

CHAIRMAN BHUTTO'S APPLICATION IN THE LAHORE HIGH COURT FOR THE TRANSFER OF THE CASE



Reproduced by:

Sani Hussain Panhwar

Member Sindh Council, PPP

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**IN THE LAHORE HIGH COURT,
LAHORE
IN RE: CR.O.NO.60/1977
STATE
vs.
MR.ZULFIKAR ALI BHUTTO
AND OTHERS**

APPLICATION UNDER SECTION 561-ACR.P.C

The petitioner, Zulfikar Ali Bhutto, an accused in the above mentioned case respectfully submits:

1. That on 18-12-1977 he filed an application with a prayer that for reasons stated in the said application the case may be transferred for trial to another Bench or Judge, preferably the Sessions Judge, Lahore.
2. That the application was presented in the Registry of the High Court, at his request by his Junior Counsel Ehsan Ullah Khan, Lilla and Miss Tallat Yagoob which was received without any objection
3. That in this 53 page petition the petitioner had given the details and particulars of the bias and prejudice of the learned Acting Chief Justice Mr. Justice Mushtaq Hussain and the Bench presided over by him during the course of over two months that the trial has been going on. The petitioner has also indicated in the said petition that even prior to the commencement of the trial Mr. Justice Mushtaq Hussain had betrayed his prejudice against the petitioner and, the Pakistan Peoples Party. The petitioner had in the said petition given some of the glaring instances of the unfair manner in which the trial was conducted and record of evidence and proceedings dovetailed to suit the prosecution. The petitioner had also quoted some of the incidents when he and his Counsel were insulted and humiliated by the Acting Chief Justice. The application also shows how the Bench presided over by Mr. Justice Mushtaq Hussain had made it almost impossible for the petitioner's Counsel to perform their lawful duty in defending him in accordance with law and in a self respecting and dignified manner.

4. That the said petition indicated that up to 11-12-1977 the evidence of 23 P.Ws. had been recorded and the Court had not allowed a single contradiction or omission in the evidence of these witnesses with their previous statements to be brought on record although there were hundreds of material contradictions and discrepancies. This was thus a singular case in the history of our criminal jurisprudence when the record shows that the witnesses were not confronted with their previous statements by Counsel which in fact was not correct as all their requests and protests were rejected in this matter.

5. That this petition was to be taken up by the Court for disposal on 19-12-1977 but the cause list put on the notice, board on 18-12-1977 indicated that this petition was to be returned to the petitioner. It has not been returned to the petitioner or his Counsel.

6. That the petitioner also understands that instructions were given through the High Court and Director of Public Relations to the Newspapers with a threat of action for contempt of Court if the petitioner's petition were to be published.

7. That the State owned Radio and Television have been giving one sided slanted distorted and highly motivated versions of this trial to the enormous prejudice of the petitioner and whatever the defence states is almost completely ignored. The Government of the Martial Law Authorities is bent upon maligning and punishing the petitioner in the name of accountability in this false and fabricated case and thus the distorted versions of the proceedings. But why should the High Court be at pains to stop the public to know what petitioner's side of the story is and what the true facts are? Why should the High Court not treat both the parties before it equally? Why should both the prosecution and defence versions be not brought to the notice of the public? This action of the Acting Chief Justice or members of the Bench only proves that the Bench does not want people to know the bias and prejudice that have been betrayed by them almost on every day of the proceedings. Instead of showing that the trial is taking place in accordance with the common law traditions in the full light of the day, stopping the press to publish the petitioner's petition giving instances and incidents of the most unfair manner in which the trial has been taking place only proves that the High Court does not want the public to know that this trial is being held in a "hole and corner fashion", in which the record of proceedings supplied to the parties and to the press for publication is at variance in material particulars with what actually transpires in the court from' day to day.

8. That if the High Court Registrar's office has suddenly discovered some technical objections in the petition filed on 18-12-1977, in that event it is requested that those may be heard "in the full light of the day" in open Court and decided by the Bench.

9. That the petitioner also wants to be heard in open Court after the submissions of his Counsel on the said petition.

It is therefore prayed that the said petition may be taken up for hearing by the Bench for disposal at an early date during the winter vacation of the High Court.

Zulfikar Ali Bhutto

Dated: 22-12-1977

**IN THE LAHORE HIGH COURT,
LAHORE
IN RE: CR.O.N0.60/1977
STATE
VS.
MR ZULFIKAR ALI BHUTTO
AND OTHERS
APPLICATION UNDER SECTION 561-A CR.P.C**

The petitioner, Zulfikar Ali Bhutto an accused in the above-mentioned ease respectfully submits:

1. That the Central Executive of the Pakistan People's Party at its meeting held in Karachi on 3rd August 1977 under the chairmanship of the petitioner expressed in clear and unambiguous terms that Mr. Justice Mushtaq Husain the Chief Election Commissioner was prejudiced and partial against the Pakistan People's Party. The Central Executive put the view on public record in his statement published in the newspapers on 4.8.1977 and. inter alia, stated that.

- (i) Combining the office of the Chief Election Commissioner with that of the Chief Justice of the largest High Court in the Country is a travesty of justice.
- (ii) The chief Election Commissioner who was superseded by the People's Party Government has already betrayed his bias and prejudice against the party in his recent television press conference. He has made irrelevant, fortuitous and baseless remarks thereby shown his partisan attitude...."

2. That a Press Note in reply issued by the Election Commission of Pakistan (Published in the Newspapers on 5-8-1977), inter Alia, stated:

The Election Commission of Pakistan today considered the allegations of partisanship and bias made by the Chairman of Pakistan People's Party (PPP) in respect of the observations of the Chief Election Commissioner in his television Press Conference. Though the allegations were incorrect the observation of the Chief Election Commissioner are supported by the records of the Commission, it was decided to ignore the allegations as the Commission had no intention to start dialogue but it would always welcome and act upon constructive suggestions from whichever quarter they emanate. (*APP - Sub Karachi, 5-8-1977*)

3. That in the ear hours of 3-9-1977 a large contingent of Army Command F.I.A. men and the Police armed to the teeth raided the residence of the petitioner, broke open the house and arrested him. It w subsequently announced that the arrest had been made under Sections 302/307/120-B/109 P.P.C., on the basis of an F.I.R. lodged with the Lahore Police on 11-11-1974 by Mr. Ahmad Raza Kasuri soon after the death of his father caused by Fire arms injuries. After the arrest in Karachi the petitioner was brought to Lahore and put under Army custody in a house somewhere in the Army Cantonment. Later he was confined in Kot Lakhpat Jail. A bail application was moved on his behalf and on 13-9-1977 Mr. Justice K.M.A. Samadani of this Honourable Court was pleased to order his release. Three days later, that is on 16-9-1977 he was again arrested from his residence in Larkana under Martial Law Order No. 12 and put in solitary confinement, first in Sukkur and Karachi and later on 22-9-1977 again in Kot Lakhpat Jail. Lahore.

4. That prior to that a Division Bench of this Court consisting of Mr. Justice K.M.A. Samadani and Mr. Justice Mazharul Haq was already enquiring into a private complaint of Mr. Ahmad Raza Kasuri about the same incident as mentioned in his F.I.R. of 11-11-1974. While the High Court Division Bench was conducting enquiry into the said complaint and Mr. Justice Samadani was hearing the bail application, an incomplete challan on the basis of the said FIR of 11-11-1974 was submitted in the Court of a Magistrate in Lahore which was immediately forwarded to the Sessions Judge Lahore.

5. That apprehension of the petitioner about the partiality and prejudice of Mr. Justice Mushtaq Hussain, the Acting Chief Justice expressed a month earlier and before the institution of these cases was substantiated by his order transferring the move mentioned challan case from the lower court to the High Court, on the same day the petitioner was enlarged on bail by Mr. Justice K.M.A. Samadani even before a complete challan was submitted to the trial court.

