

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

JUSTICE MALIK SHAHZAD AHMAD KHAN
JUSTICE AQEEL AHMED ABBASI
JUSTICE SHAKEEL AHMAD

CRIMINAL MISC. APPEAL NO. 9 OF 2017 IN CRIMINAL REVIEW
PETITION NO. NIL OF 2017 IN CRIMINAL PETITION
NO.157/2017

(Against the order of Registrar)

Sher Azam

(In Cr. Misc. Appeal 9/2017)

... Appellant

Versus

The State

...Respondent

For the Appellant: Dr. Babar Awan Sr. ASC

For the Complainant: Mr. Sher Aman ASC

For the State: Barrister Umar Aslam, Additional Attorney
General for Federation of Pakistan
Mr. Altaf Khan, Additional Advocate General
KPK

Date of Hearing: 19.05.2026

ORDER

MALIK SHAHZAD AHMAD KHAN, J.- This criminal miscellaneous appeal has been filed by the appellant against the order dated 07.03.2017, passed by the Institution Officer/Registrar, whereby he returned the file of criminal review petition filed by the appellant against the order of this Court dated 25.07.2011, in Criminal Petition No.157/2011, being not entertainable.

2. Learned Law Officers, as well as, learned counsel for the complainant have raised an objection that as the appellant filed 2nd criminal review petition, therefore, the same was not entertainable.
3. We have noted that vide order dated 26.04.2012, first review petition i.e., Criminal Suo Moto Review Petition No.45 of 2011, was dismissed by the Hon'ble Author Judge in chamber of this Court

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and the said order was agreed with by the other Hon'ble Member Judge of the Bench in chambers. At the time of passing of order dated 26.04.2012, that too separately by both the Hon'ble Judges in chamber, the presence of any advocate or the appellant in person has not been marked and as such it is evident that the appellant was condemned unheard while dismissing the first review petition i.e., Criminal Suo Moto Review Petition No.45 of 2011. Furthermore, this Court vide order dated 13.10.2017, requisitioned a report from the Registrar of this Court that under what provision of law, i.e., Criminal Suo Moto Review Petition No.45 of 2011, of the appellant was heard and decided separately by the learned two Judges of this Court in chamber. In compliance of the said order, the Registrar of this Court has submitted a report dated 07.10.2017. In the said report, he mentioned that a Full Court meeting of this Court was convened and through office order dated 22.10.1990, the decision of the Full Court was expressed as under:-

"The question of allowing a petitioner to file a review petition in person, if he was represented by an Advocate or Advocate-on-Record at the previous stage was discussed at length in the Full Court Meeting held on 20th October, 1990 and it was decided that there was no need to amend the existing rules, but such a review petition should be placed before the author Judge in Chambers for examination whether the matter was fit for Suo Motu Review. After the opinion of the author Judge the petition should be placed before the remaining Hon. Judges of the Bench in circulation."

We have noted that the abovementioned decision of the Full Court expressed through office order dated 22.10.1990, has no blessing of the Law and Rules on the subject. The powers conferred under article 191 of the Constitution of the Islamic Republic of Pakistan, 1973, "The Supreme Court Rules, 1980", were framed accordingly.

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No change in the relevant rules was made to the effect that a review petition filed by a death convict shall be placed before the author Judge in Chambers for examination that as to whether the matter was fit for Suo Motu Review and after the opinion of the author Judge, the petition shall be placed before the remaining Hon'ble Judge(s) of the Bench in circulation without affording an opportunity of hearing to the convict. Rather it was decided in the said full Court meeting that there was need to amend the existing rules. It is, therefore, evident that no amendment was made in the existing rules of 1980 to the effect that a review petition of a death convict can be dismissed in chamber by the learned author Judge and the said decision can be placed before the remaining Judge(s) of the Bench in chamber through circulation for his/their opinion. Likewise, no amendment was made in the Supreme Court Rules, 1980, to the effect that a review petition of a death convict can be dismissed without providing an opportunity of hearing to the said convict.

