



RESEARCH CENTRE, HIGH COURT OF BALOCHISTAN

COURT: BEHRAM TAREEN, JUDICIAL MAGISTRATE

SUBJECT: *Judicial Hierarchy*

DATE: Query Receiving Date: April 9, 2026

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BY: RESEARCH CENTRE

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PROPOSED QUERY

Whether the amendments to the Code of Criminal Procedure, 1898, introduced through the *Balochistan Amendment Act, 2010* (Act XV of 2010) and the *Cr.P.C. (Balochistan Amendment) Ordinance, 2010* (Ordinance III of 2010) which were declared *null and void* by the Honourable High Court of Balochistan in PLD 2012 Balochistan 57, resulting in the abolition of the executive magistracy can still be treated as operative in view of the subsequent judgment of the Honourable Supreme Court of Pakistan reported as 2024 SCMR 136, wherein the said amendments appear to have been referred to as remaining “in the field” without any discussion of the earlier High Court judgment; and, consequently, which of the two judgments holds precedential authority and is to be followed by subordinate courts.

1. STATUS OF THE HIGH COURT JUDGMENT:

In the case of *Muhammad Kamran Mullahkhail v. Government of Balochistan* (PLD 2012 Balochistan 57), the High Court of Balochistan adjudicated upon the validity of the Balochistan Amendment Act, 2010 (Act XV of 2010) and the Cr.P.C. (Balochistan Amendment) Ordinance, 2010. The Court declared these legislative instruments null and void ab initio.

The primary legal grounds for this declaration included:

- **Separation of Powers:** The Court held that conferring judicial powers upon Executive Magistrates violated the independence of the judiciary as mandated by Articles 175 and 203 of the Constitution of Pakistan.
- **Fundamental Rights:** The Court observed that since Executive Magistrates are not under the administrative supervision and control of the High Court, allowing them to conduct criminal trials would deprive citizens of the right to a fair trial under Article 10-A.
- **Repugnancy:** The amendments were found to be repugnant to Federal Law under Article 143 of the Constitution.

2. ANALYSIS OF THE SUPREME COURT RULING:

The reference to these repealed laws in **2024 SCMR 136** does not automatically revive them or restore the executive magistracy. The following principles of the law of precedents apply:

- **Requirement for Specific Overruling:** When a law is declared "null and void" by a High Court, it is considered non-existent in the eyes of the law. For such a law to be revived, the Supreme Court must specifically set aside or reverse the High Court's judgment that struck it down. If the Supreme Court in **2024 SCMR 136** referred to these laws without a formal adjudication on the validity of the ruling in **PLD 2012 Balochistan 57**, the High Court's declaration remains the field-operating law.

Note: *It is pertinent to clarify that the judgment of the Honourable High Court of Balochistan reported as PLD 2012 Balochistan 57 was not the matter in issue before the Honourable Supreme Court of Pakistan in 2024 SCMR 136, nor was its validity or effect directly examined therein.*

3. PREVAILING LEGAL AUTHORITY

While Article 189 of the Constitution dictates that decisions of the Supreme Court are binding on all other courts in Pakistan, the application of this rule in the current context is subject to the operative effect of the previous High Court judgment.

Unless the Supreme Court in **2024 SCMR 136** (or a subsequent ruling) specifically adjudicated upon, addressed, and reversed the findings of **PLD 2012 Balochistan 57**, the High Court judgment stands as the governing precedent. Consequently, the executive magistracy remains abolished in the province, and judicial functions must continue to be performed by Judicial Magistrates under the supervision and control of the High Court.

The crux of the judgment, in relation to the present query, is that **2024 SCMR 136** recognizes and applies the 2010 amendment for determining jurisdiction under section 145, Cr.P.C., but does

not adjudicate upon the legality or continued enforceability of the amendment in light of **PLD 2012 Balochistan 57**, which remains subject to pending consideration before the Honourable Supreme Court and, unless set aside, continues to hold the field within the province.

***Note:** It is further pertinent to observe that the judgment reported as PLD 2012 Balochistan 57 has been challenged and is presently pending for adjudication before the Honourable Supreme Court of Pakistan. Since the said judgment has neither been set aside nor suspended by the Honourable Supreme Court, it continues to hold the field and remains operative and binding within the Province of Balochistan.*