6. That again the order passed on the same day *i.e.* 13-9-1977 by Mr. Justice Mushtaq Hussain constituting a Special Bench of five Judges presided over by himself for the trial of the challan case, when the private complaint with regard to the same matter was already being inquired into by the said Division Bench of the High Court caused further apprehension in the mind of the petitioner about not getting a fair trial. As already submitted that on that date even though the complete challan had not been filed yet 24th September 1977, was fixed for the trial of the case.

7. That withdrawal of the challan case from lower court without hearing the petitioner has caused prejudice to his and deprived him of his valuable rights including those of appeal/revisions to the High Court.

8. That at the first hearing of the challan case on 24-9-1977, the petitioner requested for three weeks adjournment as all his Senior Counsel were appearing at that time in the Supreme Court in Rawalpindi in Begum Nusrat Bhutto's constitutional petition questioning the validity of the detention of the petitioner and some other prominent PPP leaders under M.L.O. 12. The Bench however, only adjourned the case for 7 days as required by law, assuring the petitioner that further adjournment would be considered if his counsel needed it after 7 days. On this a junior Advocate. Mr. Aftab Gul intervened and requested for more time. The Court took amiss Mr. Aftab Gul's sudden intervention, therefore the petitioner rose to stop him and stated that he had confidence in the Court clearly implying thereby that he was satisfied with the seven days of adjournment on the assurance of the Court that if needed, a further adjournment to the date of commencement of the trial would be granted. This incident was not reported in the Press on the next day *i.e.* on the 25-9-1977. However, on that date *i.e.* on 25-9-1977 a report appeared that a Petition for Leave to Appeal had been moved in the Supreme Court on behalf of the petitioner, *inter alia*, alleging partiality and bias against Mr. Justice Mushtaq Hussain. It was further reported that the same had been dismissed by the Supreme Court on the ground that the points may be raised in the first instance before the High Court itself. This was done as mentioned in the following paragraph. Thereafter on 26th September, 1977 a news report appeared in the Pakistan Times and other newspapers that Counsel for the petitioner had misstated the position before the Supreme Court and that the petitioner had "fullest confidence" in the Bench presided over by Mr. Justice Mushtaq Hussain. This inspired and misleading report came as a complete surprise to the petitioner. When the petitioner was again brought before the Bench on 27th September, 1977, he availed of the very first opportunity to point out the misleading report and explained that at the previous hearing, the question pertained only to fixing the next date of hearing of the challan case about which he had expressed his satisfaction and confidence in that limited context and not "fullest confidence" generally in the Bench. It was inconceivable for the petitioner to specifically instruct his Counsel to move the Supreme Court against the prejudice and partiality of Mr. Justice Mushtaq Hussain and yet on the same day and at about the same time express his "fullest confidence" in the Bench presided over by him. The fact that the Bench did not dispute the explanation of the petitioner at that time clearly shows that the inspired newspaper reports were made deliberately with the purpose of misleading the public and casting a reflection on the petitioner.

9. That the objections mentioned in the foregoing paragraphs were raised before this Honourable Court by Misc., Application No.933-M/1977 dated 4-10-1977 along with Misc. Application No.932-M/1977 dated 4-10-1977. These miscellaneous applications were heard on 4th, 5th and 8th October 1977 and summarily dismissed on 9-10-1977 by the Bench of, five Judges presided Inver by Mr. Justice Mushtaq Hussain.

10. That as a result of bail granted to the petitioner by Mr. Justice K.M.A. Samadani on 13-9-1977, the authorities were greatly disturbed as is clear from the records of the Supreme Court in the Constitutional petition of Begum Nusrat Bhutto. However, on 21-9-1977 the Bench presided over by the Acting Chief Justice, on the application of Special Public Prosecutor issued a show cause notice to the petitioner as to why the bail granted to him on 13-9-1977 by Mr. Justice K.M.A. Samadani be not cancelled? The petitioner was at that time already confined in Karachi Jail under MLO.

11. This fact was within the knowledge of the learned Acting Chief Justice and other members of the Bench. This notwithstanding, the Court ordered immediate service of this show cause notice for 24-9-1977 which was taken by a special Messenger to Karachi the same day and served at about midnight on the petitioner in Karachi Jail. The petitioner failed to understand the haste and urgency in serving this show cause notice on him when he was already in Jail and in solitary confinement? However subsequently, the records of the Supreme Court referred to above, threw light on these unusual and extraordinary measures.

12. That while Counsel for the petitioner Mr. Ghulam Ali Memon was arguing Cr. Misc. No.932-M/1977, the petitioner rose on two or three occasions to intervene on certain points. On the first occasion he wanted to clarify a point after some observation from the Bench not directly related to the submissions of his counsel. Similarly on the second and third occasions the petitioner rose and stated that he wanted to supplement the submissions of his Counsel on the points which were being argued and on which the Counsel was questioned by the Bench. On each occasion the petitioner was categorically assured that he would be given sufficient opportunity to address the Court after conclusion of Counsel's submissions. On the Second occasion the learned Acting Chief Justice promised to give the petitioner time to make submission for "hours and hours". This assurance was repeated again in open court and was heard by every one present in Court. However, at the conclusions of the arguments of the petitioner's Counsel on 8-10-1977. before the petitioner could rise to make his submission as promised to him, the learned Acting Chief Justice, to the utter surprise of the petitioner and those present in Court, observed with obvious vehemence, that the petitioner would not be permitted to address the Court but, if he wanted, he

could submit in writing his views for which services of a Stenographer would be made available to him in the Court premises by the Court. The Court further announced that the orders on these applications and on the application for cancellation of bail which had been argued earlier by the Special Public Prosecutor and the petitioner's Counsel, Mr. Muhammad Hayat Junejo, would be announced on the following day.

13. After the court rose the petitioner politely declined the "kind" offer of the Court to make submissions in writing and brought the fact on record that he had not been given the promised opportunity to address the Court. The petitioner stated in writing that:

"It is respectfully submitted that this Honourable Court was pleased to assure me that I would be called upon to address the Court "for hours and hours" to my fullest satisfaction on the question of Martial Law to supplement the submissions of my Counsel about its unconstitutional nature. This assurance was repeated to me on 5th of October, 1977, again in open court.

This morning at the conclusion of my Counsel's submissions I was surprised when the Court informed me that I would not be heard, but that I could file a statement in writing for which a stenographer would be made available.

At the same time, the court also observed that orders in these matters will be passed tomorrow. The Court also observed that there was no need to give notice to the other side.

Under these circumstances, it is obvious that even such important Constitutional questions which have been raised by my Counsel are likely to be summarily disposed of tomorrow.

For these and allied reasons including some of the observations made in this Court, **have all the more convinced me that I will not get a fair trial.**

Dated: 8-10-1977.

ZULFIKAR ALI BHUTTO

14. Before the commencement of trial, when the petition for cancellation of bail was being argued, within the passage of a night, a dock was specially put in the court and the petitioner was directed to be seated behind it. The petitioner was made to sit behind that specially erected dock with a Senior Intelligence Officer on his right and the Senior Police Officer seated on his left. This seating

arrangement is being continued at each hearing. This arrangement deprives the petitioner to give instructions in confidence to his lawyers in Court out of hearing of these Officers. In addition, this dock has been specially devised and put into use to cage and humiliated the petitioner. Many accused had been tried in this High Court on its original side over the years, but this is the first time that such a dock has been made to humiliate the petitioner on the one hand and to make it impossible for him to give instructions to his Counsel on the other. The object is also to devalue the importance and stature of the petitioner and to psychologically prepare public opinion for a biased and prejudicial decision. Otherwise there is no reason to add insult to injury in this manner.

