IN THE FEDERAL SHARIAT COURT

(Original/Appellate/Revisional Jurisdiction)

PRESENT

MR.JUSTICE CH. EJAZ YOUSAF, CHIEF JUSTICE
MR.JUSTICE DR.FIDA MUHAMMAD KHAN
MR.JUSTICE SAEED-UR-REHMAN FARRUKH

SHARIAT PETITION NO.1/L OF 2006

Mst.Ghafooran Bibi widow of Rehim Bakhsh and six others Residents of 772 Green Market, Near office of Foodgrain Market Kamalia, Distt:Toba Tek Singh.	--	Petitioners

Versus

The Federal Government of Pakistan through Secretary, Ministry of Law, Justice and Human Rights and four others	--	Respondents
Counsel for the petitioners	--	Mr.M. Asghar Rokhari, Advocate.
No.date of FIR and Police station	---	No.174 dated 27.3.1998 P.S.Khurrianwala
Date of the order of Trial Court	--	21.9.1998
Date of hearing	--	13.3.2006
Date of decision	--	13.3.2006

JUDGMENT

Ghafooran Bibi and others vide this Shariat Petition, filed through Mr.Muhammad Asghar Rokhari, Advocate, under Article 203-D of the Islamic Republic of Pakistan, have assailed section 7 of the Anti Terrorism Act, 1997 (hereinafter referred to as "the Act") on the ground that it is repugnant to the Injunctions of Islam as contained in the Holy Quran and Sunnah of the Holy Prophet (PBUH) in so far as it does not recognize right of waiver or afu to be exercised by walies of the deceased or compounding the offence as a whole and has prayed that the said section be amended and brought in conformity with the Injunctions of Islam. Alongwith the main petition the petitioners have also filed Criminal Misc: application No.3/L of 2006 which contains, inter-alia, the following prayer in respect of respondent No.5 Muhammad Khan:-

> "It is further prayed that till the final decision of main petition the execution of respondent No.5 may graciously be suspended pending Shariat Petition."

2. Brief facts of the case giving rise to this Shariat Petition, as gathered from the available record, pertains to a case registered vide FIR

No.174/98, under sections 302/395/148/149 PPC and section 7 of the Anti Terrorism Act, 1997 at Police Station Khurrianwala on the complaint of Abdul Hameed who, inter-alia, stated that in the night between 26th/27th March, 1998, while he alongwith his companions was travelling in Jeep No.388/IDA, at 1.45 a.m., some unknown persons, armed with fire arms, resorted to firing at the jeep in the area of Chak No 67/R.B. Resultantly Muhammad Rafique deceased, who was driving the said Jeep, on receiving the fire shot, died on the spot. The culprits being unknown were not specifically named in the FIR. After registration of the case, Muhammad Khan, Ashfaq Ahmad, Amanullah, Fazal Haq, Zulfiqar, Muhammad Afzal, Muhammad Yasin and Shahzad were sent up for trial before the learned Anti Terrorism Judge, Faisalabad who vide judgment dated 21.9.1998, finding them guilty for the offence charged, convicted all the accused, including respondent No.5 Muhammad Khan, under sections 302/396/149 PPC as well as under section 7 of the said Act and sentenced them to death for both the offences separately alongwith payment of fine. All the convicted

accused preferred an appeal before the learned Lahore High Court but it was dismissed and death sentence to the extent of respondent No.5 Muhammad Khan was maintained and the Murder Reference in respect of same was confirmed whereas, the sentences of death of other accused were converted to imprisonment for life. Thereafter, petition was filed by respondent No 5 Muhammad Khan before the Hon'ble Supreme Court of Pakistan but it was also dismissed on 1.11.2001. Thereafter, his review petition filed against that judgment also failed and was decided vide order dated 6.6.2002. However, it is worth-mentioning that during pendency of the review petition compromise was effected between the parties and therefore, Criminal Misc.No.144/2002 was preferred but the same was also dismissed on 30.5.2002. Ultimately on 15.7.2002, respondent No.5 filed a petition before the trial Court but the same was not entertained. Thereafter, he filed a writ petition before the Hon: Lahore High Court but the same was also disposed of vide Order dated 20.8.2002 with a direction to the trial Court to deal with the same in accordance with law.

