

Muhammad is directed to deposit the share amount of Diyat of injured Muhammad son of Atta Muhammad with the Nazir of this Court as notified in Gazette Notification No.M-302/L-7646 dated 10.7.2006. The accused is in judicial custody, he shall be remained in custody till payment of Diyat amount. The applications in hand stand disposed of accordingly.

The above findings have been challenged by the applicant through this Cr. Revision Application with following prayer:-

It is, therefore, prayed that this Hon'ble Court may be pleased to pass an order for setting aside the impugned order dated 07.2.2007, accept the compromise and acquit the Applicant in the above case.

2. The counsel for the applicant Mr. Samiullah Soomro, and different Prosecutors appearing in this case for almost eight years of the pendency of this Cr.Revision Application have failed to seriously examine a simple legal proposition that whether the compromise ought to have been accepted by the trial Court and the order of payment of Diyat to the insane injured was in accordance with law or not. In fact the counsel for the applicant contrary to the interest of his client has conceded on one point of time when in Court he stated that Diyat has to be paid by his client (the applicant). Therefore, by order dated **23.10.2014** Nazir of this Court was directed to calculate amount of Diyat payable by the applicant. On **14.8.2015** when the case was fixed for orders on Nazir report and hearing, learned counsel for the applicant Mr. Samiullah Soomro, advocate again stated that his client is ready to pay Diyat amount, therefore, he may be granted some time for payment of Diyat in Court.

3. In the above background on **02.11.2015** this case was listed before me for the first time and the learned counsel for the applicant and Mr. Ali Haider Saleem, APG both made a joint request to allow more time to the applicant to deposit Diyat amount in Court. Keeping in view the age of this Cr.Revision, I granted only seven days' time with the warning that in case of failure of the applicant, he should be sent to Central Prison. Ultimately on **7.11.2015** the applicant deposited a sum of **Rs.2,15,000/-** (Rupees two lacs & fifteen thousand only) with the Nazir of this Court towards the amount of Diyat payable by him in terms of the impugned order. On **10.11.2015** the only question before this Court was that how to dispose of the amount of Diyat while acquitting the applicant. On said date Mr. Ali Haider Saleem, A.P.G requested to defer the question of disbursement and the counsel for the applicant Mr. Samiullah Soomro, also did not offer any comments beyond that the applicant should be treated as acquitted.

4. The record shows both the counsel for the applicant and the State have not provided any assistance to the Court for dispensation of justice according to the law. Both did not realize that the moment the Diyat amount was deposited in Court by the applicant the impugned order stand complied. Both the counsel failed to appreciate that if the applicant was liable to pay 'diyat' then why this Cr. Revision was filed by him and why 'diyat' was not deposited by the applicant in the trial Court?

5. The other aspect of the case is that since impugned order was on an application for compromise and it is in the exclusive domain of trial Court to see whether compromise was genuine or not, the counsel

should have requested the Court to remand the case as the compromise was supposed to be accepted by the trial Court and not by the appellate or revisional Court. In eight years long period, not a single legal proposition in the given facts of the case was advanced not even the facts and grounds from the memo of Revision were discussed or even referred by the counsel appearing for and against the applicant.

6. The learned Counsel for the applicant and learned APG, as part of their professional duty in terms of the Legal Practitioners And Bar Council Act, 1973 should have examined the following provisions of Pakistan Penal Code and Criminal Procedure Code and brought to the notice of Court the utility of these provisions for the applicant in the peculiar facts of his case.

Pakistan Penal Code

“S.299(e). ‘Diyat’ means the compensation specified in **section 323** payable to the heirs of the victim”.

“S.299(k). ‘Qisas’ means punishment by causing similar hurt at the same part of the body of the convict as he has caused to the victim or by causing his death if he has committed Qatl-I-Amd in exercise of the right of the victim or a Wali.”

S.324. Attempt to commit qatl-i-amd. Whoever does any act with such intention or knowledge, and under such circumstances, that, if he by that act caused qatl, he would be guilty of qatl-i-amd, shall be punished with imprisonment of either description for a term which may extend to ten years [but shall not be less than five years if the offence has been committed in the name or on the pretext of honour], and shall also be liable to fine, and, if hurt is caused to any person by such act, the offender shall be liable to be punishment provided for the hurt caused;

Provided that, where the punishment for the hurt is qisas which is not executed, the offender shall be liable to arsh and may also be punished with imprisonment of either description for a term which may extend to seven years.