15. That in the course of the trial of the case the learned Acting Chief Justice thought it proper to give an interview to the correspondent of BBC (British Broadcasting Corporation) and another foreign newspaper journalist with the object of impressing the World that the petitioner was getting a fair trial according to Common Law traditions and that special arrangements had been made like tape-recording the proceedings. This interview was Broadcast by the BBC and reported in Newspapers including the Pakistan Times of Lahore. It is the submission of the petitioner that it is not normal for Judges claiming to follow Common Law traditions to give press interviews about the manner and conduct of trial whilst the trial is in progress. It clearly indicated that the learned Acting Chief Justice felt that the general impression inside and outside the country was that the petitioner was not getting a fair trial, and the learned Chief Justice was at pains to dispel this impression in the said interviews.

16. After reading the interview in the Pakistan Times the petitioner submitted an application to the Court protesting against the observations of the learned Acting Chief Justice but the said application was directed to be 'filed'.

17. That in the course of trial the petitioner got seriously indisposed. He was running temperature up to 103 and under the advice of the Doctors could not attend the Court for several days. The learned Acting Chief Justice by way of 'favour' adjourned the case for two days at the most, and told the counsel for the petitioner that thereafter he would proceed with the trial in the absence of the petitioner. The request of the Counsel that he was severely handicapped in cross-examination of the witnesses in the absence of the petitioner as he would not be available to give instructions in the course of cross-examination was not accepted by the Court. Thus the examination and cross-examination of witnesses was conducted for about three weeks in the absence of the petitioner, to his great prejudice.

18. That the petitioner preferred a petition for Special Leave to Appeal before the Supreme Court but the said petition in so far as it concerned the bias in the

trial Bench was withdrawn on the assurance that, the petitioner would be at liberty to raise this question after the trial, and if necessary even earlier.

19. That for reasons stated above and more so from the manner and conduct of the trial by the Bench presided over by Mr. Justice Mushtaq Hussain, the petitioner is convinced beyond doubt that he is not getting a fair trial. The objections and requests of the Defence Consul are often rejected without being recorded. Similarly relevant questions put to prosecution witnesses are either disallowed without being recorded or the question and answers are recorded after significant discussions between the Counsel for defence, Special Public Prosecutors and the Bench in the presence of the witnesses thus defeating the very purpose of cross-examination. Important documents of benefit to the defence are at times not allowed to be put to the witnesses or to come on record. Similarly, other documents which the defence wants to prove through prosecution witnesses are not brought on record. Some of the important documentary evidence in possession of the Prosecution or Government Departments is not made available to the Defence or is made available only after repeated requests and protestations. Counsel for the Defence has been insulted, ridiculed and brow-beaten in open Court on several occasions by the Bench. The petitioner has also been subjected to insults from time to time. It has been noticed that the evidence dictated in Court and typed is recast and re-typed later and copies of the re-typed record are supplied to the parties and the press. So far the petitioner has patiently exercised exemplary restraint in the face of repeated provocations only to show to the people of Pakistan that he is being subjected to a naked and unparalleled witch hunt for no other reason-except for political considerations.

20. Only a few instances of what is stated in the above paragraph are given hereunder:

(1) REMARKS AGAINST THE PETITIONER.

(i) That on the day when the dock was put up in the Court and the petitioner along with other accused was made to sit behind it. Mr. Justice Mushtaq Hussain, the Acting Chief Justice rudely remarked that "We know that you are used to a very comfortable life. I am providing you with a chair behind the dock instead of a bench. There was absolutely no reason whatsoever for the Acting Chief Justice to make this unkind and uncalled for remark. It only betrayed his deep-seated bias.

(ii) Again the learned Acting Chief Justice could not repress his resentment and prejudice with regard to his supersession when the petitioner's Counsel Mr. Ghulam Ali Memon was arguing the Cr. Misc. No. 932-M/1977 and 933-M/1977, Addressing the petitioner in open court

the Acting Chief Justice asked him as to what would be the effect if 'in a hypothetical case', under coercion and undue influence (or words to that effect) Judges were superseded at the time of appointment of the Chief Justice?

(iii) When the Petitioner's Counsel was addressing the Court on Martial Law, the Acting Chief Justice went out of his way to uphold Martial Law by stating irrelevantly, that the Petitioner had also continued Martial Law after the fall of the Yahya regime. This was an unnecessary and distorted observation meant to find an invalid ground for criticizing the Petitioner. At the time when the petitioner was forced to continue Martial Law for a few months, the Country was dismembered and without a Constitution. This fortuitous remark was made on the one hand to justify the present Martial Law and to attack the petitioner.

(iv) In the course of this trial, the learned Acting Chief Justice has again and again condescended to tell the petitioner in patronizing, terms that he gave the petitioner a "fair trial" in 1968 when he was detained under the Defence of Pakistan Rules, during the country-wide agitation against President Ayub Khan. On a couple of occasions he also added that he got an Inspector General removed for maltreating the petitioner during his detention. The petitioner is at a loss to understand as to why these agonizing and lordly assertions are being repeated. Does the learned Acting Chief Justice consider what he is supposed to have done in 1968 a favour to the petitioner and a departure from the normal duty of a Judge? Or is he trying to indicate to the petitioner that on this occasion, the verdict would be different. Whatever the purpose it is unwarranted and abnormal. It reflects on the prestige and the dignity of the Bench.

(v) When due to his illness, the Petitioner was unable to attend the Court for several days; the Acting Chief Justice appeared to get agitated over the duration of the absence despite the certificates of Government doctors stating that the petitioner was unwell and unable to attend the Court. After some days the Acting Chief Justice decided to constitute a Board of Doctors of his own choice to verify if the petitioner was really unable to attend the Court. In this connection he called for a stenographer to dictate his order. As the Stenographer not present in Court, the Acting Chief Justice loudly told his Private Secretary: "*Khokhar where have the other two fellows gone? I hope they are not suffering from Influenza, call them, what are they meant for?*"

It is a rare day when such sarcastic, insulting and uncalled for remarks are not made in the course of the trial. On one or two occasions when the

insulting remarks touched the limits of patience the petitioner got up to protest but anticipating, the reactions, Mr. Justice Mushtaq Hussain in a harsh and rude tone shouted "You sit down". On another occasion, without rhyme or reason, the Acting Chief Justice shouted to the petitioner and told him "Keep standing". This performance has reached the outer limits of normal and recognized behavior. This is a saturation point to suffering. The Petitioner has suffered enough for showing to the people's of Pakistan what exactly is happening.

(2) INSULTING TREATMENT TO THE DEFENCE COUNSEL:

This trial has been an exacting ordeal and an unusual experience for the defence Counsel. There is hardly a day when in the course of the proceedings they are not insulted, shouted at or snubbed by the learned Acting Chief Justice, Mr. Justice Mushtaq Hussain. The Acting Chief Justice keeps losing his temper and invariably attributes unjustifiable motives to the Defence Counsel during the trial whenever the Defence Counsel seek to press their cause as a matter of duty. The Acting Chief Justice is the one who fumes and frets throws applications into the face of the Defence Counsel, demands apologies when none are necessary. He is the one who loses his temper and equilibrium. The defence Counsel in contrast takes every onslaught with outstanding patience and keeps on submitting "kindly" that there is no basis for the Acting Chief Justice to get so annoyed. At the end of most of these painful circumstances, the Acting Chief Justice tells the Defence Counsel, that the Defence Counsel have been disrespectful to the Court and have lost their temper. This is done for the record and for the tape as the most sorrowful place of irony.

(i) On 16-10-19'77, when Mr. Ehsan Qadir Shah, Counsel for the petitioner was cross-examining Mr. Ahmad Raza Kasuri P.W.1, a law point arose and Mr. D. M. Awan, the senior Counsel for the petitioner stood up to address the Court on the point. He had hardly uttered the words "My Lords", when the Acting Chief Justice in a loud voice asked him "Sit down ", and refused to hear him. Mr. D. M. Awan helplessly submitted with the utmost respect: "My Lords. We know that all the restrictions are for the Defence Counsel".

