

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

**Criminal Jail Appeal No. D-51 of 2021
Criminal Conf. Case No. D-37 of 2021**

**PRESENT: Mr. Justice Riazat Ali Sahar
Mr. Justice Ali Haider 'Ada'**

Appellant Meer Hazar Khan son of Qurban Ali Chandio	:	Through Mr. Asif Ali Abdul Razak Soomro, Advocate
The State	:	Through Mr. Nazeer Ahmed Bhangwar, Deputy Prosecutor General, Sindh.
Complainant	:	Mr. Shakeel Ahmed Ansari, Advocate holds brief on behalf of Mr. Muhammad Afzal Jagirani, Advocate.
Date of Hearing	:	05.08.2026
Date of Judgment	:	05.08.2026

J U D G M E N T

RIAZAT ALI SAHAR, J:- On 15.07.2026, no one appeared on behalf of the complainant, therefore, the following order was passed;_

"15.07.2026

*Mr. Asif Ali Abdul Razak Soomro, Advocate for the appellant.
Mr. Nazir Ahmed Bhangwar, D.P.G for State.*

None present on behalf of complainant. Record reflects that M/S Muhammad Afzal Jagirani and Hayat Muhammad Khan Pathan, Advocates had filed Vakalatnama on behalf of complainant, however, in the morning in other matters Mr. Muhammad Afzal Jagirani, Advocate was present and in the instant matter he is repeatedly called absent.

Under these circumstances this appeal cannot be adjourned for want of presence of counsel for the complainant as Deputy Prosecutor General on behalf of the State is also representing the same complainant, however, by giving a fair opportunity to the complainant and his counsel the matter is adjourned to 05.08.2026. It is made clear that if on next date of hearing counsel for complainant is not appeared and proceed, the matter will be heard and decided after considering the material available on the record.

*Judge
Judge"*

2. During the course of arguments, it transpired from the record that the instant case was initially tried by the learned Judge, Anti-Terrorism Court, Naushahro Feroze. Subsequently, vide order dated 13.08.2020, the learned Judge, Anti-Terrorism Court, Naushahro Feroze transmitted the Record and Proceedings of the case to the Court of the learned Sessions Judge, Dadu, in pursuance of the judgment dated 28.07.2020 passed by the Bench of this Court at Sukkur in C.P. No.D-558 of 2020, whereby the issue of jurisdiction was finally determined. Thereafter, the case was assigned to the Court of the learned Additional Sessions Judge-I/MCTC, Dadu (trial Court), for disposal in accordance with law.

3. Upon careful examination of the record, it is evident that after receipt of the case, the learned trial Court committed a patent procedural illegality. Instead of proceeding with the trial from the stage at which it had been left by the learned Anti-Terrorism Court, or adopting the procedure permissible under law, the learned trial Court framed the charge afresh. However, the learned trial Court allowed an application moved by the learned State Counsel seeking adoption of the evidence previously recorded before the Anti-Terrorism Court and treated the same as evidence in the subsequent trial. Such a course of action is wholly alien to the scheme of the criminal jurisprudence and cannot be sustained in law. The procedure adopted by the learned trial Court has, therefore, occasioned a serious error and has vitiated the entire trial.

4. Consequently, the amended charge framed by the learned trial Court dated 22.05.2021 is set-aside and the subsequent proceedings conducted by the learned trial Court are also vitiated in nature. Consequently, the impugned **judgment dated 10.12.2021** passed by the learned trial Court is hereby **set aside** and the case is remanded to the learned trial Court with the direction to conduct the trial in accordance with law. This view finds authoritative support from the dictum laid down by the Honourable Supreme Court of Pakistan in Shahbaz Khan alias Tippu and others v. Special Judge, Anti-Terrorism Court No.3, Lahore and others (PLD 2016 SC 1), wherein the Honourable Apex Court held as under:

16. The learned counsel for the appellants has expressed the apprehension that a re-trial of the appellants would

automatically follow if the learned ATC concluded during or after the recording of evidence that a scheduled offence is not made out. The anxiety expressed is completely misplaced because Section 23 of ATA expressly provides that a Court having jurisdiction under the Cr.P.C. 1898 "to which the case is transferred may proceed with the trial of the offence as if it had taken cognizance of the offence." Accordingly, the trial of the offence resumes from the stage at which it was transferred by the learned ATC.

5. The appellant who faced the trial since last more than nine years, we are of the view that he has made out a case for grant of bail. Accordingly, appellant Meer Hazar Khan is **admitted to bail** subject to his furnishing solvent surety in the sum of Rs.300,000/- (Rupees Three Hundred Thousand only) and P.R. bond in the like amount to the satisfaction of the learned trial Court.

6. Needless to observe that the learned trial Court shall not be influenced, in any manner, by any observation made herein, as the same is confined solely to the disposal of the present appeal and the question of bail.

7. Since the matter pertains to a criminal case, the learned trial Court is directed to proceed with the matter expeditiously and conclude the trial, preferably within a period of six (06) months from the date of receipt of this order, without granting unnecessary adjournments to either side.

8. The instant criminal appeal, along with the reference, stands disposed of in the above terms.

JUDGE

JUDGE