3. On remand of the case, the statements of legal heirs of the deceased were recorded wherein, they testified the compromise having been effected between them and the accused. However, the petition for compounding the offence was dismissed vide judgment dated 7.10.2002 Then a revision petition against that order was preferred before the High Court but it was also dismissed on 20.3.2003. After dismissal of the said revision petition Ghafooran Bibi and Abida Bibi, mother and widow of Muhammad Rafique deceased, respectively, moved an application under section 345 Cr.P.C. before the trial Court for compounding the offence but the same was dismissed on 2.3.2005. Both the said ladies challenged the said order vide a writ petition before the High Court but it was also dismissed on 21.7.2005. Again, the ladies preferred an appeal against the said order before the Hon'ble Supreme Court of Pakistan but on 7.8.2005 that petition was also dismissed and it was directed that the order be communicated to Provincial Government through Home Department for information and necessary action. Now the trial Court

has issued a warrant under section 381 Cr.P.C. for execution of death sentence on 14.3.2006 at 5.30 a.m. in District Jail Faisalabad.

4. The instant petition has been filed before this Court under Article 203-D of the Islamic Republic of Pakistan in the above circumstances. The petitioners have challenged provision of section 7 of the said Act, on the ground that it is violative of Injunctions of Islam.

5. We have heard the learned counsel for the petitioners in person. He made detailed submissions in respect of the repugnancy of section 7 of the said Act in the light of the Holy Quran and Sunnah of the Holy Prophet (PBUH). He placed reliance on a number of verses of the Holy Quran and cited several historical events in support of his contentions. However, it is pertinent to mention that the learned counsel was unable to make a reference to any specific Injunction, contained in the Holy Quran and Sunnah of the Holy Prophet (PBUH) justifying compoundability of the offence of murder liable to tazir. In a way, he conceded that offences of Harrabah, commission of zina and theft which too, are against the society, were not compoundable.

6. He has also tried to canvass that since the offence under section 302 PPC which is a major offence in comparison with section 7 of "the Act" is compoundable, therefore, legal heirs of the deceased should have also been entitled to compound the supplementary or ancillary offence falling under section 7 of "the Act" as the legislature in its wisdom has, by way of amendment Act, VI of 2004, amended section 148 PPC, thereby making the same compoundable if it was committed with other compoundable offences. We are afraid the above argument advanced by the learned counsel for the petitioners, cannot prevail for the simple reason; that the offence under section 7 of "the Act" can, by no stretch of imagination, be regarded as a minor offence in comparison with section 302 PPC because under both these provisions the offenders are liable to punishment of death. Section 7 of "the Act" is rather an aggravated form of the offence because it contains the element of terrorism, as well. It would also be pertinent to refer here that Shariat Petition in another case, though carrying a different charge, but having an identical judicial background titled as "Moulvi Iqbal Haider vs Federation of Pakistan",

reported as PLD 2006 Federal Shariat Court 26, having been found misconceived was dismissed by this Court.

7. As is evident from the above, the instant Shariat Petition is primarily filed at a time when, after a long up and down travel through various Courts, fate of the said respondent is finally sealed by a judgment passed by the Apex Court and is prompted now by the urgency of issuance of black warrant against him for which, as stated above, the petitioners have also moved a Criminal Misc:application for grant of stay on the execution order scheduled on 14th March, 2006 at 5.30 a.m. The learned counsel for the petitioners was informed that this Court has no jurisdiction to pass any temporary injunction or grant relief in personem in Shariah Petition. He was also apprised of the Constitutional position about a Shariah Petition, in case it is allowed, to be effective from some specific date only prospectively, and has no retrospective effect whatsoever. In cases where the Apex Court passes an order, after making certain interpretations and takes a specific view about a particular law, the jurisdiction of this Court is further restricted.

8. For the reasons stated above, we have found this petition as well as Criminal Misc:application No.3/L of 2006 misconceived, in its present form, and dismiss them in limine, accordingly.

(Ch. Ejaz Yousaf)
Chief Justice

(Dr. Fida Muhammad Khan)
Judge

(Saeed-ur-Rehman Farrukh)
Judge

Islamabad,dated the
13th March, 2006
ABDUL RAHMAN

FIT FOR REPORTING

CHIEF JUSTICE