given an opportunity to object to the Members of the FGCM but he did not raise any such objection. In the circumstances, no case for *mala fide* of fact has been made out warranting interference by the learned High Court or by this Court.

221. The learned counsel for the Petitioner had contended that the Convict was not defended by a Civil Defence Counsel of his own choice before the FGCM. In this behalf, reference was made to Article 10(2) of the

Constitution. The Convict was tried under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, which as per the judgment of this Court, reported as District Bar Association, Rawalpindi and others (*supra*) was validly and effectively incorporated in the First Schedule of the Constitution, hence, in view of Article 8(3) of the Constitution the provisions of the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, are immune from challenge on the ground of being in violation of the Fundamental Rights, including those guaranteed by Articles 10 and 10-A. Furthermore, the record reveals that the Convict did not claim to be defended by a Civil Defence Counsel, therefore, a Defending Officer was appointed in accordance with Rule 81 of the Pakistan Army Act Rules, 1954. Such a course of action is in consonance with the law, as has been held by this Court in the case of Muhammad Mushtaq and another (*supra*).

The contentions of the learned counsel with regard to the arrest and detention of the Convict are of little consequence and do not vitiate the trial by the FGCM, as has been held by this Court in the judgment,

reported as Mrs. Shahida Zahir Abbasi and 4 others (*supra*).

222. Since the Convict was accused of civil offence and tried under Section 59 of the Pakistan Army Act, 1952, as amended, therefore, Section 91 of the Pakistan Army Act, was not applicable, as a consequence whereof, the period of time between the date of occurrence and the date of the trial has no material effect. The examination of the record of the FGCM reveals that all the procedural requirements, more particularly, the Rules that ensure a fair trial and preclude prejudice to the accused were complied with. Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. The nature of the charge was explained to him. An interpreter was also appointed. The Convict chose not to engage a Civil Defence Counsel, hence, a Defending Officer was appointed. He was granted an opportunity to object to the Members of the FGCM, the Defending Officer and the Interpreter, who were all sworn in as required by the law. The charge was formally framed to which the Convict pleaded guilty, which was altered to not guilty. The prosecution

witnesses were examined on Oath and subjected to cross-examination and an opportunity was given to produce evidence in his defence, which was declined. The Convict was allowed to make a statement, which was so recorded and the Convict again admitted his guilt. The sentence has been confirmed in accordance with the law.

223. Though the learned counsel for the Petitioner has not been able to point out any deviation from the Pakistan Army Act or the Rules framed thereunder in the conduct of the trial, yet, even otherwise, irregularity if any, stood cured in view of Rule 132 of the Pakistan Army Rules Act, 1954 and, furthermore, the matter of procedural irregularities is beyond the scope of the Constitutional jurisdiction of the High Court, as has been stated above.

224. It is settled law that while exercising the power of Judicial Review of this nature neither the learned High Court nor this Court can sit in appeal over the conclusion drawn by the FGCM or analyze the evidence produced before it. However, we have examined the record in the instant case, the Convict pleaded guilty to the charges framed against him. This was altered to not

guilty in accordance with the law. The evidence, *inter alia*, included a judicial confession, which was proved by the learned Judicial Magistrate, who recorded the same and appeared as a witness before the FGCM. The Convict never retracted from his confession. The Convict on his own in his statement before the FGCM yet again admitted his guilt. In the circumstances, it cannot be said that the conclusions drawn by the FGCM are based on no evidence or insufficient evidence or are otherwise improbable or blatantly unreasonable. The learned counsel for the Petitioner has not been able to persuade us that the conclusion drawn, conviction recorded and sentence passed are not as countenanced by law. Hence, no case of malice in law has been made out.

225. The examination of the record also reveals that the FGCM was constituted and convened in accordance with the provisions of the Pakistan Army Act and the Rules framed thereunder, hence, the conviction and sentence do not appear to be *coram non iudice*.

226. In short, it appears from the record that the Convict, being subject to the Pakistan Army Act was tried for the offences triable by the FGCM, which was convened and constituted in accordance with the law.

No personal bias of any Member of the FGCM against the Convict has been established nor that the proceedings were *mala fide* or conducted in bad faith for a collateral purpose. It does not appear to be a case of no evidence or insufficient evidence nor the conclusions drawn wholly unreasonable and improbable. No illegality in the conduct of the trial exists. The Law and the Rules, more particularly, those protecting the rights of the accused were adhered to.

227. The extraordinary circumstances necessitating the enactment of the 21st Constitutional Amendment Act and the Pakistan Army (Amendment) Act, 2015 are articulated in the Preambles thereof. The nature of the offence, the commission whereof the Convict in the instant case was accused is exactly the “mischief” sought to be suppressed by the aforesaid Enactments. The selection of the instant case for trial by the FGCM reflects the due fulfillment of the mandate and purpose of the law. The learned counsel for the Petitioner was unable to make out even the semblance of a case that the selection process in this behalf was tainted with *mala fides* of facts or law or even otherwise was without jurisdiction or *coram non judice*.

228. In this view of the matter, we find ourselves unable to interfere with the impugned judgment dated 12.04.2016 of the learned Peshawar High Court, dismissing the Constitutional Petition i.e. Writ Petition No.1048-P of 2016, challenging the conviction and sentence of the Convict.

