

Form No: HCJD/C-121

ORDER SHEET

IN THE ISLAMABAD HIGH COURT, ISLAMABAD  
(JUDICIAL DEPARTMENT)

Crl. Orig. No. 314 of 2021

Kulsum Khaliq

Vs

Inspector General of Police, etc.

S. No. of order/proceedings	Date of order/proceedings	Order with signature of Judge and that of parties or counsel where necessary.
01)	<u>26-11-2021.</u>	Ms Kulsum Khaliq Advocate, petitioner, in person.

**ATHAR MINALLAH, C.J.-** Ms Kulsum Khaliq, [hereinafter referred to as the "**Petitioner**"], is an enrolled Advocate of the High Court. The petition in hand has been filed under Article 204 of the Constitution of the Islamic Republic of Pakistan, 1973 [hereinafter referred to as the "**Constitution**"] read with sections 3 and 4 of the Contempt of Court Ordinance, 2003 [hereinafter referred to as the "**Ordinance of 2003**"]. The Petitioner has prayed that contempt proceedings be initiated against respondents no. 4 and 5.

2. It is the case of the Petitioner, as stated in paragraph 4 of the petition, that respondents no. 4 and 5 attempted to 'scandalize the character assassination in front of media in public-at-large of the former Chief Justice of Pakistan Mian Saqib Nisar'. The Petitioner was asked whether respondents no. 4 and 5 had said anything against this Court or its present honourable judges, calculated to interfere with the due

administration of justice or to prejudice pending proceedings.  
She has answered in the negative.

3. It is noted that this Court has highlighted the principles and law regarding contempt in the case titled "The State v. Dr. Firdous Ashiq Awan" [PLD 2020 Islamabad 109]. There is no cavil to the proposition that judges are not above the law and they are accountable. Bonafide criticism is an integral part of the accountability of judicial officers. The scope of contempt has been aptly described by Lord Atkin in the judgment of the House of Lords titled "Ambard v. Attorney-General for Trinidad and Tobago", [1936] 1 All ER 704] as follows:

*"But whether the authority and position of an individual Judge or the due administration of justice is concerned, no wrong is committed by any member of the public who exercises the ordinary right of criticizing in good faith in private or public the public act done in the seat of justice. The path of criticism is a public way : the wrongheaded are permitted to err therein : provided that members of the public abstain from imputing improper motives to those taking part in the administration of justice, and are genuinely exercising a right of*

*criticism, and not acting in malice or attempting to impair the administration of justice, they are immune. Justice is not a cloistered virtue: she must be allowed to suffer the scrutiny and respectful even though outspoken comments of ordinary men."*

4. A judge who ceases to hold a judicial office upon retirement instantly severs his or her connection with the judicial organ and the courts. A judge after retirement, therefore, attains the status of a private citizen. Such a person is no more a member of the 'Court' in the context of Article 204 of the Constitution nor under the Ordinance of 2003. However, a judicial officer, after his retirement, is not without a remedy in case the latter considers to have been maligned or his respect lowered in the eyes of the people. As a private citizen it remains open to a retired judicial officer to seek remedies available in a court of law. However, the offence of contempt is not attracted in the case of a retired judge because after retirement the latter attains the status of a private citizen.

5. It is emphasized that even otherwise, the power of contempt is exercised sparingly. It is not a power meant to protect a judge as an individual nor the latter's dignity. Judges are entrusted with an onerous duty to serve the people through the fountain of justice and they are, therefore, not immune from

public scrutiny nor criticism. An independent judge would not be influenced nor affected in any other manner because of public criticism. The authority of a judge is not dependent on the words of the Constitution but, rather, rests on public respect and the confidence of the people. The exercise of the power of contempt would be justified only if it is in the public interest i.e. to protect the rights of the litigants during pending proceedings or when it appears that an act or omission is calculated to interfere with the due administration of justice. Being magnanimous is an essential attribute of an independent and impartial judge because of the exalted position and the divine nature of judicial functions.

6. In the case in hand, the Petitioner seems to be hurt because a former Chief Justice of Pakistan has been publically criticized in his individual capacity. This definitely does not attract the offence of contempt.

7. For the above reasons, the petition is not maintainable and, therefore, accordingly **dismissed.**

(CHIEF JUSTICE)

**Approved for reporting.**