On this Acting Chief Justice got infuriated and was almost out of control. He severely reprimanded Mr. D. M. Awan who was looking towards the Acting Chief Justice in astonishment unable to understand as to why he was being reprimanded so harshly and with such venom. The Acting

Chief Justice then screamed at Mr. Awan saying: "Why are you staring at me." To say the least it was really a very unpleasant scene to see in a Court of Law, a Counsel being brow-beaten by the Presiding Judge with such tantrums. After the incident realizing that he had overshot the mark. Mr. Justice Mushtaq Hussain warned the representatives of the Press that this incident was not to be reported in the newspapers otherwise strict action would be taken against them.

(ii) On numerous occasions the Acting Chief Justice has without any justification remarked that the cross-examination of the P.Ws. by the Defence Counsel was against the interest of the petitioner and that the Defence Counsel were proving the case of the prosecution,

(iii) On 26-10-1977, the Acting Chief Justice in order to insult the petitioner's Counsel Mr. Ehsan Qadir Shah told him in a sarcastic tone: *"If you are finished with questions please ask for time and do not put irrelevant questions."*

There was no occasion for these uncalled for remarks as Mr. Ehsan Qadir Shah had not asked a single question from the witness which could be called irrelevant.

(iv) On 29-10-1977, Mr. Masood Mahmood was being cross-examined by Mr. D. M. Awan, Counsel for the petitioner. The witness in answer to a question made a long and irrelevant speech. The Acting Chief Justice instead of stopping the witness observed that: *"All this is as much irrelevant as the questions put by Mr. D.M. Awan."*

In spite of this observation the Acting Chief Justice brought each and every word uttered by the witness on record except the answer which the defence counsel wanted to be recorded.

(v) On numerous occasions when the defence Counsel tried to raise a law point, without any cause. Mr. Justice Mushtaq Hussain threatened the petitioner's Counsel: *"That if you feel the necessity of telling us about the Law there is another law also."* Obviously the reference was to the Law of Contempt. The petitioner's Counsel has been given these threats when they made efforts to bring their submissions/objections on the record.

(vi) On 30-11-1977, Mr. Ehsan Qadir Shah, while cross-examining P.W.15 Malik Muhammad Waris put a question to the witness regarding his statement under Section 164 Cr.P.C. The witness replied "I do not remember". It may be added here that it appears all the prosecution

Witnesses have been well tutored to say "I do not remember" in order to conceal contradictions in their testimony in Court with their previous statements. Mr. Shah wanted to show the statement of the witness but the Court ordered that the witness cannot see the statement. Mr. Shah submitted that he may kindly be permitted to contradict the witness by drawing his attention to his previous statement. The learned Acting Chief Justice observed:

"There is no contradiction. He did not state that "I will remember it on 30th of November", if it were so then it was a contradiction."

He directed to Mr. Shah to proceed further. Mr. Shah again submitted: My Lords, Kindly see his statement. It is a material omission which amounts to contradiction:"

Acting Chief Justice: *"Please proceed further."* Mr. Shah sought the permission of the Court to make his submission by quoting the relevant provisions of Law but the Acting Chief Justice observed: *"We do not review our orders, proceed further."*

Mr. Shah again submitted that his request be recorded and overruled. But the Acting Chief Justice once again ordered him to proceed further.

Ultimately in a most respectful manner Mr. Shah submitted that the record should at least show that he made this submission. Thereupon the Acting Chief Justice in a threatening tone said: *"We say for the last time please proceed."*

Thus- the record of the case does not show that what questions on this issue were put to the witness and what transpired in the Court between the Judge and the Defence Counsel. Nothing was brought on record and the Counsel was not permitted to make submissions.

(vii) On the same day but on another occasion a law point was raised by Mr. Ehsan Qadir Shah but the learned Acting Chief Justice without hearing him, over-ruled him. Mr. Ehsan Qadir Shah sought the permission of the Court to make a brief submission on the point but the Acting Chief Justice observed that in future he should make submissions before the orders were passed. It is submitted that verbal orders are generally passed before the Defence Counsel is given opportunity to make submissions.

(viii) On 1-11-1977 Mr. Saeed Ahmad Khan (P.W. 3) was in the witness box. He referred to certain aspects of evidence and findings given in the

report of the Enquiry Tribunal headed by Mr. Justice Shafiur Rahman who was appointed by the Provincial Government to enquire into the same incident. the cause of death etc., of Nawab Muhammad Ahmad Khan. The evidence of Mr. Saeed Ahmad Khan (P.W. 3) on this point sought to suggest that the Prime Minister did not allow the publication of the report of the Tribunal. The prosecution led this evidence to, build the argument that the report of the Tribunal was against the Prime Minister. The fact, however, is that the report of the Tribunal headed by Mr. Justice Shafiur Rehman exonerates the Prime Minister. The complainant had himself admitted before Mr. Justice Shafiur Rehman, as mentioned in the aforesaid report that there were several persons who had strong motives to kill him. The Special Public Prosecutor wanted to bring on record the report of the Enquiry Tribunal. A copy of the report was attached with the challan and a copy of the same was provided to the Defence also. Mr. D.M. Awan. Counsel for the petitioner supported the Special Public Prosecutor to bring the report on record but the learned Acting Chief Justice disallowed this joint request and consequently the report was not brought on the record. Mr. Awan respectfully submitted that some contents of the report were being proved and that almost every thing concerning the report was being brought on record except the report itself. The Acting Chief Justice took very strong exception to these remarks and severely reprimanded the Defence Counsel for having made insinuations against the Court. The Defence Counsel in vain tried to explain his position but the Acting Chief Justice insisted that the Counsel should apologize to the Court.

(ix) On 7-12-1977 the Acting Chief Justice passed an order under Section 265-M Cr. P.C. fixing the Court hours from: 8.00 A.M. to 12.30 Noon 2.00 P.M. to 4.00 P.M.

On 8-12-1977 a written application was placed before the Court wherein it was submitted that Section 265-M Cr. P.C. was non-applicable to this trial and prayed that the usual working hours and working days of the High Court may be observed in this case also. Mr. D.M. Awan, Counsel for the petitioner while making submissions on this application, inter alia, stated that it would not be possible for him to attend the Court till 4 o'clock in the evening as he had to prepare the case for the next day and also seek instructions from his Client daily by going to Kot Lakhpat Jail. The Acting Chief Justice took a strong exception to the use of word "possible" and the Defence Counsel was severely reprimanded compelling him to, withdraw the application. It was a scene which cannot be explained in words. The Acting Chief Justice contemptuously threw the application.

The petitioner's Counsel is working under nerve shattering conditions. The petitioner has come to the conclusion that no Lawyer worth his nerve can properly conduct his defence under these circumstances in accordance with law, self-respect and dignity.

On 13-12-1977, the Acting Chief Justice again lost his temper when Mr. D.M. Awan was seeking to make a law point. In his rage the Acting Chief Justice threatened the Petitioner's Counsel by telling him that the Judges will be on the Court for quite a long time and that Mr. D. M. Awan would have to appear before them in the future also. To cover up his own rage and outburst, the Acting Chief Justice concluded with the ironic remark addressed to Mr. D.M. Awan – "So do not lose your temper".

(3) INCORRECT RECORD OF PROCEEDING:

(i) Almost every day many pertinent material and relevant questions put by the Defence Counsel are either disallowed or over-ruled. The record, however, does not generally indicate that such questions were put to the witnesses. This is perhaps being done with a view to leaving petitioner with previous little to argue in appeal. For instance on 24-10-1977 Mr. Masood Mahmood (P.W.2) while in the witness box stated:

"I was married in June, 1961, Late Khan Bahadur Abdul Qayyum was my father-in-law. I know Munawar Ali Khan who was my contemporary in the Government College but I do not know where he works. I have no information if he is and has been the employee of M/s. Mckinnon Mackenzi Ltd., Karachi. He has been my colleague in the Air Force, but we have never been on visiting terms. It is incorrect, to suggest that whenever I visited Karachi. I visited the house of Munawar All Khan."