4. Learned Law Officer, as well as, learned counsel for the parties have admitted that the abovementioned practice of hearing the review petitions of death convicts has no blessing of the law and rules on the subject. It is also clear from the above that the appellant was condemned unheard when his first review petition was dismissed because neither the appellant nor any counsel on his behalf appeared before the Hon'ble Judges of this Court in their respective chambers. Under the circumstances, order dated 26.04.2012, regarding dismissal of first review petition filed by the appellant was passed in violation of the principal of natural justice that no one should be condemned unheard. Furthermore,

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to article 175(2) of the Constitution of the Islamic Republic of Pakistan, 1973, it is provided as under:-

"175. (1)

(2) No Court shall have any jurisdiction save as is or may be conferred on it by the Constitution or by or under any law."

It is thus clear that jurisdiction exercised by this Court while passing order dated 26.04.2012, was not available to this Court under the relevant law and rules, hence the said order is patently illegal and void.

5. The Registrar of this Court has also mentioned in its report that under Order XXVI rule 8 of the Supreme Court Rules, 1980, the review petitions filed by the convicts are to be treated as *Suo Motu* review petitions and the same are being placed before the author Judge in Chamber, who may decide regarding the fate of the said petitions in chamber and thereafter, the opinions of the author Judges are being placed before the remaining Hon'ble Judge(s) of the Bench in their chambers, through circulation.

6. We have also gone through rule 8 of Order XXVI of the Supreme Court Rules, 1980 but are unable to find out any provision in the said order or in any other order/rule, whereby it is provided that the first review petition filed by a death convict can be heard and decided in the Chamber of the author Judge and by any other Judge of the Bench, who had heard and decided the judgment under review or the said review petition can be dismissed without affording an opportunity of hearing to the appellant or his learned counsel. It is further noteworthy that under Order XXVII rule 7 of the Supreme Court Rules, 1980, it has been provided that if a convict is unable to hire the services of a learned counsel then

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he shall be provided the facility of defense counsel at State expenses but no such facility was provided to the petitioner. Moreover, it is the constitutional right of every citizen of Pakistan under Articles 4 and 10-A of the Constitution of the Islamic Republic of Pakistan, 1973, to be dealt with in accordance with the law and to have fair trial and due process. Article 4 of the Constitution reads as under:-

4. (1) To enjoy the protection of law and to be treated in accordance with law is the inalienable right of every citizen, wherever he may be, and of every other person for the time being within Pakistan.

(2) In particular—

(a) no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law;

(b)

(c)

Article 10-A of the Constitution is also reproduced hereunder for ready reference:-

10-A. For the determination of his civil rights and obligations or in any criminal charge against him a person shall be entitled to a fair trial and due process.

It is, therefore, evident from the perusal of abovementioned articles of the Constitution that no action detrimental to the life, liberty, body, reputation or property of any person can be taken except in accordance with the law. Likewise, it is also provided in the abovementioned articles of the Constitution that in any criminal charge against a person, he shall be entitled to a fair trial and due process. In the light of above, it is clear that under the Constitution every citizen of Pakistan is entitled to be tried in accordance with the law, due process of law and fair trial but neither the appellant

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was dealt with in accordance with the law nor he was provided due process of law.

7. Under the circumstances, the first review petition filed by the appellant was illegally dealt with and dismissed by this Court vide the abovementioned order dated 26.04.2012. Therefore, we declare that order dated 26.04.2012, is non-existent in the eyes of law, thus, the instant review petition filed by the appellant cannot be termed as second review petition and the same is treated as the first review petition filed by the appellant before this Court.

