

Form No.HCJD/C-121

ORDER SHEET
IN THE LAHORE HIGH COURT
MULTAN BENCH, MULTAN.
 JUDICIAL DEPARTMENT

Case No. W.P.No.3553/2017

MUHAMMAD AYOUB
 VS
 FEDERATION OF PAKISTAN, ETC.

S. No. of order/proceedings	Date of order/proceeding	Order with signature of Judge, and that of parties or counsel, where necessary
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03.04.2017

M/s. Zulfiqar Ali Sidhu, Sher Zaman Qureshi, Waseem Mumtaz, Hafiz Allah Ditta Kashif, Ch. Salamat Ali Wains, Syed Athar Hassan Bokhari, Rana Miraj Khalid, Advocates for the petitioner.

Mr. Najaf Ali Malik, Assistant Attorney General for Federation with Nisar Ahmad Director General IP&WA PTA, Khuram Siddiqui, Director Law PTA, Muhammad Naeem Ashraf, AHC (Consultant Law PTA), Faheem Gul, Assistant Director Law.

Madam Ameena Sohail, Member Legal MIOT.
 Azhar Amin Chaudhry, Deputy Secretary.

Mr. Shahab Azim Deputy Director FIA, Islamabad, Babar Shahryar, Deputy Director FIA, Multan, Muhammad Mumtaz Dogar, Assistant Director FIA, Muhammad Mumtaz Qureshi, SI/SHO, FIA Multan.

Briefly the facts relevant to the decision of instant writ petition are that some facebook pages by the names "*Bhansa*", "*Mochi*" and "*Roshni*" were found uploading inflammatory and blasphemous material. The said fact was taken notice of by the petitioner and he as a citizen of Islamic Republic of Pakistan, filed the instant writ petition precisely with the prayers that:-

- i) Respondents No.2, 3 and 4 be directed to block the pages in the social media namely "*Bhansa*", "*Machar*" and other similar pages, and
- ii) Respondents No.1 and 3 be directed to inquire into and investigate as to who are the actual culprits.

2. It is argued by learned counsel for the petitioner, being represented by a majority of the Bar and backed by number of

religious scholars and the public, that the content being uploaded on facebook is not only against faith of muslims, the same is also clear violation of Article 19 and 19-A of the Constitution of Islamic Republic of Pakistan, 1973, in addition to being an offence covered by Chapter XV of Pakistan Penal Code. It is further argued that despite commission of an offence, silence on the part of state functionaries is unacceptable. While improving their arguments, it is argued that under Section 37 of the Prevention of Electronic Crimes Act, 2016, (hereinafter to be called as “PECA”), Pakistan Telecommunication Authority constituted under Section 2(iv) thereof, (hereinafter to be referred as “PTA”), must have taken steps to remove and block all such content, but here in this case conscious inactivity on the part of PTA, must be taken note of by this Court and authority must be directed to forthwith block facebook. The learned counsel representing the petitioner added that their above verbal prayer may be considered as part of the main prayer clause of the writ petition, as this Court otherwise has ample jurisdiction to grant the relief pursuant to the ultimate prayer “*any other relief*”)

3. The learned Assistant Attorney General, assisted by Director General PTA and other officers from respondent-ministries, came out with the stance that all out efforts are being made much before the instant raise of issue and in this context blasphemous content or pornographic sites were not only removed and blocked but the said fact was also pointed out to all the information system administrators requesting them to block such pages. The Director General PTA very fairly pointed out that as a matter of fact information from the secured websites could not be removed by the PTA itself unless supported by the information system itself. Further added that social media information systems namely facebook, YouTube and Twitter etc are secured information systems and hosted out of territorial jurisdiction of Pakistan. Since the hosting of such information systems do not fall within the regulatory regime of PTA, the only option left with PTA is to make

a request to the administrator of such secured information system to block objectionable contents/material available there. In this context, certain letters written by the respondents’ way back since 2011 have been shown to the court. The court has been further informed that pursuant to the directions of the Hon’ble Islamabad High Court, they have been able to convince the facebook administrator and they have shown willingness to visit Pakistan and consider our concerns.