The following questions were put to him by the petitioner's Counsel.

Q. What is the name of your wife?

Q. Is it not a fact that prior to marrying you she was the wife of the said Munawar All Khan?

Q. I put it to you that you developed illicit relations with her during your visits to Munawar Ali's house and then she got divorce from her husband and married you?

The witness did answer these questions by saving that "Iffat was the name of his wife and that she was wife of Munawar Ali prior to her marriage

with the witness. The witness denied only the last suggestion put to him. The Acting Chief Justice disallowed these questions and neither the questions nor the answers were brought on record. Since these questions reflected on the character and credibility of the witness they were not allowed to be brought on the record of evidence. The object of the questions was not to defame the wife of the witness, but to expose his veracity. Yet these relevant questions and the answers were not permitted to be a part of the record. In like manner no question or answer adversely affecting the veracity of any prosecution witness is allowed to be recorded.

(ii) On 27-10-1977 when Mr. Masood Mahmood P.W. 2 was still in the witness box the questions put to him regarding his arrest, custody, detention etc. were either disallowed or over-ruled. Most of the questions were not even brought on the record. Although this witness being an approver is perhaps the most important prosecution witness still the Court did not allow material evidence to be put on the record to disprove him. The petitioner had been informed that Mr. Masood Mahmood was arrested by the Martial Law Authorities on 5-7-1977 on allegations of corruption, maladministration, abuse of power and of his official position, etc. He has remained in detention all along and during his detention he made a "confession" on 24-8-1977, almost seven weeks after his arrest and detention. Facts about his arrest, custody and detention etc. are most relevant to determine the evidentiary value of what "He had stated in the court and whether the confession allegedly made by him was a voluntary one or the result of inducement, threat undue influence, coercion or promise etc." The questions that were not permitted to be put to the witness were:

Q. At what time were you arrested?

Q. Do you know why were you taken into custody?

Q. Were you taken into custody for having committed any offence?

Q. For how long did you remain in custody?

These questions and the answers of the witness were not brought on record. To draw an analogy Mr. Justice Mushtaq Hussain addressing the petitioner observed how in 1969 he did not permit Qazi Akhtar, Additional Advocate General) Sindh to cross-examine:- for more than some hours in the DPR case, although according to the learned Acting Chief Justice Mr. Qazi Akhtar had come to cross examine "for months"

Hence, on the basis of that analogy, the questions put to Mr. Masood Mahmood brought on record and over-ruled are:

Q. Who were the persons who took you into custody?

Q. Did you ask why you were taken into custody?

Q. Did you come to know why you were taken into custody by the Martial Law Authorities?

Q. I put it to you that you were taken into custody by the Martial Law Authorities under Martial Law Order No. 12?

(Note: Initially the arrest and detention may have been under any other law or without lawful authority but according to petitioner's information his subsequent detention was under MLO-12).

(iii) In the course of his evidence Mr. Ahmad Raza Kasuri made an allegation that when as a Member of the Parliamentary delegation he visited some foreign Countries including Mexico he was constantly watched by the Pakistan Ambassador in Mexico and was escorted by an Officer of the Pakistan Embassy in the other countries.

To show that his allegation was wrong, the other members of the delegation could be produced as defence witnesses if the relevant questions were allowed. In this connection on 17-10-1977, Mr. Ahmad Raza Kasuri was asked:

Q. Who were the other members of the delegation that went to Mexico?

The witness gave the names of some members of the delegation.

But in spite of requests neither the question nor the answer was brought on record. The record is therefore completely silent about it.

(iv) Mr. Masood Mahmood P.W. had stated in Court that the Prime Minister was his enemy. In order to show that the witness had made a false statement the following questions were put to him.

Q. Is it a fact that for your tour abroad for the purchase of specialized vehicles, it was reported that there were not sufficient funds available for the purchase of those vehicles?

Q. You wanted to be treated abroad at State expense.

These questions were disallowed. Mr. Ehsan Qadir Shah Counsel for the petitioner who cross-examined the witness submitted that the purpose of these questions was to show that the Prime Minister was not inimical to this witness: that on the contrary despite the paucity of funds to purchase special vehicles the Prime Minister sanctioned his medical treatment abroad at Government expense. The Court did not permit these questions to be brought on record. It may not be out of place to state that the first question mentioned above was allowed to be typed but subsequently scored out under the orders of Acting Chief Justice.

(v) On 7-11-1977. Mr. Saeed Ahmad Khan while in the witness box was asked by showing a document to him:

Q. Words "The Prime Minister" is in the handwriting of Mr. Afzal Saeed.

The question was ever-ruled.

Q. For how long have you been working with Mr. Afzal Saeed?

A. For a number of years.

The question was disallowed and the question and answer were not brought on record. It was necessary from the defence point of view to prove that the words "The Prime Minister" were in the hand of Mr. Afzal Saeed Secretary to the Prime Minister.

In this connection it is submitted that in contra-distinction most of the prosecution witnesses have not only identified the signatures and writings of other persons but also proved the documents purported to have been signed, written or prepared by other persons.

(vi) On 20-11-1977 Mr. Iqbal Nadeem, Additional Deputy Commissioner Lahore appeared as PW.9 stated that while exercising the powers of Additional District Magistrate, Lahore he granted pardon to Messrs. Masood Mahmood and Ghulam Hussain approver. The first question put to this witness was:

Q. During your service how many applications of approvers you have dealt with?

This question was over-ruled without assigning any reason and the record of the case does not show that this question was put to the witness.

It may be submitted that this was a relevant question to determine as to whether all the legal formalities for the grant of pardon to these accomplices were complied with or not and whether the witness was an experienced judicial Officer who understood the technical implications and was cognizant with the law on the grant of pardon.

(vii) On 27-11-1977 Muhammad Asghar Khan P.W.12 while being cross-examined as to his previous statement gave the usual tutored evasive replies by saying "I do not remember". The defence counsel was not permitted to confront the witness with his previous statement because according to the Court the answer "I do not remember" did not amount to a contradiction. The defence Counsel sought permission of the Court to make a submission on this Law point but the Acting Chief Justice observed "We would not like to re-open the matter". In spite of persistent and valid endeavors the Defence Counsel was stopped from bringing contradictions on record.

On 7-12-1977 Muhammad Amir P.W. 19 was being cross-examined. His evidence was that he was a Driver employed in the FSF to drive a jeep. The confessing accused had allegedly gone to the place of occurrence in his jeep. He allegedly took Ghulam Hussain approver, Ghulam Mustafa, Arshad Iqbal and Rana Iftikhar accused in his jeep to Shadman Colony where Ghulam Mustafa says the car of Mr. Ahmad Raza Kasuri was parked. He further added that Sufi Mustafa along with others used to take the Jeep to Model Town and other places. He was put a question:

Q. On 10-11-1974 the Jeep was with Muhammad Afzal ASI.?

The witness replied "I do not know". The Acting Chief Justice asked the witness "You don't know" or "You don't remember". The witness said "I don't know" and yet the words "I don't remember" went on the record.

(ix) Up to 11-12-1977 the evidence of 23 P.Ws. had been recorded. Most of the witnesses had been examined previously by the Police and Magistrates and their duly recorded statements were supplied to the Defence. There are hundreds of material contradictions and omissions in the evidence given by these witnesses in Court and their previously recorded statements. To improve upon their previous statements to fill in gaps in the prosecution story to remove inconsistencies in each others former statements and to cure other crucial defects of the prosecution case,

most of these witnesses have changed their testimony in some material particulars.