229. Civil Petition for Leave to Appeal No.1306 of 2016, arises from the conviction and sentence awarded by a FGCM, convened under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, to a Civilian Fateh Khan (Convict) son of Mukaram Khan who was charged with several counts of the commission of the offences of being a Member of a known religiously motivated terrorist organization, and attacked, alongwith others, the Armed Forces of Pakistan and thereby causing death and injuries to several Army personnel. He was also separately accused of attacking and causing the death and injuries to the officials of the Law Enforcement Agencies. He was also accused of causing death of civilians and health officials. The alleged offences were committed in the Khyber Agency.

230. The offences for which the Convict was charged were punishable under the ordinary law of the land triable by a Criminal Court, hence, constituted a "civil offence" in terms of sub-section (3) of Section 8 of the Pakistan Army Act, therefore, the offences were liable to be tried by the FGCM in view of Section 59 of the Pakistan Army Act, 1952. The offences for which the accused was charged fell within the purview of Section 2(1)(d)(iii) of the Pakistan Army Act, 1952, hence, in view of Section 2(1), the Convict by operation of law was subject to the Pakistan Army Act. In the circumstances, the FGCM had the jurisdiction to try the Convict for the offences of which he was accused that too irrespective of the point of time when the offence was committed. It has also been noticed that the Convict did not object to his trial by the FGCM, as is evident from the record of the proceedings. In the circumstances, the conviction and sentence awarded by the FGCM do not suffer from want of inherent jurisdiction.

231. The contention of the learned counsel for the Petitioner regarding alleged lack of full access to the record is also misconceived as such access was given in terms of a specific Order passed by this Court. It has

also been noticed that no application in terms of Rule 130 of the Pakistan Army Act Rules, 1954, was ever made to the Competent Authority for the supply of copies of the proceedings of the FGCM at any point of time, not even when the matter was pending before the learned High Court or before this Court.

232. The Petitioner has neither pleaded nor proved on record with the requisite particularity that the Members of the FGCM or any of them had a personal bias against the Convict or the proceedings were conducted in bad faith for a collateral purpose. The record reveals that the Convict was given an opportunity to object to the Members of the FGCM but he did not raise any such objection. In the circumstances, no case for *mala fides* of fact has been made out warranting interference by the learned High Court or by this Court.

233. The learned counsel for the Petitioner had contended that the Convict was not defended by a Civil Defence Counsel of his own choice before the FGCM. In this behalf, reference was made to Article 10(2) of the Constitution. The Convict was tried under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, which as per the judgment of

this Court, reported as District Bar Association, Rawalpindi and others (*supra*) was validly and effectively incorporated in the First Schedule of the Constitution, hence, in view of Article 8(3) of the Constitution, the provisions of the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, are immune from challenge on the ground of being in violation of the Fundamental Rights, including those guaranteed by Articles 10 and 10-A. Furthermore, the record reveals that the Convict did not seek to be defended by a Civil Defence Counsel, therefore, a Defending Officer was appointed in accordance with Rule 81 of the Pakistan Army Act Rules, 1954. Such a course of action is in consonance with the law, as has been held by this Court in the case of Muhammad Mushtaq and another (*supra*).

The contentions of the learned counsel with regard to the arrest and detention of the Convict are of little consequence and do not vitiate the trial by the FGCM, as has been held by this Court in the judgment, reported as Mrs. Shahida Zahir Abbasi and 4 others (*supra*).

234. Since the Convict was accused of civil offence and tried under Section 59 of the Pakistan Army Act, 1952, as amended, therefore, Section 91 of the Pakistan Army Act, was not applicable, as a consequence whereof, the period between the date of occurrence and the date of trial has no material effect. The examination of the record of the FGCM reveals that all the procedural requirements, more particularly, the Rules that ensure a fair trial and preclude prejudice to the accused were complied with. Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. The nature of the charge was explained to him. An Interpreter was also appointed. The Convict chose not to engage a Civil Defence Counsel, hence, a Defending Officer was appointed. He was granted an opportunity to object to the Members of the FGCM, the Defending Officer and the Interpreter, who were all duly sworn in. The charge was formally framed to which the Convict pleaded guilty. Such plea was altered to not guilty. The prosecution witnesses were examined on Oath and subjected to cross-examination and an opportunity was granted to produce evidence in defence, which was declined. The

Convict was allowed to make a statement, which was so recorded and the Convict again admitted his guilt. The sentence has been confirmed in accordance with the law.

235. Though the learned counsel for the Petitioner has not been able to point out any deviation from the Pakistan Army Act or the Rules framed thereunder in the conduct of the trial, yet, even otherwise, irregularity if any, stood cured in view of Rule 132 of the Pakistan Army Rules Act, 1954 and, even otherwise, the matter of procedural irregularities is beyond the scope of the Constitutional jurisdiction of the High Court, as has been stated above.

236. It is settled law that while exercising the powers of Judicial Review of this nature neither the learned High Court nor this Court can sit in appeal over the conclusion drawn by the FGCM or analyze the evidence produced before it. However, we have examined the record in the instant case, the Convict pleaded guilty to the charges framed against him. This was altered to not guilty in accordance with the law. The evidence, *inter alia*, included a judicial confession, which was proved by the learned Judicial Magistrate, who recorded the same

and appeared as a witness before the FGCM. The Convict never retracted from his confession. The Convict, on his own in his statement before the FGCM, yet, again admitted his guilt. In the circumstances, it cannot be said that the conclusions drawn by the FGCM are based on no evidence or insufficient evidence or are otherwise improbable or blatantly unreasonable. The learned counsel for the Petitioner has not been able to persuade us that the conclusion drawn, conviction recorded and sentence passed are not as countenanced by law. Hence, no case of malice in law has been made out.

