

ORDER SHEET

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Revision No. S – 77 of 2019

Date	Order with Signature of Hon'ble Judge
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1. For orders on MA No.3891/2019
2. For hearing of main case

20.01.2020

Mr. Iftikhar Ali Arain Advocate for the Applicant
Mr. Wadjid Ali Abro Advocate for respondents 2 to 5
Mr. Shafi Muhammad Mahar, DPG for the State

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Through instant Criminal Revision Application, the applicant / complainant has impugned the Order dated 23.05.2019 passed by learned Assistant Sessions Judge-II, Sukkur, on the application under Section 31(3) Cr.P.C filed by the applicant, challenging the jurisdiction of learned trial Court.

2. Learned counsel for the applicant / complainant contends that the learned Sessions Judge Sukkur has wrongly assigned the case to the Court of learned Assistant Sessions Judge for trial, though the Section 395 PPC is applied for which the punishment of rigorous imprisonment for 10 years is provided and fine, whereas, as per Section 31(3) Cr.P.C, the learned Assistant Sessions Judge cannot award maximum punishment of 10 years, therefore, in such circumstances, the case is liable to be tried by Court of learned Sessions Judge or Additional Sessions Judge. He lastly contended that the impugned order passed by learned trial Court is liable to be set-aside and the case may kindly be assigned to Sessions Judge or Additional

Sessions Judge for its trial. In support of his contentions, he has relied upon the cases of ***Allahdad v. The State [Karachi] (1988 P Cr.L J 350) and Abdul Rafiq alias QASSU v. The State [Karachi] (1994 P Cr. L J 2507)***.

3. Learned DPG as well as learned counsel for the private respondents contend that the impugned order is speaking one and they prayed for dismissal of the instant Criminal Revision Application by contending that the learned Assistant Sessions Judge is empowered to try all the offences except those punishable with imprisonment for life or death.

4. I have heard the learned counsel for the parties and perused the entire material available on record. The learned trial Court has passed a well-reasoned and speaking order, it would be conducive to reproduce the relevant portion of the same herein below;-

“It is undisputed fact that the Court of Assistant Sessions Judge is also Court of Sessions. It is also undisputed that the Court of Assistant Sessions Judge cannot pass imprisonment punishment beyond the 07 years. Trial of the case and punishment in the case are two different phenomena. It is worth mentioning that Section 395 PPC provides discretionary punishments that is also within the ambit of jurisdiction of Court of Assistant Sessions Judge. Section 395 is reproduced here under;

‘Whoever commits dacoity shall be punished with imprisonment for life or with rigorous imprisonment for a term which [shall not be less than four years nor more than] ten years and shall also be liable to fine.’

Further that, this Court received this case by way of transfer from the Court of Honourable Sessions Judge, Sukkur under the rule of business under Section 17 Cr.P.C.

Keeping in view the above discussions, this Court has ample powers to try the case of Section 395 PPC as it shows discretionary punishment of imprisonment and is received by the orders of Honourable Sessions Judge, Sukkur. The application u/s 31(3) Cr.P.C is dismissed.”

5. In view of the above, the impugned order dated 23.5.2019 passed by learned trial Court is speaking one and does not call for any interference by this Court, the same is maintained. Consequently, the instant Criminal Revision Application is dismissed along with listed application. The case-law relied upon by the learned counsel for the applicant / complainant being on distinguishable facts, hence cannot be relied upon.

Judge

ARBROHI