8. Although learned Law Officers, as well as, learned counsel for the parties have argued that even the second review petition filed by the appellant was dismissed as having been withdrawn vide order dated 09.05.2017, of this Court. We have gone through the abovementioned order of this Court and it is evident from the perusal of said order that only CPs-200 and 2011 of 2017, were dismissed as having been withdrawn vide the abovementioned order of this Court. The said CPs were regarding granting permission to the appellant for compromise with the legal heirs of the deceased, whereas the instant Crl. Misc. Appeal No.09/2017, in Criminal Review petition No.Nil/2017, filed by the appellant against order dated 25.07.2011, passed in Crl. Petition No.157/2011, was not dismissed as having been withdrawn and this fact is also evident from the second paragraph of the abovementioned order of this Court, whereby the instant criminal miscellaneous appeal was ordered to be relisted.

9. Consequently, this criminal miscellaneous appeal is allowed and the office objection is overruled. Office is directed to entertain

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the criminal review petition filed by the petitioner/appellant and fix the same before the Court today after issuance of cause list.

**CRIMINAL REVIEW PETITION NO.173 OF 2017 IN
CRIMINAL PETITION NO.157 OF 2011**

10. Instant criminal review petition has been filed by the petitioner against order dated 25.07.2011, of this Court, whereby the criminal petition filed by the petitioner (Crl. Petition No.157/2011), was dismissed while maintaining the conviction and death sentence awarded to the petitioner by the learned trial Court and upheld/maintained by the learned High Court.
11. Arguments heard. Record perused.
12. The learned trial Court after conducting trial of Sher Azam (petitioner) and Mst. Farah Naz (co-accused), in case FIR No.184/2009, dated 04.09.2009, under sections 302/109 PPC, registered at police station Ghazi, District Haripur, convicted and sentenced the petitioner as under:-

Under section 302(b) PPC to death. He was also directed to pay Rs.200,000/- as compensation to the legal heirs of the deceased recoverable as arrears of land revenue and in default whereof to further undergo six (06) months simple imprisonment. However, vide the same judgment, Mst. Farah Naz (co-accused), was acquitted.

The appeal filed by the petitioner before the learned High Court and the criminal petition filed by the petitioner before this Court were dismissed vide judgments dated 25.07.2011 and 02.03.2011, respectively while maintaining the conviction and sentence awarded to the petitioner by the learned trial Court.

13. We have noted that the occurrence was unseen. However, the petitioner made a judicial confession before the concerned Court. Though the said judicial confession was retracted later on but the abovementioned retracted judicial confession of the petitioner was corroborated by the recovery of pistol at the pointing out of the

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petitioner and the positive report of FSL. The prosecution produced reliable evidence against the petitioner. We are, therefore, of the view that the prosecution has proved its case against the petitioner beyond the shadow of any doubt.

14. Insofar as the quantum of sentence of the petitioner is concerned it is noteworthy that the motive of friendship of the petitioner with the wife of the deceased namely Mst. Farah Naz (co-accused), was not believed because the said Mst. Farah Naz (co-accused), has already been acquitted by the learned trial Court, which acquittal has attained finality, therefore, the said motive cannot be believed against the petitioner. Moreover, the case of the petitioner was not based on the evidence of eye-witnesses. FIR was lodged against the unknown accused and the petitioner was later on implicated in this case. The prosecution case hinges upon circumstantial evidence. As the motive has not been proved in this case, therefore, it is not determinable that as to what had actually happened immediately prior to the occurrence, which had result into present unfortunate incident. Under the circumstances, we are of the view that the sentence of death awarded to the petitioner is quite harsh and the sentence of life imprisonment to the petitioner shall meet the ends of justice. Consequently, this review petition is partly allowed and the judgment under review dated 25.07.2011, of this Court is modified to the extent of the quantum of sentence awarded to the petitioner. The conviction of the petitioner under section 302(b) PPC, awarded by the learned trial Court and upheld by the learned High Court, as well as, by this Court vide the judgment under review, is maintained, however, his sentence is altered from death to imprisonment for life. The direction regarding the payment

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of compensation and sentence in default thereof is maintained and upheld. Benefit of section 392-B Cr.P.C is also extended in favour of the petitioner. The judgment under review dated 25.07.2011, of this Court is, therefore, modified in the above terms.