237. The examination of the record also reveals that the FGCM was constituted and convened in accordance with the provisions of the Pakistan Army Act and the Rules framed thereunder, hence, the conviction and sentence do not appear to be *coram non judice*.

238. In short, it appears from the record that the Convict, being subject to the Pakistan Army Act was tried for the offences triable by the FGCM, which was convened and constituted in accordance with the law. No personal bias of any Member of the FGCM against the Convict has been established nor that the

proceedings were *mala fides* or conducted in bad faith for a collateral purpose. It does not appear to be a case of no evidence or insufficient evidence nor the conclusions drawn wholly unreasonable and improbable. No illegality in the conduct of the trial exists. The Law and the Rules, more particularly, those protecting the rights of the accused were adhered to. No case of malice in law or *coram non judice* was made out.

239. The extraordinary circumstances necessitating the enactment of the 21st Constitutional Amendment Act and the Pakistan Army (Amendment) Act, 2015 are articulated in the Preambles thereof. The nature of the offence, the commission whereof the Convict in the instant case was accused is exactly the “mischief” sought to be suppressed by the aforesaid Enactments. The selection of the instant case for trial by the FGCM reflects the due fulfillment of the mandate and purpose of the law. The learned counsel for the Petitioner was unable to make out even the semblance of a case that the selection process in this behalf was tainted with *mala fides* of facts or law or even otherwise was without jurisdiction or *coram non judice*.

240. In this view of the matter, we find ourselves unable to interfere with the impugned judgment dated 12.04.2016 of the learned Peshawar High Court, dismissing the Constitutional Petition i.e. Writ Petition No.1184-P of 2016, challenging the conviction and sentence of the Convict.

241. Civil Petition for Leave to Appeal No.1335 of 2016, arises out of conviction and sentence of a Civilian Taj Gul alias Javid (Convict) son of Sultan Zareen by a FGCM, convened and constituted under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015. Taj Gul alias Javid was accused of the offences of being a Member of a known religiously motivated terrorist organization, who attacked and caused the death of the officials of the Law Enforcement Agencies and further for possession of arms and ammunitions.

242. The offences for which the Convict was charged were punishable under the ordinary law of the land triable by a Criminal Court, hence, constituted a "civil offence" in terms of sub-section (3) of Section 8 of the Pakistan Army Act, therefore, the offences were liable to be tried by the FGCM in view of Section 59 of the Pakistan Army Act, 1952. The offences for which the accused was charged fell within the purview of Section

2(1)(d)(iii) of the Pakistan Army Act, 1952, hence, in view of Section 2(1), the Convict by operation of law was subject to the Pakistan Army Act. In the circumstances, the FGCM had the jurisdiction to try the Convict for the offences of which he was accused that too irrespective of the point of time when the offence was committed. It was also noticed that the Convict did not object to his trial by the FGCM, as is evident from the record of the proceedings. In the circumstances, the conviction and sentence awarded by the FGCM do not suffer from want of inherent jurisdiction.

243. The contention of the learned counsel for the Petitioner regarding alleged lack of full access to the record is also misconceived as such access was given in terms of the specific Order passed by this Court. It has also been noticed that no application in terms of Rule 130 of the Pakistan Army Act Rules, 1954, was ever made to the Competent Authority for the supply of copies of the proceedings of the FGCM at any point of time, not even when the matter was pending before the learned High Court or before this Court.

244. The Petitioner has neither pleaded nor proved on record with the requisite particularity that the

Members of the FGCM or any of them had a personal bias against the Convict or the proceedings were conducted in bad faith for a collateral purpose. The record reveals that the Convict was given an opportunity to object to the Members of the FGCM but he did not raise any such objection. In the circumstances, no case for *mala fides* of fact has been made out warranting interference by the learned High Court or by this Court.

245. The learned counsel for the Petitioner had contended that the Convict was not defended by a Civil Defence Counsel of his own choice before the FGCM. In this behalf, reference was made to the Article 10(2) of the Constitution. The Convict was tried under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, which as per the judgment of this Court, reported as District Bar Association, Rawalpindi and others (*supra*) was validly and effectively incorporated in the First Schedule of the Constitution, hence, in view of the Article 8(3) of the Constitution, the provisions of the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, are immune from challenge on the ground of being in violation of the Fundamental Rights, including

those guaranteed by Articles 10 and 10-A. Furthermore, the record reveals that the Convict did not claim to be defended by a Civil Defence Counsel, therefore, a Defending Officer was appointed in accordance with Rule 81 of the Pakistan Army Act Rules, 1954. Such a course of action is in consonance with the law, as has been held by this Court in the case of Muhammad Mushtaq and another (*supra*).

The contentions of the learned counsel with regard to the arrest and detention of the Convict are of little consequence and do not vitiate the trial by the FGCM, as has been held by this Court in the judgment, reported as Mrs. Shahida Zahir Abbasi and 4 others (*supra*).

