IN THE SUPREME COURT OF PAKISTAN
(Advisory Jurisdiction)

Present:

Justice Qazi Faez Isa, CJ
Justice Sardar Tariq Masood
Justice Syed Mansoor Ali Shah
Justice Yahya Afridi
Justice Amin-ud-Din Khan
Justice Jamal Khan Mandokhail
Justice Muhammad Ali Mazhar
Justice Syed Hasan Azhar Rizvi
Justice Musarrat Hilali

REFERENCE NO. 1 OF 2011

[Reference by the President of Islamic Republic of Pakistan under Article 186 of the Constitution]

In Attendance:

On behalf of President	:	Mr. Mansoor Usman Awan, Attorney-General for Pakistan with Mr. Javed Iqbal Weins, Additional Attorney-General for Pakistan.
On Court Notice	:	Mr. Hassan Akbar, Advocate-General, Sindh. Mr. Ayaz Swati, Addl. AG, Balochistan. Mr. Sultan Mazhar Sher Khan, Addl AG, Khyber Pakhtunkhwa.
For Applicant *(In CMA No.8622/2018)*	:	Mr. Farooq H. Naek, Sr. ASC with Mr. Bilawal Bhutto Zardari.
Amicus Curiae	:	Mr. Ali Ahmed Kurd, ASC.
Complainant	:	Mr. Ahmed Raza Kasuri.
Date of Hearing	:	12.12.2023.

ORDER

1. Reference No. 1 of 2011 was filed by the President of Pakistan under Article 186 of the Constitution of the Islamic Republic of Pakistan ('**Presidential Reference**') with regard to the late Mr. Zulfiqar Ali Bhutto's ('**Mr. Bhutto**') criminal trial and conviction, and it was entertained by this Court. A number of hearings took place till 12 November 2012, but thereafter the Presidential Reference was not fixed in Court. A number of other presidential references, filed later under Article 186 of the Constitution, were taken up for hearing and decided by this Court, but this

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Presidential Reference remains pending, therefore, it merits determination as early as possible.

2. Learned Mr. Farooq H. Naek referred to an application (CMA No.8622/2018) filed on behalf of Mr. Bilawal Bhutto Zardari, the grandson of the late Mr. Bhutto and states he wants to be represented herein. We are informed that there is only one surviving daughter of the late Mr. Bhutto and he has eight grandchildren. The application is allowed and learned Mr. Naek may represent Mr. Bilawal Bhutto Zardari and assist this Court. If Mr. Bhutto's daughter and any of his grandchildren also want to be represented they may engage counsel. Mr. Naek states that he has also filed an application (CMA No. 10492/2023) seeking live telecast of these proceedings, however, the committee constituted in this regard had before filing of the application already made requisite arrangements and recommended that the Presidential Reference be broadcast, and proceedings are being broadcast,[1] therefore, this application has become infructuous and is disposed of.

3. Learned Mr. Naek refers to the report of Justice Shafi-ur-Rehman, who was then a Judge of the Lahore High Court, regarding the investigation into the murder of Mr. Mohammad Ahmed Khan, the father of the complainant, Mr. Ahmed Raza Khan Kasuri. He requested that he be provided its copy. A Tribunal of inquiry was constituted by the Government of Punjab in exercise of its powers conferred by section 3 of the West Pakistan Tribunals of Inquiry Ordinance, 1969.[2] The *Report of the Tribunal* is dated 22 February 1975 and comprises of 30 pages, and is mentioned in the judgment of the Lahore High Court[3] and also in the appeal therefrom.[4]

4. The learned Attorney-General for Pakistan ('**AG**') was asked whether any of the successive Presidents or the Federal Government sought to withdraw the Presidential Reference or wants to do so now, and the learned AG stated that this was not done nor is this sought to be done now.

5. Learned AG was asked to read the Presidential Reference, which he did. He also read some of the orders of this Court, including order dated 21

[1] https://www.youtube.com/live/fnsKtf1yM78?si=Wnye57Er_IJ39zB0.
[2] Notification No.SOG-III-6-309/74, dated 13 November 1974, published in the Punjab Gazette on 11 December 1974.
[3] *State v Zulfiqar Ali Bhutto* PLD 1978 Lahore 523.
[4] *Zulfiqar Ali Bhutto v State*, PLD 1979 Supreme Court 53, p. 61, para 9.