Some have introduced completely new versions of certain aspects of the case. They were duly confronted with their previous statements from 11-10-1977 when trial commenced up to 11-12-1977 but not a single confrontation has been permitted to be brought on record. The words "confronted not recorded" or "confronted not so recorded" or "confronted so recorded" do not find mention anywhere on more than 450 pages of the typed prosecution evidence. This is perhaps the first murder case in the entire judicial history of the Sub-Continent where from the evidence recorded in Court one does not find any omission, inconsistency or contradiction anywhere in the statements of the P.Ws. The reason, as stated above, is that the defence Counsel is not permitted to bring on record contradictions, omissions or inconsistencies. Section 145 of the Evidence Act appears to have been given a novel meaning. On repeated protests of the defence Counsel the Acting Chief Justice has observed on numerous occasions that "Court will take note of the submissions of the Defence Counsel when the case is finally argued". What would the Counsel be left with to argue at that stage with a blank record in this most important and crucial juncture on P.W's false, dishonest and contradictory evidence? Strangely enough they all seem to remember vividly every detail when giving evidence in Court as to what happened in 1974 or even earlier but they "do not remember" what they said to the Police officers and Magistrates only two or three months ago when their statements and the details in those statements were recorded.

(x) The Special Public Prosecutors have been allowed to put all types of questions, relevant or irrelevant, admissible or inadmissible including leading ones to their own witnesses. The objections taken by the Defence are ignored with contempt or over-ruled summarily. Evidence about the contents of documents are being permitted to be brought on record and protests of Defence Counsel rejected often with a threat of action under "another law".

(xi) Whenever some answer favorable to the accused's defence is given or is being given by a witness there is prompt interjection from the Bench and, after abundant discussion, an answer is suggested to the witness. On various occasions Mr. Justice Mushtaq Hussain has read out to the witnesses evidence recorded in their examination-in-chief or statements recorded under Section 164 Cr. P.C. or under Section 161 Cr. P.C. with a view to giving an indication to the concerned witness as to what he should state. A judge is not supposed to see or read statements of

witnesses recorded previously by the Police 'or Magistrates while hearing the case. but in this case all the five judges have before them the previous statements of the witness when he is examined.

(xii) On 28-11-1977 Muhammad Abdul Vakil Khan (PW-14) stated in his examination-in-chief: "Mr. Bajwa then asked me if he could see the empties which had been recovered from the spot. Up to that time the empties had not been sealed and I avoided him by saying that the empties had been sealed."

The learned Special Public Prosecutor put him the following question:

Why did you feel the necessity of putting him off on this score. The witness answered:

"It occurred to me that Mr. Bajwa wanted to see the empties and might want to suggest to us to tamper with the empties. Mr. Bajwa was associated with the FSF and I had seen him, using the vehicles of FSF."

The answer of the witness was dictated and the same was typed. The Acting Chief Justice thereafter wrote something on a piece of paper and read it to the witness:

"I know that Mr. Bajwa was associated with the FSF very closely and I wanted to avoid any suggestion from him in order to exonerate the FSF".

The Acting Chief Justice asked the witness "This is what you want to say"?

The witness replied in the affirmative. Thus the answer drafted by the Acting Chief Justice and not that of the witness formed part of the record. This question and answer is recorded at page 384 of the record of the prosecution evidence but the page does not show that some thing was written and subsequently scored out.

(xiii) During his examination in-chief of Muhammad Abdul Vakil Khan (PW-14) on 28-11-1977 he referred to an earlier incident when he was allegedly on petrol duty and had stopped a Jeep belonging to FSF. According to him a person came out of the Jeep and said that he was Inspector in the FSF. The word "Inspector" was not mentioned anywhere by this witness in his previous statements recorded under Sections 161 Cr. P.C. or 164 Cr. P.C. It was an improvement. Despite the fact that the witness was repeatedly asked the name of the Inspector he did not give any name but Mr. Justice Gulbaz Khan who was dictating the evidence on

that day introduced the name of “Ghulam Hussain Inspector” on his own initiative whilst giving dictation to the Court Typist typing the statement of the witness. Ghulam Hussain. Inspector is an approver in this case. The petitioner’s Counsel raised a spontaneous protest on the introduction of the name of Ghulam Hussain out of the blue sky by the Court itself. The Court again asked the witness whether he had named the Inspector to which the witness replied in the negative. It was only then that the name of Ghulam Hussain was ordered to be deleted. This solitary but significant instance is sufficient to show the working of the mind of the Court. The record of evidence supplied to parties and the Press does not show the introduction of Ghulam Hussain’s name, nor the further questions from the witness and the subsequent deletion of Ghulam Hussain’s name.

(xiv) The carbon copies of the statements of the witnesses are not being supplied to the Defence. On the next day and in certain cases after 2/3 days a photostat copy of the statement is given to the Defence. What happens in the Court is that questions and answers are written, scored off and rewritten but the photostat copies supplied to the Defence do not indicate any such changes. As already submitted it seems that in the court a draft of the statements is prepared but after Court time the statements are re-cast and re-typed..

(xv) On 21-11-1977 the cross-examination of Mr. Zulfiqar Ali Toor, Magistrate 1st Class, Lahore (PW-10) was conducted by the petitioner’s Counsel Mr. D.M. Awan. This witness had recorded the statements of P.Ws. Muhammad Ameer, Malik Muhammad Waris, Abdul Ikram, Amir Badshah, Manzoor Hussain, Muhammad Bashir, Mr. M. R. Welch, Mr. Abdul Wakil Khan and Mr. Saeed Ahmad Khan under Section 164 Cr. P.C. besides the statements of approver and confessing co-accused. In view thereof, Mr. D.M. Awan, Counsel for the petitioner tried his level best to get the statements of witnesses recorded by his witness under Section 164 Cr. P.C. proved and exhibited through this witness but the Court did not permit him to do so. The Court observed that if there were contradictions brought on record this witness may be recalled for proving the statements of the witnesses recorded by him under Section 164 Cr. P.C.

It may be submitted that for the first time ‘his departure has been made from the well established procedure in order to bar the defence to get the statements exhibited through the witness who had recorded the same. These statements show the material contradictions and discrepancies in the evidence of the aforesaid witnesses recorded in Court and their previous statements. Hence they were not permitted to be proved and exhibited.

(xvi) On the same day *i.e.* 21-11-1977 Mr. Zulfiqar Ali Toor, Magistrate 1st Class. Lahore was asked by the Defence Counsel as to how many Police officials accompanied Mr. Ahmad Saeed. A.D./F.I.A. when he produced Mian Abbas accused in Court for recording his statement under Section 164 Cr. P.C. The witness replied:

"It is my guess work that one or two police officials accompanied Mr. Ahmad Saeed, A.D. /FIA when he produced Mian Abbas accused before me."

Mr. Ijaz Batalvi, Prosecuting Counsel interjected and said to the witness:

"Don't say it is your guess work".

Acting Chief Justice added: *"We can't bring on record your guess work."*

Aftab Hussain, J. further added:

"You don't remember or do you remember?" Thereupon the witness said that he did not remember. The result was that neither the question nor the answer was brought on record. Very often the evidence of the prosecution witnesses is tailored, polished, tightened and improved upon by such means.