246. Since the Convict was accused of civil offence and tried under Section 59 of the Pakistan Army Act, 1952, as amended, therefore, Section 91 of the Pakistan Army Act, was not applicable, as a consequence whereof, the period of time between the date of occurrence and the date of trial has no material effect. The examination of the record of the FGCM reveals that all the procedural requirements, more particularly, the Rules that ensure a fair trial and preclude prejudice to

the accused were complied with. Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. The nature of the charge was explained to him. An interpreter was also appointed. The Convict chose not to engage a Civil Defence Counsel, hence, a Defending Officer was appointed. He was granted an opportunity to object to the Members of the FGCM, the Defending Officer and the Interpreter, who were all sworn in as required by the law. The charge was formally framed to which the Convict pleaded guilty, which was altered to not guilty. The prosecution witnesses were examined on Oath and subjected to cross-examination and an opportunity was given to produce evidence in his defence, which was declined. The Convict was allowed to make a statement, which was so recorded and the Convict again admitted his guilt. The sentence has been confirmed in accordance with the law.

247. Though the learned counsel for the Petitioner has not been able to point out any deviation from the Pakistan Army Act or the Rules framed thereunder in the conduct of the trial, yet, even otherwise, irregularity if any, stood cured in view of Rule 132 of the Pakistan

Army Rules Act, 1954, and even otherwise, the matter of procedural irregularities is beyond the scope of the Constitutional jurisdiction of the High Court, as has been stated above.

248. It is now settled law that while exercising the powers of Judicial Review in such like cases neither the learned High Court nor this Court can sit in appeal over the conclusion drawn by the FGCM or analyze the evidence produced before it, in this behalf. However, we have examined the record in the instant case, the Convict pleaded guilty to the charges framed against him. This was altered to not guilty in accordance with the law. The evidence, *inter alia*, included a judicial confession, which was proved by the learned Judicial Magistrate, who recorded the same and appeared as a witness before the FGCM. The Convict never retracted from his confession. The Convict, on his own, in his statement before the FGCM, yet, again admitted his guilt. In the circumstances, it cannot be said that the conclusions drawn by the FGCM are based on no evidence or insufficient evidence or were otherwise improbable or blatantly unreasonable. The learned counsel for the Petitioner has not been able to persuade

us that the conclusion drawn, conviction recorded and sentence passed are not as countenanced by law. Hence, no case of malice in law has been made out.

249. The examination of the record also reveals that the FGCM was constituted and convened in accordance with the provisions of the Pakistan Army Act and the Rules framed thereunder, hence, the conviction and sentence do not appear to be *coram non judice*.

250. In short, it appears from the record that the Convict, being subject to Pakistan Army Act was tried for the offences triable by the FGCM, which was convened and constituted in accordance with the law. No personal bias of any Member of the FGCM against the Convict has been established nor that the proceedings were *mala fides* or conducted in bad faith for a collateral purpose. It does not appear to be a case of no evidence or insufficient evidence nor the conclusions drawn blatantly unreasonable or wholly improbable. No illegality in the conduct of the trial exists. The Law and the Rules, more particularly, those protecting the rights of the accused were adhered to. No case of malice in law or *coram non judice* was made out.

251. The extraordinary circumstances necessitating the enactment of the 21st Constitutional Amendment Act and the Pakistan Army (Amendment) Act, 2015 are articulated in the Preambles thereof. The nature of the offence, the commission whereof the Convict in the instant case was accused is exactly the “mischief” sought to be suppressed by the aforesaid Enactments. The selection of the instant case for trial by the FGCM reflects the due fulfillment of the mandate and purpose of the law. The learned counsel for the Petitioner was unable to make out even the semblance of a case that the selection process in this behalf was tainted with *mala fides* of facts or law or even otherwise was without jurisdiction or *coram non judice*.

252. In this view of the matter, we find ourselves unable to interfere with the impugned judgment dated 12.04.2015 of the learned Peshawar High Court, dismissing the Constitutional Petition i.e. Writ Petition No.1190-P of 2016, challenging the conviction and sentence of the Convict.

253. In Civil Petition for Leave to Appeal No.1353 of 2016, a Civilian Aksan Mahboob alias Khubab (Convict) son of Asghar Ali was convicted and sentenced by a

FGCM, convened and constituted under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, for the offences on several counts of being a Member of a known religiously motivated terrorist organization and attacking, alongwith others, the officials of the Law Enforcement Agencies, which resulted in death and injuries to the officials of the Law Enforcement Agencies and having possession of firearms, explosives and receiving funds for committing the aforesaid offences.

254. The offences for which the Convict was charged were punishable under the ordinary law of the land triable by a Criminal Court, hence, constituted a "civil offence" in terms of sub-section (3) of Section 8 of the Pakistan Army Act, therefore, the offences were liable to be tried by the FGCM in view of Section 59 of the Pakistan Army Act, 1952. The offences for which the accused was charged fell within the purview of Section 2(1)(d)(iii) of the Pakistan Army Act, 1952, hence, in view of Section 2(1), the Convict by operation of the law was subject to the Pakistan Army Act. In the circumstances, the FGCM had the jurisdiction to try the Convict for the offences of which, he was accused that too irrespective

of the point of time when the offence was committed. It was also noticed that the Convict did not object to his trial by the FGCM, as is evident from the record of the proceedings. In the circumstances, the conviction and sentence awarded by the FGCM do not suffer from want of inherent jurisdiction.