Sd/-J

Sd/-J

Sd/-J

Certified to be True Copy

[Signature]
Senior Court Associate
Supreme Court of Pakistan
Islamabad

*I have appended my
additional note.*

Islamabad, the
19th of May, 2026
Not Approved For Reporting
Attas

OR No: _____

Date of Presentation: _____

Court Fee Stamp: _____

Date of Completion of Copy: _____

Date of Delivery of Copy: _____

Compared by/Prepared by: _____

Received by: _____



Shakeel Ahmad, J. I have had the privilege of going through the order authored by my learned brother, Malik Shahzad Ahmad Khan, J. I am in complete agreement with the conclusions reached therein; however, I consider it appropriate to add a few supplementary observations in support of the said order, in the following terms:

2. The circumstances giving rise to the present Review Petition transcend the confines of an ordinary procedural dispute. They engage questions of profound constitutional significance touching upon the legality of the review process, the applicability and supremacy of the principles of natural justice in the administration of justice (*Adl*), and denial of right of hearing to the applicant/petitioner under the garb of administrative directions in proceedings involving capital punishment, and the solemn obligation of this Court, as the guardian of the Constitution and the fundamental rights guaranteed thereunder, to ensure that justice is not sacrificed at the altar of procedural expediency. One of the cardinal principles of *Sharia* in the administration of justice (*Adl*) is that no person should be condemned without first being afforded an opportunity of hearing. This principle, which finds its modern expression in the doctrine of natural justice, embraces the well-settled rules that no one shall be condemned unheard, that justice must not only be done but must manifestly appear to have been done, and that no person shall be a judge in his own cause. The Holy Qur'an consistently demonstrates that accountability is preceded by notice, warning, and an opportunity to respond, and that punishment follows only after the truth has been fully communicated and wilful disobedience established. Procedural fairness is, therefore, not merely ancillary to justice in Islamic jurisprudence; it is one of its indispensable attributes.

3. Where the life and liberty of a citizen hang in the balance, procedural fairness ceases to be a matter of form and assumes the character of a substantive guarantee. The administration of criminal justice, particularly in cases carrying the irreversible consequence of death, derives its legitimacy not merely from the correctness of the outcome but from the fairness, transparency, and legality of the process through which that outcome is reached. Any departure from prescribed legal safeguards, howsoever well-intentioned, strikes at the very foundation of public confidence in the judicial system.

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4. The controversy involved in the present matter may conveniently be examined under the following heads:

- (i) Whether review jurisdiction, in its constitutional and statutory contours, is purely corrective in nature and distinct from appellate or revisional powers;
- (ii) Whether the disposal of a review petition in chambers, pursuant to an administrative or Full Court arrangement, in deviation of the principles of natural justice, requiring hearing in open Court, is legally sustainable;
- (iii) Whether denial of the convict's right of audience in proceedings involving capital punishment constitutes a violation of Articles 4 and 10-A of the Constitution read with the principles of *audi alteram partem*;
- (iv) Whether in cases resting primarily on circumstantial evidence and retracted confession, the imposition and affirmation of the death penalty meet the constitutional threshold of certainty required in capital sentencing;
- (v) Whether, in the presence of procedural illegality and violation of due process, the Supreme Court may invoke its inherent jurisdiction to entertain a review petition or treat the matter as one of recall to prevent manifest miscarriage of justice.

5. Let us begin with the origin, purpose, and philosophy of review jurisdiction. The power of review emanates from the well-settled maxim *actus curiae neminem gravabit*, meaning that an act of the Court shall prejudice no one. The object of review is not to sit in appeal over a judgment or to permit a rehearing on merits; rather, it exists to correct manifest error, prevent miscarriage of justice, rectify procedural unfairness, and preserve public confidence in the administration of justice. The underlying rationale is that while finality of litigation is an important principle, it cannot be allowed to perpetuate an obvious injustice resulting from judicial oversight, procedural irregularity, or failure to consider a material matter. This philosophy is not only embedded in the common law tradition but also finds deep roots in Islamic jurisprudence, which has consistently emphasized that the ultimate objective of adjudication is the attainment of justice. The Holy Qur'an commands, "And when you judge between people, judge with justice"