Criminal Procedure Code

S. 345. Compounding offences. (2) The offences punishable under the sections of Pakistan Penal Code specified in the first two columns of the table next following may, with the permission of the Court before which any prosecution for such offence is pending, be compounded by the persons mentioned in the third column of that table:-

Attempt to commit qatl-i-amd.	324	The person against whom the offence was committed.
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(4) When the person who would otherwise be competent to compound an offence under this section is [under the age of eighteen years or is] an idiot or a lunatic, any person competent to contract on his behalf may [with the permission of the Court] compound such offence.

All the family members of the insane victim in this case have entered into compromise and trial Court has granted permission to enter into compromise. However, the compromise itself was declined in terms of impugned order reproduce in para-1 above.

7. On perusal of provisions of **Section 299(e)** which deals with ‘Diyat’ reproduced above we find that it does not speak of **Diyat** of injury or Diyat for injury to the injured (victim) nor **Section 324 PPC** speaks about payment of Diyat to the victim of an attempt to qatl-i-amd. Since the victim, has survived the case against the applicant was a case of “hurt” caused by him and therefore in his case the direction of trial Court to “deposit the share amount of diyat of injured Muhammad son of Atta Muhammad with the Nazir of the Court” was patently illegal and contrary to law. The reference to **section 309 PPC** by the trial Court was not proper either. Section 309 PPC is as under:-

309. Waiver—Afw of qisas is qatl-i-amd. (1) In the case of qatl-i-amd, an adult sane wali may, at any time and without any compensation, waive his right of qisas:

Provided that the right of qisas shall not be waived—

(a) Where the Government is the wali; or

(b) Where the right of qisas vests in a minor or insane.

(2) Where a victim has more than one wali any one of them may waive his right of qisas;

Provided that the wali who does not waive the right of qisas shall be entitled to his share of diyat.

(3) Where there are more than one victim, the waiver of the right of qisas by the wali of one victim shall not affect the right of qisas of the wali of the other victim.

(4) Where there are more than one offenders, the waiver of the right of qisas against one offender shall not affect the right of qisas against the other offender.

The “Qisas” is not applicable unless the injury caused by the accused falls under **Section 332 (2)(a) and (b) PPC**. The charge sheet available as annexure ‘E’ to the Revision Application does not refer to the offences for which punishment is provided under **Section 333 and 335 PPC**. The case of prosecution in the FIR and charge sheet is about causing injury/hurt on the head of the victim and therefore the case of applicant fell under **Section 337(2)(a) to (f) PPC**. In schedule-II of Cr.P.C the provisions of **Section 337(2)(a) to f of PPC** have been shown as compoundable. The provisions of **Section 324 PPC** also do not imposed any condition which can hamper the possibility of compromise in terms of **Section 345(6) Cr.P.C** by the persons who, otherwise, are competent to compound the offence on behalf of an idiot or insane injured in terms of **subsection (4) of Section 345 Cr.P.C** since the applicant was at the most liable for punishment provided for the “hurt” caused by him in terms of Section 337(2)(a) to (f) PPC.

8. In view of the above provisions of law, I believe this Cr. Rev. Application should have been disposed of hardly in half an hour even 08 years back when the counsel has argued application under **Section 426 Cr.P.C** on **10.9.2007** and the applicant was bailed out pending this Revision Application. However, due to lack of interest of the counsel for the applicant and the prosecution and their willful failure to discharge their professional duty with minim honesty, the case was not only lingered on for eight years but the applicant suffered badly when his own counsel persuaded the applicant to arrange an amount of **Rs.2,15,000/-** as 'diyat' and deposit with the Nazir of this Court to thwart his imprisonment for an indefinite period as the impugn order was "**the applicant shall remain in custody till payment of Diyat**". The Prosecutors acted as silent expectator and did not assist the Court with the proper legal position in the light of the facts of the case in hand.

9. The narration of above facts suggests that the applicant is victim of non-serious attitude of lawyers appearing for and against him. It was not a matter of simple lack of assistance rather it was a case of criminal negligence on the part of the counsel for the applicant as well as the prosecutor since their negligence to examine the case of applicant had compelled the poor applicant to borrow a sum of **Rs.2,15,000/-** to save himself from imprisonment for the rest of his life on account of non-payment of diyat in a case in which "diyat" was not payable at all. It was not a simple case of incompetence of the lawyers of either side, it was a case of willful negligence of both the counsel namely Mr. Samiullah Soomro, counsel for the applicant and Mr. Ali Haider Saleem, for the State. It was willful negligence because on **10.11.2015**, Senior Counsel