The Director General FIA, Multan submits that pursuant to the order of this Court an FIR No.59/2017 has been registered at police station FIA ACC, Multan and already another FIR stood registered by the orders of Islamabad High Court, where-after, a joint investigation team has been constituted, some of the culprits have been arrested, continuous efforts are being to trace and arrest the remaining accused and all must be brought to book.

4. Heard.

5. On cursory glance to the annexures of this writ petition, this Court was shocked to see that the said material consisting of text as well as the pics in the shape of caricature, etc., was more than enough to create wide scale public unrest and outrage amongst absolute muslim majority of our Islamic ideological state. Therefore, taking notice of significance of the issue, on the very first date of hearing, the learned Standing Counsel for Federation as well as concerned officers from FIA, Multan, were summoned in the court.

6. When an act is declared to be an offence, it is responsibility of the state to adopt all legal measures firstly to prevent such crimes and secondly if the said offence is committed then bring the culprits to book, put them before the court for ultimate decision. In the same context Article 5 of the Constitution of Islamic Republic of Pakistan, 1973 deals with loyalty to state and obedience to the constitution and law, hence, it becomes constitutional duty of the

state functionaries to perform their duties to curb the crimes as defined in different statutes of the country. With reference to this petition, the material appended with it clearly disclosed commission of offences as detailed in Chapter XV of the Pakistan Penal Code. This court could not oversight that the legislators had laid down specific provisions i.e. Section 295-C P.P.C, etc., to cater similar situations where any person uses derogatory remarks, etc., in respect of the Holy Prophet ﷺ, by words, either spoken or written, or by visible representation or by any imputation, innuendo, or insinuation, directly or indirectly, and thus defiles the sacred name of the Holy Prophet ﷺ, the name of any wife (Ummul Mumineen), or members of the family (Ahle-bait) of the Holy Prophet ﷺ, or any of the righteous Caliphs (Khulafae-Rashideen) or companions (Sahaaba) of the Holy Prophet ﷺ. It was for the above reason that FIA authorities were directed to receive an application/ oral statement of the petitioner and after adopting the requisite proper procedure, register a criminal case. This is quite a sensitive issue and the referred material clearly discloses that visible intent behind such posts was to hurt the feelings of muslims all over the world and we also have the history that whenever such unholy attempts were made, it worked as an ignition for the whole of our society and whenever the state failed to respond quickly, the antagonists were responded befittingly by the masses, at times by the individuals.

7. This court would remind the state agencies of preamble of the Constitution of Islamic Republic of Pakistan, 1973 (*now Article 2-A of the Constitution*), which provides that the principles of democracy, freedom, equality, tolerance and social justice, as enunciated by Islam, shall be fully observed; the Muslims shall be enabled to order their lives in the individual and collective spheres in accordance with the teachings and requirements of Islam as set down in the Holy Quran and Sunnah, protection shall be provided to the fundamental rights, including equality of status, of

opportunity and before law, social, economic and political justice, and freedom of thought, expression, belief, faith, worship and association, subject to law and public morality.

8. As shall be seen from the preamble of our Constitution, the rights of every community have been delicately balanced and freedom of speech/expression and information is also hallmark of our constitution, but the term “*right of expression*” cannot be stretched to such an extent that it be used as a tool to defy the religious thoughts or sacred personalities of one’s religion. This court is of the clear view that under the umbrella of “*freedom of speech and information*” not only the muslim community, in fact the followers of all the religions have been made to suffer immensely e.g. Salman Rushdie wrote a book hurting the feelings of muslims all over the world and his book was banned in 1988, James Laine characterized Shivaji (Shivaji Maharaj Bhonsle) hurting the feelings of that sect, as a result Bhandarkar library was vandalized by the mob and similarly Wendy Doniger wrote a book “*The Hindus: An Alternative History*” creating rage amongst Hindu community. In view of the above, the right of expression cannot be allowed to thwart the feelings of any religion on earth, because as a matter of fact distortion of any religion on the pretext of right of speech/expression or information now amounts to another form of terrorism a fact that the international community must now concede.

9. There can be no second opinion that advancement and use of technology has brought whole of the universe into one global village and internet is now considered to be the most productive element in spreading, sharing and developing knowledge and ideas, ultimately benefiting the public at large. Having observed that, this court is well aware of the fact that despite all above pointed benefits, comparatively a few of the internet users, for any reason whatsoever, have resorted to use it for destructive purpose. In this context we are aware that the internet or for that matter other social

forums like facebook, twitter, etc. unfortunately are being used, by some of the elements, negatively, and by their such nefarious activities, the laws of the countries are being violated, religious feelings of all kinds of communities are being hit, let it be said that all this is being done under the cover of "*freedom of expression*" and "*freedom of speech*".