(Surah Al-Nisa, 4:58), while the traditions of the Holy Prophet (PBUH) emphasise caution against erroneous punishment and underscore the imperative of fairness in judicial decision-making. Classical Islamic jurists recognised that where a material fact or legal consideration had escaped attention, where evidence was doubtful, where a confession was unreliable, or where procedural unfairness had occurred, a prior determination could be revisited to prevent injustice. Islamic legal history itself furnishes a notable example where Caliph Umar (RA), upon being apprised by Hazrat Ali (RA) of a material legal consideration concerning the rights of an unborn child, reconsidered and deferred the execution of a sentence previously ordered. The incident demonstrates that where a material matter has escaped consideration, correction of an earlier determination is not viewed as a departure from finality but as a means of ensuring that justice prevails. Likewise, the well-established principles governing *Hudood* and *Qisas*, particularly the rule that doubt prevents the imposition of penal consequences, reflect a broader jurisprudential commitment to ensuring that judicial error does not culminate in irreparable injustice.

6. Similarly, a retracted confession has traditionally been viewed with extreme caution in Islamic law. Thus, review jurisdiction in Islamic jurisprudence is fundamentally rooted in the prevention of *zulm* (oppression), the correction of judicial error, and the protection of human life. Likewise, European and common law jurisprudence developed review powers through the doctrines of natural justice, due process of law, and the inherent powers of the superior Courts. At the heart of this evolution lie two enduring principles: *audi alteram partem*, that no person shall be condemned unheard, and *nemo iudex in causa sua*, that no one shall be a judge in his own cause. The right to be heard consequently became inseparable from the concept of a fair trial, finding recognition in Article 6 of the European Convention on Human Rights, the doctrine of due process, and the constitutional traditions of modern democratic societies.

7. In my considered opinion, review jurisdiction is corrective, not because Courts are fallible, but because justice demands a mechanism capable of correcting the consequences of human fallibility. The law may value finality, yet it values justice more. No judicial system can claim legitimacy if it knowingly permits a manifest illegality, a denial of hearing, or a fundamental procedural defect to culminate in the loss of life or liberty merely in the name of closure. Review jurisdiction, therefore, stands as the

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Court's final safeguard against irreversible injustice, ensuring that the solemn authority of a judicial verdict remains anchored in fairness, legality, and due process. In matters involving life and liberty, the refusal to correct a manifest error does not advance the cause of finality; it perpetuates the very injustice that the judicial process exists to prevent.

8. Coming now to the central question regarding the effect of hearing a review petition in chambers without providing right of audience to the accused or his counsel in a case of death penalty. In the present case, owing to a Full Court or administrative decision, the matter was fixed in chambers before the learned Senior Judge, where the review petition was dismissed, and the learned other Judge of the Bench concurred with the said view. The consequence is that the convict was denied a right of audience in a proceeding which, by its very nature, and under the principles of natural justice, required an open Court hearing. This deviation from the principle of natural justice raises a serious constitutional question touching upon the principles of fair trial, access to justice, and due process guaranteed under Articles 4 and 10-A of the Constitution, as the issue is not merely one of procedural irregularity but goes to the root of the legitimacy of the adjudicatory process where a litigant is condemned unheard in a matter affecting life and liberty. The administrative decision inconsistent with the principle of natural justice cannot prevail. The hierarchy of law remains constitutionally settled, namely the Constitution, followed by statutes and rules having statutory force, and thereafter administrative instructions, and any administrative direction contrary to the principle of natural justice is void to the extent of inconsistency. Consequently, disposal of a review petition in chambers in deviation from the principles of fair trial and access to justice and due process guaranteed under Articles 4 and 10-A of the Constitution would be *coram non jure*, procedurally illegal, and constitutionally infirm, offending Articles 4 and 10-A of the Constitution, particularly in cases involving life and liberty where Article 9 is directly engaged, and the consequences are irreversible, thereby demanding the strictest adherence to procedural fairness.

