

**IN THE COURT OF ASGHAR SHAH,**  
SESSIONS JUDGE, ORAKZAI AT HANGU

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Criminal Appeal No:- 01/19  
Date of Institution:- 23/04/2019  
Date of Decision:- 03/05/2019

Dr. Niaz Ahmed S/O Basher Hussain R/O Rawalpindi,  
Presently Central Jail Peshawar.

..... (Petitioner/ Appellant)

**VERSUS**

1. FCR Tribunal through its Chairman.
  2. Commissioner FCR, Kohat.
  3. Assistant Political Agent/ Assistant Commissioner Tehsil Lower Orakzai/ District Orakzai.
- ..... (Respondents)

**ORDER**

Petitioner/ Appellant, Dr. Niaz Ahmed through counsel has preferred the appellant hand challenging thereby his conviction recorded by Assistant Political Agent Orakzai Lower Agency dated 02/05/2013 whereby he was convicted to suffer rigorous imprisonment for 14 years and also to pay fine of Rupees 1 lac or in default further to undergo 3 years SI U/S 121 – A, 122 PPC/11 FCR. Secondly, he was convicted for 14 years RI with fine Rs. 1 lac or in default further to undergo 3 years SI U/S 3, 5 of Explosive Substances Act/ 11 FCR. The petitioner was granted the benefit of section 382-B Cr.P.C. Later on petitioner, preferred appeal before the commissioner FCR but the same was turned down vide order dated 29/05/2013. The petitioner also filed revision before the FATA tribunal Peshawar but the same was also dismissed vide order dated 16/11/2015. Lastly, the Peshawar High Court Peshawar was approached through writ petition No. 4914-P/2018 and it was held therein through order dated 22/03/2019 that petitioner has availed the remedies available to him under the law, in field at that time and now the matter before the Court is past and closed transaction. The Honorable Chief Justice Peshawar High Court Peshawar, while dismissing the above mentioned writ petition directed the petitioner to approach the concerned quarter under existing procedure of law / rules for redressal of his grievance i.e. remission etc. Accordingly, the criminal appeal in hand was submitted.

*Handwritten signature and date:*  
03/05/19

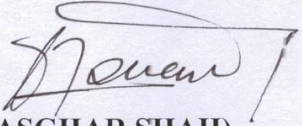


The case was fixed for preliminary hearing and accordingly Mr. Ihtesham Anwar Khattak advocate learned counsel for the petitioner and Zohaib Shair learned Assistant Public Prosecutor for state heard and case file perused.

Admittedly, the petitioner has availed his remedies of appeal and revision, hence the conviction recorded by the APA, appeal decided by Commissioner FCR and revision decided by FATA Tribunal Peshawar got finality and have got protection under section 6 of The General Clauses Act and cannot be challenged in appeal before the present court as the matter is past and closed transaction. The learned counsel for the petitioner/ appellant referred para four of the above mentioned judgment of the Peshawar High Court Peshawar wherein directions were given to the petitioner to approach the concerned forum and was of the view that they have preferred appeal in hand in the light of said judgment of the Peshawar High Court Peshawar. No doubt in the said para four of the judgment such directions were given but for the purpose of remission and the question of remission do not fall within the ambit of the present court and for the said purpose the petitioner is at liberty to approach the Home Department or IG Prisons etc.

The appeal in hand for the stated reasons above is not maintainable hence, the same stands dismissed in limine. Case file be consigned to General Record Room of District Hangu after completion and compilation.

**Announced:**  
03.05.2019

  
**(ASGHAR SHAH)**  
Sessions Judge,  
Orakzai at Hangu.

03/05/19