255. The contention of the learned counsel for the Petitioner regarding alleged lack of full access to the record is also misconceived as such access was given in terms of the specific Order passed by this Court. It has also been noticed that no application in terms of Rule 130 of the Pakistan Army Act Rules, 1954, was ever made to the Competent Authority for the supply of copies of the proceedings of the FGCM at any point of time, not even when the matter was pending before the learned High Court or before this Court.

256. The Petitioner has neither pleaded nor proved on record with the requisite particularity that the Members of the FGCM or any of them had a personal bias against the Convict or the proceedings were conducted in bad faith for a collateral purpose. The record reveals that the Convict was given an opportunity to object to the Members of the FGCM but he did not

raise any such objection. In the circumstances, no case for *mala fides* of fact has been made out warranting interference by the learned High Court or by this Court.

257. The learned counsel for the Petitioner had contended that the Convict was not defended by a Civil Defence Counsel of his own choice before the FGCM. In this behalf, reference was made to the Article 10(2) of the Constitution. The Convict was tried under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, which as per the judgment of this Court, reported as District Bar Association, Rawalpindi and others (*supra*) was validly and effectively incorporated in the First Schedule of the Constitution, hence, in view of Article 8(3) of the Constitution, the provisions of the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, are immune from challenge on the ground of being in violation of the Fundamental Rights, including those guaranteed by Articles 10 and 10-A. Furthermore, the record reveals that the Convict did not claim to be defended by a Civil Defence Counsel, therefore, a Defending Officer was appointed in accordance with Rule 81 of the Pakistan Army Act Rules, 1954. Such a

course of action is in consonance with the law, as has been held by this Court in the case of Muhammad Mushtaq and another (*supra*).

The contentions of the learned counsel with regard to the arrest and detention of the Convict are of little consequence and do not vitiate the trial by the FGCM, as has been held by this Court in the judgment, reported as Mrs. Shahida Zahir Abbasi and 4 others (*supra*).

258. Since the Convict was accused of civil offence and tried under Section 59 of the Pakistan Army Act, 1952, as amended, therefore, Section 91 of the Pakistan Army Act, was not applicable, as a consequence whereof, the period of time between the date of occurrence and the date of trial has no material effect. The examination of the record of the FGCM reveals that all the procedural requirements, more particularly, the Rules that ensure a fair trial and precluded prejudice to the accused were complied with. Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. The nature of the charge was explained to him. An Interpreter was also appointed. The Convict chose not to

engage a Civil Defence Counsel, hence, a Defending Officer was appointed. He was granted an opportunity to object to the Members of the FGCM, the Defending Officer and the Interpreter, who were all sworn in as required by the law. The charge was formally framed to which the Convict pleaded guilty, which was altered to not guilty. The prosecution witnesses were examined on Oath and subjected to cross-examination and an opportunity was given to produce evidence in his defence, which was declined. The Convict was allowed to make a statement, which was so recorded and the Convict again admitted his guilt. The sentence has been confirmed in accordance with the law.

259. Though the learned counsel for the Petitioner has not been able to point out any deviation from the Pakistan Army Act or the Rules framed thereunder in the conduct of the trial, yet, even otherwise, irregularity if any, stood cured in view of Rule 132 of the Pakistan Army Rules Act, 1954 and, furthermore, the matter of procedural irregularities is beyond the scope of the Constitutional jurisdiction of the High Court, as has been stated above.

260. It is now settled law that while exercising the powers of Judicial Review in such like cases neither the learned High Court nor this Court can sit in appeal over the conclusion drawn by the FGCM or analyze the evidence produced before it, in this behalf. However, we have examined the record in the instant case, the Convict pleaded guilty to the charges framed against him. This was altered to not guilty in accordance with the law. The evidence, *inter alia*, included a judicial confession, which was proved by the learned Judicial Magistrate, who recorded the same and appeared as a witness before the FGCM. The Convict never retracted from his confession. The Convict, on his own, in his statement before the FGCM yet again admitted his guilt. In the circumstances, it cannot be said that the conclusions drawn by the FGCM are based on no evidence or insufficient evidence or otherwise improbable or blatantly unreasonable. The learned counsel for the Petitioner has not been able to persuade us that the conclusion drawn, conviction recorded and sentence passed are not as countenanced by law. Hence, no case of malice in law has been made out.

261. The examination of the record also reveals that the FGCM was constituted and convened in accordance with the provisions of the Pakistan Army Act and the Rules framed thereunder, hence, the conviction and sentence do not appear to be *coram non judice*.

262. In short, it appears from the record that the Convict, being subject to the Pakistan Army Act was tried for the offences triable by the FGCM, which was convened and constituted in accordance with the law. No personal bias of any Member of the FGCM against the Convict has been established nor that the proceedings were *mala fide* or conducted in bad faith for a collateral purpose. It does not appear to be a case of no evidence or insufficient evidence nor the conclusions drawn blatantly unreasonable or wholly improbable. No illegality in the conduct of the trial exists. The Law and the Rules, more particularly, those protecting the rights of the accused were adhered to. No case of malice in law or *coram non judice* was made out.

