
**Alteration/correction of clerical errors in the judgments by
Criminal Court**



RESEARCH CENTER, HIGH COURT OF BALUCHISTAN



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FOR: HON'BLE PAZEER AHMED BALOCH MEMBER INSPECTION TEAM
SUBJECT: CRIMINAL LAW
DATE: 04TH OCTOBER 2024
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Queries:

- 1- *Whether trial or revisional Court can alter/modify its own judgments after signing and announcing it or otherwise?*
- 2- *What is clerical error?*
- 3- *Whether substitution of observation "the case is remanded back to the learned trial court with the direction to decide the same on its own merits" with "the petitioners /accused are acquitted from the charge in case FIR No. 73/2018" in the concluding paragraph of the judgment of revisionary Court is covered with the expression "except to correct clerical errors" or does it stand violative of the general rule contained in section 369 of the Code of the Criminal Procedure 1898?*

Response to query No. 1 & 2

In order to respond the first and 2nd query, it is stated that this legal proposition has been addressed by the Substantive Law under **Section 369 of the Code of Criminal Procedure (Cr.P.C.)**, which unambiguously declares that *once a court delivers its judgment, it generally cannot alter or review it **except to correct clerical errors***. For more accurate understanding, the section is reproduced here under:-

Section 369 Cr.P.C. reads:

"Save as otherwise provided by this Code or by any other law for the time being in force or, in the case of a High Court, by the Letters Patent, no court when it has signed its judgment shall alter or review the same, except to correct a clerical error."

It is manifested from plain reading of the section that it ensures that finality is brought to decisions in criminal proceedings, preventing repeated alterations or reconsiderations once a judgment is pronounced. However, there are certain circumstances where a court is allowed to make corrections without violating the principles of **Section 369 Cr.P.C. The section explicitly permits corrections of clerical errors**

in a judgment by a criminal Court. A clerical error refers to mistakes that arise from an accidental slip or omission during the preparation or drafting of the judgment. These corrections do not **alter the substantive content or findings** of the judgment but **simply fix errors** in wording, dates, names, or similar technical details.

In Crown vs. Habibullah and others (PLD 1952 Lahore 587), the court provided a detailed analysis regarding the determination of errors as clerical or otherwise. The relevant paragraph from the judgment regarding the test are as follows:

"(2) **Alteration or Review.**-These words do not appear to have been used in any special sense. An alteration means change, whether in character or appearance, and a document would be altered if it is made different in some respect, 6 whether that end is achieved by a mere insertion or by the substitution of something for something else. There would thus be an alteration of the judgment when an argument is added even in support of the existing arguments, The judgment would, therefore, be altered if certain words are inserted in it, whether they do or do not alter the sense. An alteration which changes the sense also, whether wholly or partially, will be covered by the term "review". Now since the insertion of the words in question will not alter the purport of the judgment, which is that a sentence of death has been passed, but only' indicate the mode in which that purport is to be accomplished, it will not amount to a review of the judgment. There will nevertheless be an alteration.

(3) **Clerical Error.**-This has been defined in *Wharton's Law Lexicon* as **"an error in a document which can only be explained by considering it to be a slip or mistake of the party preparing or copying it"**. One might usefully add the word **"omission" to the phrase "slip or mistake"**. We are familiar with the phrase "accidental slip or omission". **What it pre supposes is want of intention. In other words, if I were conscious of what I was doing, I should not do it.** If I were asked whether I propose any mode of execution other than that of hanging by the neck and my reply were "Of course n9t", but even then I left out the words in question unconsciously, my judgment could properly be said to suffer from an accidental slip or omission."

As referred in the case (supra) the term "clerical error" is defined in Wharton's Law Lexicon as "an error in a document which can only be explained by considering it to be a slip or mistake of the party preparing or copying it." This definition implies that a clerical error arises from inadvertence rather than from judicial reasoning or determination. **The judgment emphasizes that the phrase " clerical error " presupposes a lack of intention.** If some is conscious of his action, he would not

make such an error. Thus, if the omission or insertion of specific words was made unconsciously, it could be classified as a **clerical error**. In nutshell, as the Lahore High Court in the above-cited case, it can be concluded that **common sense should be used in determining whether an error was indeed a clerical error.**

Response to Query No. 3

In the present case, the learned Revisionary Court accepted the revisions and set aside the orders of the learned trial Court; however, the revisional Court, in the concluding para of its judgment dated 02nd September 2024, passed order for remanding back the case to the learned trial Court with direction to decide the same on its own merits. Subsequently, on the application of applicant/accused, the learned Revisionary Court, in its Order dated 25th September 2024; modified/substituted the operative para of the judgment dated 02nd September 2024 respecting **remanding back to case to the trial Court** with observation that **"the petitioners/accused are acquitted from the charge in case."**

An extensive study of the judgment of the learned Additional Sessions Judge-IV Quetta, reflects that the *Revisionary Courts while evaluating the prosecution case on the touch stone of principles of appraisal of evidence in criminal jurisprudence has critically commented that the evidence produced and relied by the prosecution side was not enough to find the accused persons guilty.* It further reflects from the judgment of the Revisionary Court that it has pointed out the flaws and lacunas existed in the prosecution case and cited judgments of the superior Courts in support of his view.

It also requires due emphasis here that it is evident from the para No.12 of the judgment that learned counsel for complainant had urged that as only one prosecution witness viz. second investigation officer remained to be examined before the trial Court; therefore, requested for dismissal of application u/s 249-A and allowing the case to be heard and decided on merit. However, the learned court, as is apparent from the said para of the judgment, had turned down such contention of the complainant's counsel and refused to allow the case to be decided after full-dressed trial and on its own merit.

Considering what is noted above, it is unequivocally apparent that *the intention of the learned revisional court was to allow the petition, which is evident from the holistic reading of the judgment, and as corollary acquit the accused persons from the charges. While the order for remanding*

back the case to the trial court for deciding it on merit was unintentional error/mistake. In view of the definition and explanation of the expression "***Clerical error***" given in the "***Crown vs Habibullah***" (supra) the mistake or error committed by the Revisionary Court, being unintentional and irreconcilable with its findings. Consequently, ***the correction made by it comes within the purview of exception of section 369 Cr. P.C., as it does not come within the ambit of alteration or review of judgment.***

The End

RCBHC