(xvii) On 30-10-1977, when Mr. D.M. Awan defence Counsel for the petitioner was about to conclude his cross-examination of Mr. Masood Mahmood (PW-2), Mr. Ghulam Mustafa accused stood up and submitted to the Court that he wanted to put certain questions to Mr. Masood Mahmood (PW-2). Thereupon the learned Acting Chief Justice directed him to give his questions in writing to his Counsel Mr. Irshad Ahmad Qureshi. After Mr. D.M. Awan had concluded his cross-examination, Mr. Irshad Ahmad Qureshi who had earlier completed his cross-examination on behalf of three accused namely Ghulam Mustafa, Rana Iftikhar and Arshad Iqbal was permitted once more by the Court to cross-examine the witness Mr. Masood Mahmood. He put various questions which were answered by the witness. These were meant to malign the petitioner according to a pre-planned design. Altogether false and malicious allegations were made in these questions and answers, after the conclusion of the cross-examination by the petitioner's Counsel. The aim was to cause prejudice in public mind and to allow the false but damaging material to remain unchallenged on the record. These questions and answers appear at pp 170, 171, 172 of the record of evidence. An objection was raised by the defence Counsel for the petitioner but a decision was

not given. At that stage another accused Arshad Iqbal stood up and made a statement that he wanted a Guard to be detailed to accompany him for the purpose of collecting documents namely one written by Ch. Nazir Ahmad, Deputy Director, (O&I), FSF to show that he was irregularly transferred from Lahore and was then given explosives and a plan for explosion in the Mansoor, the Headquarter of "Jamat Islami". Mr. D.M. Awan objected to the recording of this statement and to such permission being granted but without deciding the objection the following order was passed:

"Since the accused has asked for facility to enable him to collect a document and explosives which he wants to produce in his defence the Superintendent of Police Incharge of the Escort is directed to the needful after the Court rises for the day."

This accused did not say that he wanted to produce the aforesaid evidence in his defence. He has made a confession and is adhering to it. He is not in fact defending himself. Same is the case with his co-accused Ghulam Mustafa and Rana Iftikhar. Perhaps this is the only case after that of Ghazi Ilam Din in 1929, in which accused have confessed that they have murdered the deceased and have not retracted their confession". The question of questions is do they really want to be hanged or have they been solemnly promised that no harm will come to them even if they do not retract their false and tutored "confessions"?

By adopting such a course and by passing the order referred to above, the Court assumed the role of the Investigating Agency and directed the collection of evidence wholly irrelevant to the trial of the present case. As already submitted such a course was adopted and the order passed with the view to prejudice the public mind against the petitioner, to create sensation and hatred against him among the members of "Jamaat Islami".

(xviii) Mr. Irshad Ahmad Qureshi, Advocate who is representing Messrs. Ghulam Mustafa, Arshad Iqbal and Rana Iftikhar confessing accused is for all practical purposes a Counsel for the prosecution. All the time his worry is to prove the case of the prosecution. On certain occasions he has been permitted to cross-examine the witnesses after, the petitioner's Counsel and Counsel for Mian Muhammad Abbas accused have concluded their cross examination. The questions put by Mr. Irshad Qureshi are aimed at dismantling the Defence. As submitted earlier, Mr. Irshad Qureshi had concluded his cross-examination of PW-2 Mr. Masood Mahmood on 24-10-1977 but on 30-10-1977 he was again permitted to put questions to the witness which were in no way helpful to his clients. On the contrary by allowing these questions to be put to the witness an irreparable loss could

have been caused to the case of the petitioner and that of Mian Muhammad Abbas. When such liberties are shown by the Court whenever there is a potential possibility of causing damage to the Defence, it is an understatement to say that confidence in the impartiality of the Court is shattered to smithereens. The following questions were allowed to be put to Mr. Masood Mahmood in the second cross-examination conducted by Mr. Irshad Ahmad Oureshi Advocate on 30-10-1977.

Cross-examination by Mr. Irshad Ahmad Qureshi Advrirate on behalf a Ghulam Mustafa accused:

Question: Is it a fact that a public meeting held in Tajpura Lahore in connection with the election campaign of Mr. Ghularn Mustfa Khar in a bye-election was broken up and disturbed by the personnel of the FSF under the orders of then Prime Minister?

Answer: Not my knowledge.

Question: Do you remember or do you know that two religious scholars were kidnapped from Islamabad by the F'SF under orders of the Prime Minister?

Answer: I recall one such event having taken place *i.e.*, in respect of one Maulvi.

Question: Is it a fact that Mohammad Ali, a well known film actor was fired at by the FSF at Sohan river under the orders of the then Prime Minister?

Answer: Not to my knowledge.

Question: Is it correct that you were given plan by the Prime Minister to assassinate retired Justice, Syed Jamil Husain Rizvi.

Answer: No. but the then Prime Minister had plans about the judiciary of which he mentioned to me at some stage.

Question: Is it correct that a bomb was exploded at the Lahore Railway Station about two years back at the arrival of Rtd. Air Marshal Asghar Khan by the men of the FSF, under the orders of the Prime Minister?

Answer: Not to my knowledge.

Question: Do you know an employee of the FSF named Sardar Shamas?

Answer: I do not know. Question:

Do you know or have you knowledge of the incident or assault on Maulana Abdul Sattar Khan Niazi at Lahore?

Answer: Yes. I do.

Question: Is it correct that this was done by the FSF' under the orders of Mr. Bhutto?

Answer: This is correct.

Question: Do you remember that the then Prime Minister, Mr. Zuifkar Ali Bhutto, had prepared a plan for involving Jamaat-i-Islami and its leaders in certain criminal acts, including keeping explosives, arms and ammunition in their custody and exploding bombs with the purpose to put a ban on the said party?

Answer: No. but from the discussions in various meetings I did got to know that the then Prime Minister was averse to the very existence and the strength of Jamaat-i-Islami.

The objection raised by the petitioner's Counsel was not decided.

(xix) On 26-10-1977, while Mr. Masood Mahmood was in the witness box, the petitioner's Counsel sought to confront him with his previous statements by putting him the following question:

Q. Did you say in the said two statements that Mr. Bhutto on your return to Rawalpindi summoned you and told you that the actual task had yet to be accomplished, but you told him "at your behest an idea conceived by you was carried out and communicated by me to Mian Abbas, who had already your directions through my predecessor and the fact remains that both you. I and my subordinates will be taken to task by God Almighty but I will not carry out any such orders any more"?

The witness did not give a direct reply and started making an irrelevant long speech by introducing extraneous matters. An objection was raised by the defence. The Acting Chief Justice after having consulted other Members of the Bench for about five minute observed:

"We will over-rule this statement."

The statement which was overruled could not form part of the record in any case and could under no Law be recorded by the learned Acting Chief Justice. It was irrelevant for the purpose of decision of this case. The statement was all the same typed on a separate paper and was kept separately in a sealed cover. The Acting Chief Justice alone knows the reason for keeping that statement which was over-ruled in a separate sealed cover. The fact however, remains that the defence Counsel's question put to this witness to show a contradiction on the most crucial part of his evidence in Court and his previous statements was not allowed to be answered and the confrontation of the witness with his previous statements was not recorded.

(xx) The proceedings are being tape-recorded under the specific orders of the learned Acting Chief Justice. The petitioner prayed for retaped cassettes of the proceedings or the grant of permission to tape record the proceedings by placing his own tape-recorder in the Court room and to have the retaped proceedings already recorded. The Court has neither accepted nor refused the prayer. The orders have been deferred to some "appropriate time". The petitioner states that a copy of the tapes should have been given to him from the inception of the trial or he should have been allowed to make his arrangements for simultaneous taping from the beginning. Knowing the prejudice and the bias, and having had more than an adequate dose of it in this trial, it is feared that the tapes are likely to be tampered with in order to cause detriment to the defence.

(xxi) On 26-10-1977, the petitioner noticed that when there were observations against the petitioner or his Counsel from the Bench, the Acting Chief Justice or the other Members of the Bench would put their hands on the microphone so that the observations are not tape-recorded. This practice continues until this day. The Acting Chief Justice has recently placed a new microphone before him with an automatic switch. Now he simply pushes the button off at the appropriate moment and is relieved of the trouble of putting his hand on the microphone whenever he feels that the observations made by him should not go down on the tape-recorder.

