

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Cr. Appeal No.D-39 of 2026
(Abdul Qahar v. The State & another)

PRESENT:

Mr. Justice Arbab Ali Hakro,
Mr. Justice Muhammad Osman Ali Hadi,

Appellant : through Malik Khalil-ur-Rehman Kakar, Advocate.

State : through Mr. Aitbar Ali Bullo, Deputy Prosecutor General.

Date of hearing & Order : 27.10.2026.

O R D E R.

Arbab Ali Hakro, J.- Through this criminal appeal, appellant Abdul Qahar has called in question the order dated 01.09.2026 passed by the learned Additional Sessions Judge-I, Jacobabad (styled as Additional Sessions/Special CNS Judge-I), whereby his application u/s 516-A, Cr.P.C. (Cr. Misc. Application No.15/2026) seeking release, on *superdari*, of a ten-wheeler truck bearing Registration No.TKW-896, Engine No.JO8CUB-12930, Chassis No.F.D2J.LB14494, Model 1996, held as case property in Crime No.34/2026 registered at P.S. Saddar, Jacobabad, for an offence punishable u/s 9(2)(9) of the Sindh Control of Narcotic Substances Act, 2024, was dismissed. The trial of the said crime is pending before the same Court as Special Case (Narcotics) No.41/2026.

2. On the last date of hearing, i.e. 13.10.2026, learned counsel for the appellant, while addressing the objection raised by the office regarding the maintainability of this criminal appeal, contended that in view of Section 32 of the Act, any order passed in proceedings under the Act is appealable; therefore, the impugned order has rightly been challenged through an appeal.

3. Learned DPG appearing for the State submits that this criminal appeal u/s 32 *ibid* is not maintainable, as the Special Courts contemplated by Section 30 of the Act have not yet been established. Until then, only the Court of the District & Sessions Judge, being the competent court within the meaning of Section 2(qq) of the Act, has jurisdiction to entertain and decide the matter. He further submits that the learned Additional Sessions Judge-I, Jacobabad,

passed the impugned order, but was not competent to entertain and decide the said application; the learned District & Sessions Judge, Jacobabad, ought to have decided it. He adds that the impugned order, passed under a special law by a Court lacking jurisdiction, is *coram non judice* and void, and the proper remedy is revision under Section 435 read with Section 439, Cr.P.C.

4. We have heard learned counsel for the appellant and learned DPG and have perused the record. Section 29 of the Act vests exclusive jurisdiction to try offences under the Act in the Special Court and Section 30 requires the Government to establish such Courts by notification in the official Gazette. It is not disputed that no Special Court has so far been established. Until that is done, the Court of District & Sessions Judge, being the competent court within the meaning of Section 2(qq) of the Act, has the jurisdiction to take cognizance and deal with the trial proceedings. The learned Additional Sessions Judge-I, Jacobabad is neither a Special Court nor the competent court so defined; therefore, the impugned order is null and void. It is an elementary principle that "if a mandatory condition for the exercise of jurisdiction by a Court, tribunal or authority is not fulfilled, then the entire proceedings which follow become illegal and suffer from want of jurisdiction."¹ Section 32 of the Act provides an appeal to this Court against an order of the Special Court. Since the impugned order was not made by a Special Court, the appeal under that section is not attracted. Besides, the impugned order was passed under Section 516-A, Cr.P.C. during the pendency of the trial and is interlocutory in nature. By virtue of Section 31 of the Act, the provisions of the Code of Criminal Procedure, 1898 apply to such proceedings, and an order of this kind can only be examined in the revisional jurisdiction of this Court under Section 435 read with Section 439, Cr.P.C. The power of this Court to treat or convert an appeal into a revision is well settled; it flows from the authority to act *ex debito justitiae* and is exercised to advance the cause of justice.² As such, at the oral request of learned counsel for the appellant, this criminal appeal is converted into a criminal revision application. As learned DPG has been fully heard on the point, and no order is being made to the prejudice of any accused, no further notice under Section 439(2), Cr.P.C. is called for. Office is directed to assign it a regular number.

5. In *Hafeezullah Lashari*³ this Court has categorically observed that "all cases registered under the SCNS Act, 2024 shall be tried by ordinary courts of original criminal jurisdiction, i.e., the Courts of District and Sessions Judges, as

¹ *Mansab Ali v. Amir* PLD 1971 SC 124.

² *Noman Mansoor alias Nomi v. The State* PLD 2024 SC 805; *Mian Asghar Ali v. Government of Punjab* 2017 SCMR 118.

³ *Hafeezullah Lashari v. Province of Sindh* 2026 PCr.LJ 1068 (C.P. No. D-625 of 2025, decided on 16.07.2025).

the “competent courts” within the meaning of Section 2(qq) read with Sections 29 and 30(2)(ii) of the Act. Sessions Judges shall not refuse to take cognizance or proceed with trial solely on the ground that Special Courts have not yet been established. The exclusive jurisdiction under Sections 29 and 30(2)(ii) of the Act remains in abeyance until such establishment.” In such view of the matter, the impugned order passed by the learned Additional Sessions Judge-I, Jacobabad was without jurisdiction and cannot be sustained.

6. The upshot of the above discussion is that the criminal revision application is allowed and the impugned order dated 01.09.2026 is set aside. The learned District & Sessions Judge, Jacobabad shall forthwith withdraw the main case, i.e. Special Case (Narcotics) No.41/2026, from the file of the learned Additional Sessions Judge-I, Jacobabad and proceed with it in accordance with law. The applicant is at liberty to file a fresh application u/s 516-A, Cr.P.C. before the learned District & Sessions Judge, Jacobabad, who shall decide it on its own merits and strictly in accordance with law, uninfluenced by anything stated in the impugned order. A copy of this order shall be sent to the learned District & Sessions Judge, Jacobabad for compliance.

JUDGE

JUDGE

Qazi Tahir PA/*

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As no Special Court has been established under the Act of 2024, only the District and Sessions Judge, as the competent court under section 2(qq), may deal with such a trial; an order of an Additional Sessions Judge is without jurisdiction and void. As the appeal under section 32 lies only against a Special Court's order, an interlocutory order under section 516-A Cr.P.C. is examinable in revision, and the appeal may be converted ex debito justitiae.