10. It is important to mention here that some individuals who can be counted on finger tips are of the view that under Article 19 and 19-A of the Constitution of Islamic Republic of Pakistan, 1973, they carry uninterrupted right of freedom of speech and information, therefore, no action can be taken against any such material, as is part of this writ petition. But, they are totally ignorant of the fact that Article 19 of the Constitution of Islamic Republic of Pakistan, 1973 in clear terms provides that said liberty should be subject to any reasonable restrictions imposed by law in the interest of the glory of Islam or the integrity, security or defence of Pakistan or any part thereof, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court or incitement to an offence. Same is the position with Article 19-A of the Constitution, which was inserted through 18th amendment and it provides a right of information to any citizen, but this is again subject to regulations and reasonable restrictions imposed by law. Therefore, any effort by the individuals or any smaller groups to twist these Articles and interpret the same at their whims could not be permitted as these liberties are not absolute, rather are subject to certain restrictions of law and the regulations.

11. The court is cognizant that freedom of expression, universally acknowledged as both fundamental and foundational human right, is not only a corner stone of democracy but also indispensable to thriving civil society. Indeed, the freedom of expression is considered to be a foundational human right of the greatest importance. The right to freedom of expression is protected by a multitude of regional and international treaties and charters

and frameworks, but internationally it is applied with some restrictions as no country could allow the rebellions by delivering speeches against the state, promoting hatred and seeds of terrorism in the country. If such situation is allowed to persist, certain disgruntled elements will start to recruit citizens as a force to wage a war against the state as is the case in Syria, Afghanistan, Iraq, etc. Hence, the restrictions imposed by the Constitution of Islamic Republic of Pakistan, 1973 could not be bypassed. In short freedom of speech and information and restrictions imposed there-against, could be explained in one sentence "*liberty of one ends where the nose of other starts*"

12. One must not forget that the right of "*freedom of speech or freedom of expression*" which is now being portrayed as innovation of recent times had in fact been introduced by Holy Prophet  1400 years ago. Yet it is important to remember that freedom of expression, speech, tolerance and respect go hand in hand. As it is a general consensus that mocking, degrading or insulting others, in the name of freedom of speech or expression devalues a civilized society. Without any doubt, democracy, racial equality, social justice, human rights are all Islamic concepts. But unfortunately, the western world sees Islam as the opposite. The reality of Islam is that it promotes justice and preserves human rights. The Holy Prophet  was the greatest humanitarian that ever walked on the planet. In fact "he must be called the saviour of humanity...". George Bernard Shaw insists that "if a man like Muhammad were to assume dictatorship of the modern world, he would succeed in solving its problems that would bring it the much needed peace and happiness." In support of this, a great historian, Lamartine argues that "as regards all standards by which human greatness may be measured, we may well ask, is there any man greater than he?" Thus, we learn that Muslims and non-Muslims alike have found the life of Holy Prophet  a continuous source of inspiration. Even the non-muslims of Makkah knew him

as "the Truthful" (Al Sadiq) and "the Faithful" (Al Amin). In fact, each aspect of the life of Hazrat ﷺ exemplifies his perfection and is invaluable for those who seek a model of guidance because it is specifically designed by Allah (S.W.T.) for this purpose. All of the Holy Prophet's ﷺ attributes, virtues and qualities have been showered on him as gifts from The Creator. Allah (S.W.T.) has carved the physical features, the style of living and the conduct of His Messenger (S.A.W.) in such a perfect manner that each one of his qualities serves as an argument for the glory and grandeur of The Creator. In fact the life of Hazrat ﷺ is the focus of our faith. Recognition of Messengership is recognition of the divine presence. According to his wife Umm-ul Mu'mineen Hadhrat `A'ishah (R.A), "He was a personification of the Qur'an." Since the Prophet (S.A.W.) is the embodiment of all the virtues that have been enunciated by the Holy Qur'an, a true understanding of the attributes of the Prophet ﷺ is in fact a true understanding of Allah's attributes. Sahih Al-Bukhari, Sahih Muslim, and other authentic compilations of the traditions or Hadith of Hazrat ﷺ are brimming with examples to support the fact.

