

ORDER-SHEET  
**IN THE HIGH COURT OF SINDH,**  
CIRCUIT COURT HYDERABAD.

Criminal Jail Appeal No.S-144 of 2013.

Date of hearing	Order with signature of Judge
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For orders on M.A. No.3117/2019.

**12.04.2019.**

Mr. Altaf Ahmed Shahid Abro, advocate for appellant.

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Urgent Application is granted.

Perusal of record shows that the appellant was charged under Article 17 (3) of the Offence Against Property (Enforcement of Hudood) Ordinance, 1979, read with Sections 324, 34 P.P.C; and the charge was framed under Hudood law, so also the trial was conducted under Hudood laws and after full dressed trial, the trial Court convicted and sentenced the appellant under Section 397 P.P.C for a term of seven (07) years and under Section 336 PPC for ten years and fine of Rs.2,174,576/- as Arsh.

Learned counsel for the appellant submits that due to mistake or oversight of previous counsel instant appeal has been filed before this Court which being incompetent cannot be entertained/ maintained before this Court as it would lie before the Federal Shariat Court in view of the case of *Ali Dino and another v. The State* (2017 P.Cr.L.J 578) and an unreported Order dated 15.04.2011 passed by this Court (Sukkur bench) in Crl. Appeal No. S- 48/2009, Re; Habibullah v. The State.

Admittedly, the F.I.R of the instant case was registered for offence under Article 17 (3) of the Offence Against Property (Enforcement of Hudood) Ordinance, 1979, read with Sections 324, 34 P.P.C. The appellant was charged and tried under Hudood laws but was convicted for offence

punishable under Section 397 & 336 P.P.C. The learned trial Court has not given findings or reference to Article 17 (3) of the Offence Against Property (Enforcement of Hudood) Ordinance, 1979. In order to decide the question of jurisdiction of this Court, I would like to refer second proviso of Article 24 of the Offence Against Property (Enforcement of Hudood) Ordinance, 1979, which reads as under:

**“Provided further that an offence punishable under Section 9 or Section 17 shall be triable by a Court of Session and not by a Magistrate authorized under section 30 of the said Code and an appeal from an order under either of the said sections (or from an order under any provision of this Ordinance which impose a sentence of imprisonment for a term exceeding two years) shall lie to the Federal Shariat Court;”**

This provision of law makes it clear that if the trial is conducted for an offence under Articles 9 and 17 and sentence of imprisonment for a term exceeding two years is awarded the appeal shall lie to the Federal Shariat Court, irrespective of the fact that ultimately the Court convicts the offender for another offence falling in P.P.C.

Keeping in view the above discussion and case law, I am of the view that when the charge is framed under Hudood Laws and sentence of imprisonment for a term exceeding two years is awarded the appeal before this Court is incompetent and the same would lie before Federal Shariat Court, as such the Additional Registrar of this Court is directed to send the memo of appeal alongwith its annexures and its record/ paper book including R&Ps of S.C. No.38/2012 re-The State versus Qurban Ali and others to the Federal Shariat Court after keeping its photocopy on record, for its disposal according to law.

**J U D G E**