(xxii) The record of the evidence is full of hearsay evidence. Objections are repeatedly taken but the hearsay evidence is nevertheless recorded. For example, on 28-11-1977 Mr.-Abdul Vakil Khan '(PW.14) stated:

“I got annoyed with Mr. Ahad and asked him as to why did he hand over the empties to Mr. Abdul. Hamid Bajwa. He told me that Mr. Bajwa contacted him and told him that these empties were to be taken to the Prime Minister’s House to be shown to the high officers and because of this threat these empties were given to him.”

Both Mr. Ahad and Mr. Abdul Hamid Bajwa are dead and gone. They were not cited as witnesses. The conversation of two dead men which took place in the absence of this witness has been permitted to be brought on record. An objection to the admissibility of this part of the statement was taken on the ground that it is not covered under Section 32 of the Evidence Act, but the objection was not decided and the statement was allowed to form the part of the record. There are many other instances where the statements of dead persons or those who are not witnesses have been allowed to be brought on record to the prejudice of the petitioner’s case.

22. On 12-12-1977 the petitioner and his Counsel were surprised at the comparatively polite treatment given to them by the Acting Chief Justice and the other members of the Bench. Even some contradictions of the witnesses were allowed to be brought on the record in an indirect way. Why this sudden changes, in the attitude of the Court? Soon the petitioner discovered that some foreign Jurists who had been invited to Pakistan to attend the Fourth Pakistan Jurists Conference had been invited to attend the proceedings of this case and they were present in Court. The moment the foreign Jurists left the attitude reverted to what it has been from the inception of the trial.

23. That on 16-12-1977 the petitioner’s wife Begum Nusrat Bhutto along with their daughter Miss Benazir Bhutto went to see the Test Cricket Match in Gadaffi Stadium. Lahore. On seeing them the Spectators at the match cheered them and raised slogans of “Jeeay Bhutto” Suddenly under the orders of a police officer these two ladies were attacked by some Police Constables. Miss Benazir Bhutto received a lathi blow on her shoulder whereas Begum Bhutto was hit on the head. She fell down and blood started pouring down from her severe head injury. On seeing this crowd went wild with rage and a battle of lathis and brick bats and empty cold drinks bottles started between the Police and the People. The match could not continue. Begum Bhutto was later hospitalized in a serious condition.

24. That therefore on 17-12-1977 when the petitioner was brought to Court he saw, before the hearing commenced, photograph of his injured and bleeding wife in a newspaper. He asked his Counsel Mr. D.M. Awan as to how his wife was feeling and was informed that his Senior Counsel Mr. Yahya Bakhtiar and he saw her the previous evening after the operation. She was recovering but Mr.

Bakhtiar would be seeing Surgeon Asif Chaudhri at 10 a.m. that morning to get the details of the injuries and about the condition of her health. The petitioner then told one of his junior Counsel Miss Tallat Yaqoob to inform Mr. Bakhtiar to see him at 11 O' Clock when the Court has fifteen minutes break for Coffee. He further added that he would like to hear the Doctor's report about Begun Nusrat Bhutto's condition from Mr. Bakhtiar and would also like to consult him on some important legal problem.

25. That at the hearing that morning the petitioner was in a very disturbed state of mind. At about 10 O' Clock the examination of the second approver Ghulam Hussain concluded and the Acting Chief Justice asked Mr. Irshad Qureshi Advocate for some accused to seek instructions from his Clients until 10.30 a.m. and observed that Court will rise to meet again at 10.30 a.m. Thereupon the petitioner told Miss Tallat Yaqoob who was sitting nearby to tell Mr. Awan that the normal Coffee break was at 11 a.m. when he expected Mr. Bakhtiar to see him about the Doctor's report and for consultation and therefore, the hearing may either continue till then or the Coffee break may be extended until after 11 a.m. Some how Miss Tallat Yaqoob could not properly convey his message or Mr. Awan could not follow his message therefore Mr. Awan did not make the request. Meanwhile Court was rising and the petitioner told Mr. Awan "Damn it, make it clear to the Court". Hearing this Acting Chief Justice got angry and told the petitioner that he was not to use such bad words in Court. The petitioner replied that it was not a bad word and that he was in a disturbed state of mind because of yesterday's incident. On this the Acting Chief Justice loudly retorted "We don't care". Then the petitioner also lost temper and told the Acting Chief Justice, "I have had enough of it". The Acting Chief Justice then asked "Enough of what?" The petitioner replied "Of your insults and humiliations". Thereupon the Acting Chief Justice addressing the Police Officers shouted: "Take this man away till he regains his senses."

26. That after the petitioner was taken out of the Court room the Acting Chief Justice told his Counsel:

"Mr. Awan advise your Client that there are jail Rules under the jail Manual. We can deal with him under those Rules and then he would be sorry for ever."

Then Mr. Justice Zaki-ud-Dan Pal also observed:

"He has not behaved well. We cannot tolerate this. He thinks he is the former Prime Minister but we do not care for him."

27. That thereafter the Acting Chief Justice called Mr. Awan in his Chambers and told him that the petitioner would be taken back to Jail now. The trial would

go on and tomorrow also the petitioner would not be brought to Court and the trial will proceed. Thereafter the petitioner was taken back to jail.

28. That when the Court reassembled after the Coffee-break the Acting Chief Justice addressing the Special Public Prosecutor said that:

"We have passed an order to proceed in the absence of the principal accused as he is not capable of remaining before the Court as he himself had stated that he was upset."

29. That on hearing this order the Counsel for the petitioner submitted:

"My Lords, my Client says that he is capable of remaining before the Court."

The Acting Chief Justice then observed that it was for the Court to decide whether he was capable to attend the Court or not.

30. That thereafter the cross-examination of the approver by Mr. Irshad Ahmad Qureshi commenced and concluded at about 12.30 in the afternoon.

During the cross-examination by Mr. Irshad Qureshi whose assignment seems to be to ask questions more for maligning the petitioner and his Government than defending his Clients, the approver brought out two irrelevant and extraneous matters to prejudice those present in Court and public generally against the petitioner. After Counsel for the petitioner objected to the first matter, which was duly record the Court sustained the objection and ordered that the question and answer would not form part of the record.

31. That the other matter which approver Ghulam Hussain mentioned was that he was also assigned another mission. The Court recording his evidence about this other mission did not dictate the words "The other mission" or "a separate mission". Mr. Awan pointed this out and the Court added those words. After the approver gave the detail of this highly irrelevant and unconnected allegation maligning the petitioner Mr. Awan strongly objected to its admissibility but the Court observed that since he had stated that the words of the approver be mentioned, therefore, the Court over-ruled his objection and the prejudicial matter was brought on record.

32. That after that the Acting Chief Justice told the Counsel for the petitioner that he would cross-examine the approver on the next day *i.e.* 18-12-1977 and that he hoped his Client would be capable of attending the Court tomorrow. On this Mr. Awan Counsel for the petitioner submitted that his Client was capable of attending Court even today. The Acting Chief Justice however observed that the

Court had already passed the order for today and that the Counsel repeated submission in that matter would not serve any purpose.

33. The petitioner has for good and valid reasons informed the Bench presided over by Mr. Justice Mushtaq Hussain, before the commencement of the trial and in the course of the trial, that he had no confidence whatsoever in the Bench presided over by him. He has repeatedly stated that he apprehends that he does not have a ghost of a chance to get a fair trial from this Bench. The manner and conduct of the trial by the Bench during the past two months or so has more than ever convinced him that the trial is patently unfair. Under great mental and physical strain the petitioner tried to participate in the proceedings of the trial.

For the reasons stated above it is prayed that the case may be transferred for trial by another Bench of Judge preferably the Sessions Judge, Lahore.

Sd/

ZULFIKAR ALI BHUTTO

PETITIONER

LAHORE

DATED: 18th December, 1977,