13. Deen-e-Islam is not a religion alone, it is a complete code of life. Religion deals with private affairs of life whereas Deen covers all aspects of life, individual as well as collective. In other words Deen is all embracing term which includes religio-socio-politico-economic system. It touches upon the material as well as spiritual dimensions of human existence and insists that all our thoughts and deeds should be performed with good consciousness. Having said all that, Hazrat ﷺ is the pivot around which all of our faith revolves. It is narrated by Abdullah bin Hisham (R.A.): "We were with the Prophet Muhammad (S.A.W.) and he was holding the hand of Umar bin al Khattab. Umar said to him "O Allah's Messenger! You are dearer to me than everything except my ownself." The Prophet (S.A.W.) said, "No, by Him in whose hand my soul is you

will not have complete faith till I am dearer to you than your own self.” Then Umar said to him, “However, now by Allah you are dearer to me than my ownself.” The Prophet ﷺ said, “Now, O Umar (now you are a believer)”.

14. As shall be seen from the life of Hazrat Muhammad, in fact the fabric of Islam accentuates the concept of peace as the word ‘Islam’ itself has been derived from another Arabic word “Salam” which means peace and the literal meaning of Islam is ‘to enter into peace’. The Holy Prophet ﷺ always endeavoured not only to maintain peace and tranquility within Islamic society but also for peaceful co-existence of Muslims with other communities. He ﷺ was sent as a messenger of peace and mercy for the whole mankind-not to the Muslims only- as Allah Almighty says in verse 107 of Surah Al-Anbya (the Prophets), “And We have not sent you, [O Muhammad], except as a mercy to the worlds.” Even before announcing his prophethood, the Holy Prophet ﷺ had been making efforts to promote peace in Arab society by amicably resolving the disputes. The issue of Blackstone (Hijr-e-Aswad) is one of its example. To carry the greatest of values set by Hazrat Muhammad ﷺ for each and every field of life, is the paramount duty of muslims on earth.

15. Now, it is really unfortunate that unholy attempts are being made by the certain elements to defy the most sacred personality ﷺ, not only of muslims but whole of the universe. Perhaps, such wrongdoers are not aware of the fact that protecting the prestige of Hazrat ﷺ is the first and foremost duty of all muslims on earth. Muslims would not allow any one, on the basis of any slogan, either that of “*freedom of expression*” or “*freedom of speech*” to undermine the dignity of Hazrat ﷺ. I am also mindful of a big and unprecedented event of our muslim history i.e. “*waqia masjid-e-zarar*”. In brief a mosque was constructed by

some munafiqeen with an evil intention of causing harm and disgrace to the true muslims as well as the Holy Prophet himself, when Hazrat **محمد** was returning from Ghazwa-e-Tabooq, following Ayats were revealed in the Holy Quran:-

Verses 107 – 110

وَالَّذِينَ اتَّخَذُوا مَسْجِدًا ضِرَارًا وَكُفْرًا وَتَفْرِيقًا بَيْنَ الْمُؤْمِنِينَ
وَارْضَاءًا لِمَنْ حَارَبَ اللَّهَ وَرَسُولَهُ مِنْ قَبْلُ وَلَيَحْلِفْنَ إِنْ
أَرَدْنَا إِلَّا الْحُسْنَىٰ وَاللَّهُ يَشْهَدُ إِنَّهُمْ لَكَاذِبُونَ ﴿١٠٧﴾ لَا تَقُمْ
فِيهِ أَبَدًا لِمَسْجِدٍ أُسِّسَ عَلَى التَّقْوَىٰ مِنْ أَوَّلِ يَوْمٍ أَحَقُّ أَنْ
تَقُومَ فِيهِ فِيهِ رِجَالٌ يُحِبُّونَ أَنْ يَتَّطَهَّرُوا وَاللَّهُ يَحِبُّ
الْمُطَهَّرِينَ ﴿١٠٨﴾ أَفَمَنْ أَسَّسَ بُنْيَانَهُ عَلَى تَقْوَىٰ مِنَ اللَّهِ
وَرِضْوَانٍ خَيْرٌ أَمْ مَنْ أَسَّسَ بُنْيَانَهُ عَلَى شِقَاجِرٍ هَارٍ فَانْهَارَ
بِهِ فِي نَارِ جَهَنَّمَ وَاللَّهُ لَا يَهْدِي الْقَوْمَ الظَّالِمِينَ ﴿١٠٩﴾