263. The extraordinary circumstances necessitating the enactment of the 21st Constitutional Amendment Act and the Pakistan Army (Amendment) Act, 2015 are articulated in the Preambles thereof. The nature of the

offence, the commission whereof the Convict in the instant case was accused is exactly the “mischief” sought to be suppressed by the aforesaid Enactments. The selection of the instant case for trial by the FGCM reflects the due fulfillment of the mandate and purpose of the law. The learned counsel for the Petitioner was unable to make out even the semblance of a case that the selection process in this behalf was tainted with *mala fides* of facts or law or even otherwise was without jurisdiction or *coram non iudice*.

264. In this view of the matter, we find ourselves unable to interfere with the impugned Order dated 19.01.2016 of the learned Lahore High Court, Rawalpindi Bench, dismissing the Constitutional Petition i.e. Writ Petition No.117 of 2016, challenging the conviction and sentence of the Convict.

265. Civil Petition for Leave to Appeal No.1503 of 2016, is arising from the conviction and sentence awarded to Nasir Khan (Convict) son of Khan Afsar Khan by a FGCM, convened and constituted under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015. The said Nasir Khan was accused for the offences of being a Member of a known

religiously motivated terrorist organization, who, alongwith others, attacked the Armed Forces of Pakistan, causing the death and injuries to Army personnel and for possession of arms and explosives.

266. The offences for which the Convict was charged were punishable under the ordinary law of the land triable by a Criminal Court, hence, constituted a "civil offence" in terms of sub-section (3) of Section 8 of the Pakistan Army Act, therefore, the offences were liable to be tried by the FGCM in view of Section 59 of the Pakistan Army Act, 1952. The offences for which the accused was charged fell within the purview of Section 2(1)(d)(iii) of the Pakistan Army Act, 1952, hence, in view of Section 2(1), the Convict by operation of law was subject to the Pakistan Army Act. In the circumstances, the FGCM had the jurisdiction to try the Convict for the offences of which, he was accused that too irrespective of the point of time when the offence was committed. It was also noticed that the Convict did not object to his trial by the FGCM, as is evident from the record of the proceedings. In the circumstances, the conviction and sentence awarded by the FGCM do not suffer from want of inherent jurisdiction.

267. The contention of the learned counsel for the Petitioner regarding alleged lack of full access to the record is also misconceived as such access was given in terms of a specific Order passed by this Court. It has also been noticed that no application in terms of Rule 130 of the Pakistan Army Act Rules, 1954, was ever made to the Competent Authority for the supply of copies of the proceedings of the FGCM at any point of time, not even when the matter was pending before the learned High Court or before this Court.

268. The Petitioner has neither pleaded nor proved on record with the requisite particularity that the Members of the FGCM or any of them had a personal bias against the Convict or the proceedings were conducted in bad faith for a collateral purpose. The record reveals that the Convict was given an opportunity to object to the Members of the FGCM but he did not raise any such objection. In the circumstances, no case for *mala fides* of fact has been made out warranting interference by the learned High Court or by this Court.

269. The learned counsel for the Petitioner had contended that the Convict was not defended by a Civil Defence Counsel of his own choice before the FGCM. In

this behalf, reference was made to the Article 10(2) of the Constitution. The Convict was tried under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, which as per the judgment of this Court, reported as District Bar Association, Rawalpindi and others (*supra*) was validly and effectively incorporated in the First Schedule of the Constitution, hence, in view of the Article 8(3) of the Constitution, the provisions of the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, are immune from challenge on the ground of being in violation of the Fundamental Rights, including those guaranteed by Articles 10 and 10-A. Furthermore, the record reveals that the Convict was specifically asked whether he wished to be defended by a Civil Defence Counsel but he declined, therefore, a Defending Officer was appointed in accordance with Rule 81 of the Pakistan Army Act Rules, 1954. Such a course of action is in consonance with the law, as has been held by this Court in the case of Muhammad Mushtaq and another (*supra*).

The contentions of the learned counsel with regard to the arrest and detention of the Convict too are of little

significance and do not vitiate the trial by the FGCM, as has been held by this Court in the judgment, reported as Mrs. Shahida Zahir Abbasi and 4 others (*supra*).

270. Since the Convict was accused of civil offence and tried under Section 59 of the Pakistan Army Act, 1952, as amended, therefore, Section 91 of the Pakistan Army Act, was not applicable, as a consequence whereof, the period of time between the date of occurrence and the date of trial has no material effect. The examination of the record of the FGCM reveals that all the procedural requirements, more particularly, the Rules that ensure a fair trial and preclude prejudice to the accused were complied with. Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. The nature of the charge was explained to him. An Interpreter was also appointed. The Convict chose not to engage a Civil Defence Counsel despite being given an opportunity to do so, hence, a Defending Officer was appointed. He was granted an opportunity to object to the Members of the FGCM, the Defending Officer and the Interpreter, who were all sworn in as required by the law. The charge was formally framed to which the

Convict pleaded not guilty. The prosecution witnesses were examined on Oath and subjected to cross-examination and an opportunity was given to produce evidence in his defence, which was declined. The Convict was allowed to make a statement, which was so recorded and the Convict again admitted his guilt. The sentence has been confirmed in accordance with the law.