Mr. Habib Ahmed had categorically advised both the counsel that they should properly assist the Court as the order of payment of “diyat” by the trial Court in a case under **Section 324 PPC** was patently illegal and particularly once the accused was pardoned by the persons who in terms of **sub-section 4 of section 345 Cr.P.C** can contract on behalf of the lunatic injured. However, both the counsel despite a word of advice from a senior counsel, did not assist the Court on the question of disbursement of ‘diyat’ deposited by the applicant with the Nazir of High Court. In fact they had realized the mistake and to hush-up the mess under the carpet, they preferred to escape from their responsibility both toward the applicant and the Court in the hope that this case will never be listed once is disposed of as no one would come forward to claim “diyat”. Thus they also contributed in perpetuating the consequence of their offence of compelling the applicant for payment of diyat and leaving it unattended with Nazir of this Court though it ought to have been refunded to the applicant as it was erroneously paid by him. Yes, it was erroneous payment of “diyat” since the Court had not decided that ‘Diyat’ was payable by the applicant, rather the Counsel for the applicant has shown willingness of his client to deposit diyat in Court.

10. Mr. Habib Ahmed, advocate was kind enough to bring the above position of law to my notice. I discussed the above pathetic experience as judge with Mr. Shahadat Awan, learned Prosecutor General of Sindh who also confirmed that the Counsel should have assisted the Court properly and it was not very complexed issue. The question of ‘Diyat’ does not arise under any circumstances in an offence under **Section 324 PPC** and the victim can himself compound the offence or in case of his disability to compound, any one on his behalf can compound the offence

in terms of **Sub-section (4) of Section 345 Cr.P.C.** Therefore, I preferred to fix this matter for rehearing on **25.11.2015**. And I was fully prepared to send the case of Mr.Samiullah Soomro, and Mr. Ali Haider Saleem advocates to the Bar Council for disciplinary action against them. However, after examining the above quoted provisions of law, both have conceded to their non-serious attitude towards their duty as lawyers and accepted that their behaviour resulted in a serious hardship to the applicant and passing of a wrong order compelling the applicant to deposit **Rs.2,15,000/-** toward 'diyat' amount in Court. Both the counsel instead of facing Bar Council to explain their obvious misconduct agreed to compensate the victim of their negligent behaviour by payment of Rs.10,000/- (Rs.5000/- each) to the applicant within two days. Therefore, I have decided not to send this particular instance of grave misconduct of the two lawyers to the Bar Council. Nevertheless, I think it is high time for the responsible office bearers of various Bar Associations and leaders of Bar Council to check the growing incidents of professional misconduct including inefficiency amongst the lawyers. The Bar Council should develop some mechanism of periodical appraisal of not only the conduct but also "inefficiency" of lawyers and take strict action against the frequent delinquent members without fear of losing a vote in the upcoming election. The Supreme Court of Pakistan while framing Procedure of Inquiry 2005 regarding inquiry against Judges of Superior Courts in terms of Article 209 of the Constitution of Islamic Republic of Pakistan, 1973 has defined "misconduct" for the purpose of Procedure of Enquiry as follows:-

(3) Definitions:

(1) "Misconduct", includes,

(i).

(ii).

(iii) is found to be inefficient or has ceased to be efficient.

Therefore, I believe following the spirit of Supreme Court, the Bar Councils should also keep an eye on the conduct of their members with reference to their “inefficiency” as lawyers and if they find any lawyer “inefficient or has ceased to be efficient”, he should also be proceed against for the disciplinary action. It is pertinent to note here that “inefficiency” of a Judge is curable in an appeal or by a larger bench. It is not fatal, but inefficiency of a lawyer is neither curable nor anything short of miscarriage of justice. It is like appointing a blind man as driver and innocently expecting a safe journey to the ultimate goal of getting the justice from a Court of law. The Bar Councils should amend the Bar Council Act accordingly and ensure periodical check on their members at least with regard to their performance as lawyer.

11. The upshot of above discussion is that the amount of “Diyat” deposited by the applicant in Court may be refunded to the applicant forthwith subject to furnishing an affidavit by the applicant that both the counsel have paid a sum of Rs.5000/- each to him as compensation. The impugned order is set aside, this Revision Application is allowed. The accused is, therefore, acquitted. The surety furnished by him to the trial Court in terms of order dated **10.9.2007** stand discharged.

Copies of this judgment should be sent to the provincial Bar Councils and Pakistan Bar Council in the hope that soon they will do something to control ever deteriorating standards of advocacy.

J U D G E

Karachi

Dated:_____