And (there are) those who have built a mosque to cause mischief and infidelity and to create dissention among the believers and to make preparations for one who has been at war with Allah and His Messenger even before. And they will certainly swear (and say), "We intended nothing but good." And Allah testifies that they are liars. [107]

Do not ever stand there (in prayer). In fact, the mosque that was founded on *Taqwā* (piety) from the very first day is more-worthy that you stand there. In it there are people who like to observe purity; and Allah loves those observing purity. [108]

Is, then, a person who has founded his building on fear from Allah and His pleasure better or the one who has founded his building on the edge of an abyss about to collapse, so it did collapse with him into the fire of Jannah? And Allah does not give guidance to the unjust people. [109]

The building they have made shall always remain a

source of doubt in their hearts unless their hearts are cut into pieces. And Allah is All-Knowing, Wise. [110]

Thus, on the commandment of Allah Almighty, Hazrat **محمد** ordered the same to be demolished and set on fire. From the above it is obvious that apparently one thing may be good but unless the intention behind such an activity is not pure, it is essential to curb it by all means.

16. During the course of arguments, the D.G PTA was further enlightened on the rights and responsibilities of the users as uploaded by the facebook administrator. Its clause-3(7) clearly provides that its user will not post content that is hate speech,

threatening, or pornographic; incites violence, or contains nudity or graphic or gratuitous violence. Further, its clause 5(1) and (2) provides that the user would not post content or take any action on Facebook that infringes or violates someone else's rights or otherwise violates the law, and facebook could remove any content or information which is posted on facebook and it is believed that same violates the statement or policies of the facebook and similarly the respectful behaviour would be encouraged. When the Director General PTA, present in the court, was confronted with above position, he pointed out that the secured websites are hosted on https and TLS etc., protocols. Most of the social media websites namely facebook, YouTube and Twitter etc are secured information systems and hosted out of territorial jurisdiction of Pakistan. Since, the hosting of such websites do not fall within the regulatory regime of PTA, the only option left with PTA is to make a request to the administrator of such secured website to block objectionable contents/material available there. Further, he informed the court that already this issue has been taken up before the facebook authorities and he is sanguine that issue of bad content shall be resolved within next two months. He further recognized that facebook or twitter are only social portals and have no much significance in spreading knowledge based material.

17. This court has been apprised that the issue of uploading blasphemous content on social media has also been discussed in a meeting of Muslim Ambassadors in Islamabad wherein, it has been decided to formulate a joint strategy to address the issue of blasphemous content on social media and further it has been resolved that a comprehensive strategy paper will be circulated by the Ministry of Foreign Affairs among the ambassadors of the Muslim countries, which they will share with their governments to evolve future plan of action. A formal reference will also be sent to Secretary General of the Arab League and Secretary General of OIC raising the issue of blasphemous content on social

media. After response from the governments of the Islamic countries, the matter then will be taken up at the level of United Nations. Besides, legal options will be explored to follow up the matter legally in the courts of the respective countries from where such content is being generated.

18. Furthermore, during arguments this Court repeatedly posed questions to the Director General PTA that if the facebook refuses to block such pages or some new pages are opened for the purpose of spreading hatred material which is otherwise against the law and the Constitution of the Islamic Republic of Pakistan, 1973, and it may even result in damaging the integrity and sovereignty of the state, whether the state agencies would remain silent spectators, **D.G PTA came out with the plea that if within a period of two months decisive steps are not taken by the concerned information system providers/administrators for removal of all such content, then as a last and final resort, the authority would block all such sites at once without any space.**

19. As detailed above, this court is convinced that pursuant to the orders of the court, the concerned agencies have already activated the process of blocking all such accounts on social pages, spreading hateful material and in this respect as pointed out by the D.G PTA approximately two months would be required to settle down the issue to its logical end, however, this court is aware that all above activity would involve a new understanding with international information system providers, therefore, considering all the ground realities, as a safer mode, this court directs that the concerned agencies may even take four months for the completion of above uphill task, but the ultimate object of protecting the honour of our Holy Prophet ﷺ shall be achieved at any cost.