9. Capital punishment, as recognized in *Gregg v. Georgia*¹, is unique in its total irrevocability and severity, in that death is qualitatively distinct from all other forms of punishment. It extinguishes not only liberty but the possibility of judicial correction. This irreversible character

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necessitates a heightened procedural and evidentiary threshold in its imposition, requiring the judicial process to operate under what may be described as a "super due process" standard. Within this framework, a criminal, however grave his crime, is not to answer for forfeiture of life or liberty until tried and convicted in conformity with law². This foundational premise is further reinforced by the distinction between procedural rules intended merely for the orderly dispatch of business and those designed to secure a fair trial to the accused; the former may admit of flexibility, whereas the latter constitute essential safeguards of liberty and cannot be diluted without undermining the legitimacy of the adjudicatory process. Super due process, in this sense, does not create a parallel procedural code; rather, it intensifies the existing constitutional guarantees under Articles 4, 9, and 10-A of the Constitution in cases where the consequences are irreversible. It requires strict adherence to procedural safeguards, full and fair consideration of guilt, and rigorous judicial scrutiny of all mitigating material before the ultimate penalty can be affirmed. The doctrine of "rarest of rare" operates at the sentencing threshold, whereas super due process governs the integrity of the decision-making process leading to that threshold being reached. Read together, these principles ensure that capital punishment is not only justified in its outcome but is constitutionally unimpeachable in its process.



10. It is an admitted position that in the present case, the review petition was decided in chambers, in disregard of the principles of natural justice requiring an open Court hearing, notwithstanding that the accused was facing capital punishment. A proceeding conducted in such a manner, particularly in a matter involving the irreversible consequence of death, cannot sustain judicial scrutiny, as it stands in clear conflict with the requirements of due process, the principles of natural justice, and the constitutional mandate of fair trial under Articles 4 and 10-A of the Constitution. It is a settled principle that justice must not only be done but must manifestly and undoubtedly be seen to have been done, a standard which assumes heightened significance where life and liberty are at stake. In such circumstances, any deviation from mandatory procedural safeguards strikes at the very legitimacy of the adjudicatory process and falls short of the super due process threshold governing capital cases.

11. Coming to another important aspect of the matter, namely the nature of the evidence forming the basis of the conviction and sentence, it

² People v. Moran, (246 N.Y. 100, 106, 158 N.E. 35).

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is evident from the record that the prosecution's case rested substantially upon circumstantial evidence coupled with a retracted judicial confession. During the course of arguments, the learned Additional Advocate General fairly conceded that the case did not warrant the imposition of the death penalty. Such concession assumes significance when viewed in the context of the settled principle that capital punishment may be sustained only where the evidence inspires the highest degree of confidence and excludes every reasonable possibility of error. Circumstantial evidence, however strong, requires careful scrutiny, while a retracted confession is traditionally regarded as a weak form of evidence unless corroborated by independent and reliable material particulars. Consequently, where the prosecution's case is founded upon a chain of circumstances and a retracted confession, and the State itself does not support the extreme penalty, the continued maintenance of a sentence of death becomes difficult to reconcile with the heightened standard of certainty demanded in capital cases. In such circumstances, the sentencing discretion must necessarily be exercised with utmost caution, for where any reasonable doubt exists regarding the appropriateness of the ultimate penalty, the law leans in favour of life rather than death.

12. This brings me to the question whether the present petition is barred by the dismissal of the earlier review petition. A perusal of the order dated 09.05.2017 reflects that only petitions for compromise were withdrawn, and the main review petition was ordered to be re-listed. Ordinarily, the law does not contemplate repeated review proceedings, and considerations of finality demand that a litigant should not be permitted to re-agitate matters that have already attained conclusiveness. However, the principle of finality presupposes a determination rendered in accordance with law and through a process consistent with constitutional and due process requirements. Where the earlier review proceedings themselves are alleged to have been conducted in disregard of the principles of natural justice, without affording the convict a right of audience, and in a matter involving the sentence of death, the issue transcends the ordinary question of maintainability and assumes a constitutional dimension. In such exceptional circumstances, technical objections must yield to the paramount duty of the Court to ensure that its proceedings conform to the requirements of due process and fairness. A Constitutional Court is not rendered powerless where a prior order is shown to suffer from a patent procedural illegality affecting the legitimacy of the adjudicatory process itself. The Court retains inherent jurisdiction