271. Though the learned counsel for the Petitioner has not been able to point out any deviation from the Pakistan Army Act or the Rules framed thereunder in the conduct of the trial, yet, even otherwise, irregularity if any, stood cured in view of Rule 132 of the Pakistan Army Rules Act, 1954 and, even otherwise, the matter of procedural irregularities is beyond the scope of the Constitutional jurisdiction of the High Court, as has been stated above.

272. It is now settled law that while exercising the powers of Judicial Review in such like cases neither the learned High Court nor this Court can sit in appeal over the conclusion drawn by the FGCM or analyze the evidence produced before it, in this behalf. However, we have examined the record in the instant case. The

evidence, *inter alia*, included a judicial confession, which was proved by the learned Judicial Magistrate, who recorded the same and appeared as a witness before the FGCM. The Convict never retracted from his confession. The Convict, on his own, in his statement before the FGCM, admitted his guilt. In the circumstances, it cannot be said that the conclusions drawn by the FGCM are based on no evidence or insufficient evidence or are otherwise improbable or blatantly unreasonable. The learned counsel for the Petitioner has not been able to persuade us that the conclusion drawn, conviction recorded and sentence passed are not countenanced by law. Hence, no case of malice in law has been made out.

273. The examination of the record also reveals that the FGCM was constituted and convened in accordance with the provisions of the Pakistan Army Act and the Rules framed thereunder, hence, the conviction and sentence do not appear to be *coram non iudice*.

274. In short, it appears from the record that the Convict, being subject to the Pakistan Army Act was tried for the offences triable by the FGCM, which was convened and constituted in accordance with the law. No personal bias of any Member of the FGCM against

the Convict has been established nor that the proceedings were *mala fides* or conducted in bad faith for a collateral purpose. It does not appear to be a case of no evidence or insufficient evidence nor the conclusions drawn blatantly unreasonable or wholly improbable. No illegality in the conduct of the trial exists. The Law and the Rules, more particularly, those protecting the rights of the accused were adhered to. No case of malice in law or *coram non judice* was made out.

275. The extraordinary circumstances necessitating the enactment of the 21st Constitutional Amendment Act and the Pakistan Army (Amendment) Act, 2015 are articulated in the Preambles thereof. The nature of the offence, the commission whereof the Convict in the instant case was accused is exactly the “mischief” sought to be suppressed by the aforesaid Enactments. The selection of the instant case for trial by the FGCM reflects the due fulfillment of the mandate and purpose of the law. The learned counsel for the Petitioner was unable to make out even the semblance of a case that the selection process in this behalf was tainted with *mala fides* of facts or law or even otherwise was without jurisdiction or *coram non judice*.

276. In this view of the matter, we find ourselves unable to interfere with the impugned judgment dated 12.04.2016 of the learned Peshawar High Court, dismissing the Constitutional Petition i.e. Writ Petition No.1271-P of 2016, challenging the conviction and sentence of the Convict.

277. Civil Petition for Leave to Appeal No.1541 of 2016, pertains to a Civilian Muhammad Arbi alias Sher Khan (Convict) son of Hafiz Muhammad Sadiq, who was convicted and sentenced by a FGCM convened and constituted under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, for the offences of being a Member of a known religiously motivated terrorist organization and attacked, alongwith others, the Law Enforcement Agencies, causing the death and injuries to its personnel. He was also accused of preparing explosives devices and suicide jackets for terrorist activities against the Law Enforcement Agencies as well as for the abetment of the attack on Bannu Jail and providing assistance in the escape of high profile terrorists and other prisoners from the said Jail and causing injuries to the officials of the Law Enforcement Agencies.

278. The offences for which the Convict was charged were punishable under the ordinary law of the land triable by a Criminal Court, hence, constituted a "civil offence" in terms of sub-section (3) of Section 8 of the Pakistan Army Act, therefore, the offences were liable to be tried by the FGCM in view of Section 59 of the Pakistan Army Act, 1952. The offences for which the accused was charged fell within the purview of Section 2(1)(d)(iii) of the Pakistan Army Act, 1952, hence, in view of Section 2(1), the Convict by operation of law was subject to the Pakistan Army Act. In the circumstances, the FGCM had the jurisdiction to try the Convict for the offences of which he was accused that too irrespective of the point of time when the offence was committed. It was also noticed that the Convict did not object to his trial by the FGCM, as is evident from the record of the proceedings. In the circumstances, the conviction and sentence awarded by the FGCM do not suffer from want of inherent jurisdiction.

279. The contention of the learned counsel for the Petitioner regarding alleged lack of full access to the record is also misconceived as such access was given in terms of a specific Order passed by this Court. It has

also been noticed that no application in terms of Rule 130 of the Pakistan Army Act Rules, 1954, was ever made to the Competent Authority for the supply of copies of the proceedings of the FGCM, at any point of time, not even when the matter was pending before the learned High Court or before this Court.

280. The Petitioner has neither pleaded nor proved on record with the requisite particularity that the Members of the FGCM or any of them had a personal bias against the Convict or the proceedings were conducted in bad faith for a collateral purpose. The record reveals that the Convict was given an opportunity to object to the Members of the FGCM but he did not raise any such objection. In the circumstances, no case for *mala fides* of fact has been made out warranting interference by the learned High Court or by this Court.