20. In addition to the above, with reference to the order dated 13.05.2014 passed by a Division Bench of this Court in the case **“BYTES FOR ALL versus FEDERATION OF PAKISTAN, etc.”**

(Writ Petition No.958/2013), this Court is well aware that in somewhat similar matter, the Hon'ble Supreme Court of Pakistan on 17.09.2012 had passed the following order:-

“4. M/s. M. Akram Sheikh and Taufiq Asif, learned counsel have filed Civil Misc. Application No.3908/2012, wherein attention of the Court has been drawn towards anti Islamic film under title “innocence of Muslim”. They stated that in Pakistan this film, which contains disrespectful material regarding the Holy Prophet (Peace Be Upon Him), injuries to the feelings of every Muslim is still available on website. Therefore, the PTA is under legal obligation to control such like matter but it has failed to perform its statutory duties, as such direction be issued to the PTA to block the above said film on U-Tube website and refrain in future as well for allowing such material.”

5. Office has inquired from the office of PTA and has gathered information that the Chairman, PTA is out of town and is likely to be back to Islamabad today. Be that as it may, on having seen the material, which has been published in newspapers i.e. The News, Dawn, etc. and the material, which is going on as per the reporting, we direct the Chairman PTA to immediately block the offending material on U-Tube website and on any other website, referred to hereinabove. This order be communicated to the Chairman PTA during course of the day. He is directed to submit report to the Registrar today positively for our perusal in Chambers. (Emphasis supplied.)

This Court has been told that said order of the Apex Court still holds the field, and provides guidelines to this court and all the concerned authorities in such like matters.

21. At this stage it is made clear that if the authorities could not succeed to remove the blasphemous content, as require by the Constitution and the other laws applicable in the country, all such accounts or even the information system involved in above pointed nefarious activities, shall be blocked at once as undertaken by the Director General PTA, present in the court.

22. For what has been discussed above, in view of the substantial and adequate steps taken by the state in the matter, the learned counsels for the petitioner have expressed their satisfaction. This Court would only observe that it is never too late to make right

decisions. Since FIR has already been registered, the investigation shall take the matter to its logical end. Therefore, this writ petition is disposed of in above terms, however, for future eventualities, in furtherance and in addition to the directions earlier issued by this Court in the case “ISLAMIC LAWYERS MOVEMENT through Tahir Farooq alias Allah Bakhsh Leghari versus FEDERATION OF PAKISTAN through Secretary Establishment, Government of Pakistan, Islamabad and 3 others” (2012 C.L.C 1300), it is directed that:-

- i) State functionaries shall keep in mind that PTA is an independent body in the light of its statute and government at the most could issue instructions, that too within the parameters of law.
- ii) A Bill be tabled before the Parliament for deliberations and decision about:-
 - a) Amendment in Section 37 of PECA to authorize PTA to block information system in case service providers fail to remove blasphemous content;
 - b) Procedure for right of appeal, revision, review be provided to the individuals or the system operators whose accounts, pages or systems are blocked by the authorities;
 - c) Where in Section 9 of PECA, punishment for offences relating to terrorism, proscribed organizations, etc. has been provided, punishment of Section 295 to 295-C PPC may also be introduced.
- iii) Rules be framed under PECA, which are though required, yet have not been framed. This exercise must be completed within three months from today;
- iv) A cell in the foreign ministry shall be created to keep all the Islamic countries abreast of the efforts and steps taken pursuant to the above referred meeting of the Ambassadors, which was chaired by the Federal Interior Minister, Pakistan;
- v) The Government shall adopt all necessary measures for enhancing technical expertise and equipments of PTA authorities;
- vi) It appears that FIA which is to investigate such like matters is not equipped with complete devices and team of experts, hence, necessary steps including finance facility, be provided.

23. Since the annexures of the writ petition carry the material which is totally against our faith and belief, the same cannot be made public. As such, the same shall be sealed by the Deputy Registrar (Judicial) of this Bench, so that no one could have access to it or could even get its certified copies, except with specific approval of the Court.

(MUHAMMAD QASIM KHAN)
JUDGE.

ANNOUNCED IN OPEN COURT.

APPROVED FOR REPORTING.

Javed*