to recall or revisit orders passed in violation of the principles of natural justice to ensure that no person is deprived of life or liberty except in accordance with law. Consequently, where the validity of the earlier review proceedings is itself under challenge on constitutional and procedural grounds, the bar ordinarily applicable to successive review petitions cannot be treated as an absolute impediment to judicial scrutiny.

13. At this stage, it is necessary to distinguish between the concepts of review and recall. While review proceeds on the assumption that a valid order exists and seeks reconsideration within the limited parameters prescribed by law, recall proceeds on the premise that the order itself suffers from a fundamental procedural defect affecting its validity. The distinction may conveniently be summarized as follows:

Sr. #	Review	Recall
1.	Reconsideration of an existing decision on recognised grounds.	Setting aside an order affected by a fundamental procedural defect.
2.	Exercised within the statutory framework governing review.	Exercised in the Court's inherent jurisdiction to protect the integrity of its proceedings.
3.	Requires apparent error on the face of the record or other recognized review ground.	Commonly invoked where notice was not given, hearing was denied, or the order/ judgment was otherwise passed in violation of due process.

If an order/judgment has been passed without affording a right of hearing, and in violation of the principles of natural justice, the challenge is directed not merely to the correctness of the decision but to the validity of the process by which it was reached. In such circumstances, Courts have treated the matter as falling within the sphere of recall rather than conventional review. Viewed in this light, the present petition is maintainable because it calls into question the legality of the earlier proceedings themselves and seeks correction of an alleged procedural defect going to the root of the adjudicatory process.

14. The cumulative effect of the foregoing circumstances is that the dismissal of the review petition in chambers, in disregard of fairness and due process of law, cannot be sustained in law. The denial of a right of audience in a capital punishment case offends the guarantees of due

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process and fair trial embodied in Articles 4 and 10-A of the Constitution, while an administrative decision cannot override the mandate provided in Articles 4 and 10-A of the Constitution governing the exercise of judicial power. The procedural infirmity is further aggravated by the fact that the prosecution's case rests substantially upon circumstantial evidence and a retracted judicial confession, coupled with the State's own concession that the case does not warrant the extreme penalty of death. Viewed in this context, the present matter raises not merely a question concerning the quantum of sentence but the validity of the earlier proceedings themselves. Consequently, the Court's recall jurisdiction, exercised to remedy a fundamental procedural defect and prevent an irreversible miscarriage of justice, is directly attracted.

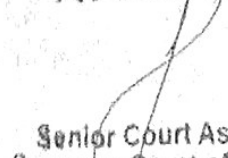
15. In conclusion, it may be observed that Constitutional Courts are not merely instruments for the enforcement of procedure, but are ultimate guardians of justice. Where the sentence of death is in issue, the accused has been denied a right of audience, and the provisions of Article 4 & 10-A of the Constitution have been disregarded, the evidentiary foundation is not beyond reasonable doubt in the strictest sense, and even the prosecution concedes that the extreme penalty is not warranted, the judicial conscience cannot remain indifferent to the possibility of irreversible injustice. In such circumstances, this Court is vested with ample constitutional, equitable, Islamic, and inherent jurisdiction to revisit the matter so as to ensure that the sanctity of due process is preserved, public confidence in the administration of justice is maintained, and the constitutional promise of a fair trial is given full effect. The law, in its deepest sense, leans in favour of life where any reasonable doubt or mitigating circumstance emerges, for the finality of judicial process can never be permitted to eclipse the fundamental value of justice itself.


Judge

Approved for Reporting

Zia/*/Rameen Shahram LC

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