281. The learned counsel for the Petitioner had contended that the Convict was not defended by a Civil Defence Counsel of his own choice before the FGCM. In this behalf, reference was made to the Article 10(2) of the Constitution. The Convict was tried under the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, which as per the

judgment of this Court, reported as District Bar Association, Rawalpindi and others (*supra*) was validly and effectively incorporated in the First Schedule of the Constitution, hence, in view of the Article 8(3) of the Constitution, the provisions of the Pakistan Army Act, 1952, as amended by the Pakistan Army (Amendment) Act, 2015, are immune from challenge on the ground of being in violation of the Fundamental Rights, including those guaranteed by Articles 10 and 10-A. Furthermore, the record reveals that the Convict did not claim to be defended by a Civil Defence Counsel, therefore, a Defending Officer was appointed in accordance with Rule 81 of the Pakistan Army Act Rules, 1954. Such a course of action is in consonance with the law, as has been held by this Court in the case of Muhammad Mushtaq and another (*supra*).

The contentions of the learned counsel with regard to the arrest and detention of the Convict are of little consequence and do not vitiate the trial by the FGCM, as has been held by this Court in the judgment, reported as Mrs. Shahida Zahir Abbasi and 4 others (*supra*).

282. Since the Convict was accused of civil offence and tried under Section 59 of the Pakistan Army Act, 1952, as amended, therefore, Section 91 of the Pakistan Army Act, was not applicable, as a consequence whereof, the period of time between the date of occurrence and the date of trial has no material effect. The examination of the record of the FGCM reveals that all the procedural requirements, more particularly, the Rules that ensure a fair trial and preclude prejudice to the accused were complied with. Summary of evidence had been taken and was laid before the FGCM, as is apparent from the record of the proceedings thereof. The nature of the charge was explained to him. An Interpreter was also appointed. The Convict chose not to engage a Civil Defence Counsel, hence, a Defending Officer was appointed. He was granted an opportunity to object to the Members of the FGCM, the Defending Officer and the Interpreter, who were all sworn in as required by the law. The charge was formally framed to which the Convict pleaded not guilty. The prosecution witnesses were examined on Oath and subjected to cross-examination and an opportunity was given to produce evidence in his defence, which was declined.

The Convict was allowed to make a statement, which was so recorded and the Convict admitted his guilt. The sentence has been confirmed in accordance with the law.

283. Though the learned counsel for the Petitioner has not been able to point out any deviation from the Pakistan Army Act or the Rules framed thereunder in the conduct of the trial, yet, even otherwise, irregularity if any, stood cured in view of Rule 132 of the Pakistan Army Rules Act, 1954, and furthermore, the matter of procedural irregularities is beyond the scope of the Constitutional jurisdiction of the High Court, as has been stated above.

284. It is settled law that neither the learned High Court nor this Court can sit in appeal over the conclusion drawn by the FGCM or analyze the evidence produced before it. However, we have scanned the record in the instant case. The evidence besides an eye witness account included a judicial confession, which was proved by the learned Judicial Magistrate, who recorded the same and appeared as a witness before the FGCM. The Convict never retracted from his confession. The Convict, on his own, in his statement before the

FGCM, admitted his guilt. In the circumstances, it cannot be said that the conclusions drawn by the FGCM are based on no evidence or insufficient evidence or otherwise improbable. The learned counsel for the Petitioner has not been able to persuade us that the conclusion drawn, conviction recorded and sentence passed are not countenanced by law. Hence, no case of malice in law has been made out.

285. The examination of the record reveals that the FGCM was constituted and convened in accordance with the provisions of the Pakistan Army Act and the Rules framed thereunder, hence, the conviction and sentence do not appear to be *coram non iudice*.

286. In short, it appears from the record that the Convict, being subject to the Pakistan Army Act was tried for the offences triable by the FGCM, which was convened and constituted in accordance with the law. No personal bias of any Member of the FGCM against the Convict has been established nor was the proceedings conducted *mala fides* or conducted in bad faith for a collateral purpose. It does not appear to be a case of no evidence or insufficient evidence nor the conclusions drawn appear to be blatantly unreasonable

or wholly improbable. No illegality in the conduct of the trial exists. The Law and the Rules, more particularly, those protecting the rights of the accused were adhered to. No case of malice in law or *coram non judice* was made out.

287. The extraordinary circumstances necessitating the enactment of the 21st Constitutional Amendment Act and the Pakistan Army (Amendment) Act, 2015 are articulated in the Preambles thereof. The nature of the offence, the commission whereof the Convict in the instant case was accused is exactly the “mischief” sought to be suppressed by the aforesaid Enactments. The selection of the instant case for trial by the FGCM reflects the due fulfillment of the mandate and purpose of the law. The learned counsel for the Petitioner was unable to make out even the semblance of a case that the selection process in this behalf was tainted with *mala fides* of facts or law or even otherwise was without jurisdiction or *coram non judice*.

288. In this view of the matter, we are not persuaded to interfere with the impugned Order dated 12.05.2016 of the learned Lahore High Court, Bahawalpur Bench, dismissing the Constitutional

Petition i.e. Writ Petition No.3315-P of 2016, challenging the conviction and sentence of the Convict.

289. In view of the above, all the titled Civil Petitions for Leave to Appeal are dismissed and leave declined.

Chief Justice

Judge

Judge

Judge

Judge

'NOT APPROVED FOR REPORTING'

Announced on _____ at _____

Judge