

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Appeal No.S-72 of 2020

Date of hearing: 01.12.2022.
Date of Judgment 01.12.2022.

Appellant : Abdul Qahir S/o Khaliq Dad Pathan,
Through M/s. Ambreen Siyal and Zulfiqar
Ali Shaikh, Advocate

The State : Through Ms. Safa Hisbani,
Assistant P.G Sindh.

JUDGMENT

Muhammad Saleem Jessar, J,- Through instant criminal appeal, appellant Abdul Qahir has called in question the judgment dated 06.03.2020 passed by learned Additional Sessions Judge-I, Tando Muhammad Khan, in Sessions Case No.23 of 2020 (Re: the State v. Abdul Qahir), arising out of Crime No.11 of 2020, registered with P.S Tando Muhammad Khan for offences under Sections 269, 270, 337-J PPC, whereby he has been convicted and sentenced to undergo R.I for one year and to pay fine of Rs.10,000/-, in default thereof, to suffer imprisonment for three months more.

2. Since the facts of prosecution case are already mentioned in F.I.R as well as impugned judgment; therefore, there is no need to reproduce the same in order to save precious time of the Court.

3. At the very outset, learned Counsels for the appellant submit that they would be satisfied and shall not press this appeal on merits, if the sentence awarded to the appellant i.e. imprisonment for one year is reduced to one already undergone by him. They further submit that appellant is a poor person,

first offender and is surviving bread earner of his family and while taking lenient view, his sentence may be reduced as the appellant has much repentance of his guilt. Besides, learned Counsels submit that Section 337-J PPC was wrongly applied by the Police under the F.I.R and no proper evidence for establishing the charge against appellant under Section 337-J PPC has been brought on record; hence, the conviction and sentence awarded to the appellant under Section 337-J PPC may be set aside.

4. Learned Assistant P.G Sindh has very candidly extended her no objection.

5. Heard and perused the record.

6. Before parting with the judgment, I have gone through the evidence adduced by the prosecution and find that Section 337-J PPC was wrongly applied; besides it had never been established by the prosecution by adducing tangible material or any concrete evidence. Moreover, perusal of evidence available under R&Ps vide Sessions Case No.23 of 2020 the basic ingredients for establishing the charge under Section 337-J PPC are lacking in this case; therefore, the conviction and sentence awarded to appellant by the trial Court in terms of Section 337-J PPC cannot be maintained; hence, it is hereby set aside. Consequently, the appellant is acquitted of the charge under Section 337-J PPC.

7. Per impugned judgment, the appellant after full dressed trial was convicted and sentenced to suffer imprisonment for one year; besides to pay fine of Rs.10,000/-. Per learned Counsel, the appellant has shown repentance of his guilt and being first offender as well only bread earner of his poor family, his sentence may be considered to one already undergone by him. Since the appellant has shown repentance and remorse of his guilt in the sincerest manner and merited to be accepted; therefore, the sentence already undergone by him

in jail whatever is sufficient to learn lesson from. I, therefore, while taking lenient view against appellant hold that appellant has made out his case where he deserves leniency being proposed by learned Counsel.

8. In view of above, I dismiss this appeal and maintain conviction and sentence awarded to appellant by learned trial Court vide impugned judgment dated 06.03.2020; however, reduce the sentence awarded to appellant to one already undergone by him including fine. Appellant is present on bail; his bail bond stands cancelled and surety is hereby discharged. Appeal is disposed of accordingly.

JUDGE

Shahid