

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Jail Appeal No.631 of 2021

Date

Order with Signature of Judge

1. For orders on Misc. No.247/2022.
2. For hearing of Main Case.

10.01.2022

ORDER

Muhammad Saleem Jessar, J:- Through instant jail appeal, appellant has assailed the judgment dated 22.10.2021 handed down by the trial Court / Model Trial Magistrate-II/22nd Judicial Magistrate, Karachi (East) vide Criminal Case No.2484/2019 re-the State Versus Afzal Ahmed (being outcome of FIR No.575/2019 of P.S Ferozabad, Karachi, under Section 489-F PPC. After full dressed trial as well as assessment of the evidence and hearing to the parties, appellant was found guilty of the charge under section 489-F PPC, therefore, was convicted and sentenced to suffer S.I for two years with fine of Rs.20,000/-. In case of default in making payment of fine, the appellant/convict has further been ordered to suffer S.I for two months more; however, benefit of section 382-B Cr.P.C has been extended to him.

2. One lady namely Mst. Muntaha, claiming herself to be wife of the appellant, is present and submits that appellant being pauper and due to inadvertence, has wrongly submitted instant jail appeal before this Court. Hence, she makes a request that it may be disposed of; however, delay so occasioned may be condoned as it was not willful or deliberate; besides the appellant is pauper one. Learned Assistant P.G, Sindh has no objection. Order accordingly.

3. Mr. Talib Ali Memon, Assistant Prosecutor General, Sindh, present in Court in connection with other cases, waives notice of instant jail appeal and submits that appeal may be returned to the appellant by condoning delay with directions to submit it before the appropriate forum / first appellate Court (Sessions Judge, Karachi East). The point raised by learned Assistant P.G, Sindh carries weight.

4. Since the aforementioned case was tried by the Court of Judicial Magistrate and the judgment passed by him was required to be assailed before the Court of Sessions/appellate Court; however, the appellant being pauper and due to inadvertence, has submitted his appeal to this Court in terms of section 410 Cr.P.C instead of filing the same under section 408 Cr.P.C.

5. Since, to file an appeal against his conviction, is statutory right of the appellant which cannot be snatched from him merely on the ground of filing his appeal before wrong forum more particularly when he filed it through jail authorities and was unaware of the legal constraints. Learned Assistant P.G, Sindh has rightly extended his no objection for condonation of the delay for filing fresh appeal before appropriate forum. Accordingly and in view of above legal position instant jail appeal is hereby disposed of. The appellant is directed to file/submit fresh appeal / jail appeal, as the case may be, before the Court of Sessions within thirty (30) days' time, after receipt of instant order.

6. Office is directed to communicate copy of this order to the appellant through jail authorities over fax today, for compliance. The appellant seems to be a pauper, therefore, jail authorities are directed to submit/resubmit his fresh jail appeal in terms of section 408 Cr.P.C before the Court of Sessions Judge, Karachi (East) without causing any delay or negligence, under intimation to this Court through MIT-II. Once, appeal is presented/filed by the appellant before the appellate Court, same shall be heard and decided according to law.

7. Appeal stands disposed of along with pending application(s).

JUDGE

Zulfiqar/P.A