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April 2011[5] which formulated questions for the opinion of this Court. A number of *amici curiae* were appointed, some of whom have passed away and others we are told are indisposed. Learned Mr. Ali Ahmed Kurd, an *amicus* appointed by this Court, states that he will be rendering assistance. We are also informed that learned Mr. Makhdoom Ali Khan, another *amicus* appointed by this Court, will also be rendering assistance. Notice had also been issued to the Supreme Court Bar Association ('**SCBA**') and the late Ms. Asma Jahangir represented SCBA; if SCBA want to be represented before this Court they may nominate a counsel to assist us. We also appoint learned Messrs Khalid Javed Khan, Salahuddin Ahmed and Zahid F. Ebrahim as *amici curiae*. Mr. Yasser Kureshi, an academic working at Oxford University, United Kingdom, and Ms. Reema Omer of the International Commission of Jurists are also appointed as *amici curiae*. They are appointed to particularly attend to the constitutional and legal aspects of the matter.

6. The first and foremost constitutional and legal points, in addition to those recorded in order dated 21 April 2011, that require consideration are:

(1) Whether the Presidential Reference is maintainable under Article 186 of the Constitution;

(2) Whether the Presidential Reference requires a factual inquiry, and if so, whether under Article 186 of the Constitution an opinion can be given in this regard;

(3) The constitutional-legal position of the trial and appeal, and its credibility/legitimacy when the person being tried was removed from power by a usurper who himself assumed power and then launched the prosecution of Mr. Bhutto in a criminal case which was filed as 'untraced'; and

(4) Were certain judge(s) removed from the trial and/or hearing the appeal to secure a particular result.

7. If the aforesaid aspect is successfully attended to then we will need to consider the trial and appeal which will require expertise in criminal law and procedure. Justice Manzoor Ahmed Malik, former Judge of the Supreme Court, and Justice Assadullah Khan Chamkani, a former Judge of the Peshawar High Court, have vast experience and we want to benefit from their knowledge in this regard, therefore, they are appointed as *amici curiae*, who may either submit a written brief and/or address us in person. We note that learned Mr. Khawaja Haris Ahmed was the Advocate-General,

[5] *In re: Reference No. 1 of 2011*, 2011 SCMR 962.

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Punjab and was associated with the Presidential Reference when it was earlier heard and is also a criminal law expert, therefore, he is also appointed as *amicus curiae* to assist with the criminal law and procedure.

8. With regard to the criminal law aspects the learned *amici curiae* may assist on the following:

(1) If, and when, can a murder trial be conducted by the High Court, and to cite local and international precedents;

(2) Was the murder-trial being conducted by the High Court objected to, and if it was, how was the objection attended to;

(3) The consequences, if any, of departing from the usual mode of trial;

(4) The admissibility or otherwise of a confessional statement of an approver and to what extent can it be used against a co-accused;

(5) Was there any legal bias, and if so its effects; and

(6) What were the facts leading to reopening the investigation, and was it because fresh evidence had been discovered or was it on account of the usurper securing his position.

9. The Presidential Reference refers to an interview, which we are told was given to Mr. Iftikhar Ahmed of *Geo* television by Justice Nasim Hassan Shah, who was on the Bench of the Supreme Court which decided the appeal and review.[6] Mr. Ahmed Raza Kasuri also refers to his application (CMA No. 5788/2011) and states that he has filed extracts from a book written by the same learned Judge - *Constitution, Law and Pakistan Affairs*. Mr. Naek states that Justice Dorab Patel had also given an interview about the case.

10. Office is directed to send copies of the Presidential Reference, all orders and the *Report of the Tribunal* to the learned *amici curiae* who may attend to the questions noted above, in order dated 21 April 2011 and in the Presidential Reference. The learned *amici* may submit their respective written opinions on all or any of the said matters, and on any other aspect which they consider relevant, by Friday, 5 January 2024.

11. Notice be issued to *Geo* television to provide unedited-complete recording of the interview of Justice Nasim Hassan Shah conducted by Mr. Iftikhar Ahmed, and any other interview which it may have with any other Judge who had conducted the trial or the appeal of Mr. Bhutto's case.

[6] *Zulfikar Ali Bhutto v State*, PLD 1979 Supreme Court 741.

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Learned Mr. Naek has also undertaken to provide such recordings with their transcripts by or before Friday, 5 January 2024.

11. To come up on **Monday, 8 January 2024** at 11:30 am.

Qazi Faez Isa, CJ.

Sardar Tariq Masood, J.

Syed Mansoor Ali Shah J.

Yahya Afridi, J.

Amin-ud-Din Khan, J.

Jamal Khan Mandokhail, J.

Muhammad Ali Mazhar, J.

Syed Hasan Azhar Rizvi, J.

Musarrat Hilali, J.

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Islamabad:
12.12.2023
(M. Tauseef, Hassan K.W.)

Approved for Reporting

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