

Order Sheet
IN THE HIGH COURT OF SINDH,
BENCH AT SUKKUR

Crl. Appeal No.S-98 of 2022

Date of hearing	Order with signature of Judge.
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For Directions

Letter received from learned II-Addl. Sessions
Judge, Mirpur Mathelo at flag-A

30-01-2024

None present for the appellant.
Mr. Aftab Ahmed Shar, Additional P.G for the State.

This Reference has been received from Additional Sessions Judge-II, Mirpur Mathelo stating that accused Ali Khan was convicted vide judgment dated 01.11.2022 under section 23(i)(a) Sindh Arms Act by learned Additional Sessions Judge/MCTC, Ubauro. He filed Appeal No.S-98 of 2022 before this Court, which was decided along with connected Appeal No.S-97 of 2022 vide judgment dated 19.05.2023 by this Court and the impugned judgments were set aside and both the cases were remanded to the trial Court with certain directions. However, on 25.01.2024, when the case was posted for evidence, appellant Ali Khan submitted a true copy of judgment dated 22.01.2024, passed by this Court in Appeal No.S-98 of 2022 allowing the appeal and acquitting him of the charge, which has created a confusion.

On this reference, learned APG is present, whereas, none has appeared on behalf of appellant. A perusal of case file of Appeal No.S-97 of 2022 shows that a single Bench of this Court comprising my learned brother Mr. Justice Abdul Mobeen Khan, had decided both the cases arising out of crime No.74 and 75 of 2022 of P.S Khambra vide judgment dated 19.05.2023 remanding both the cases to the trial Court for recording evidence afresh. However, due to inadvertent mistake, a copy of judgment was not placed in Appeal No.S-98 of 2022 and it was continuously posted in the Court for hearing. Ultimately it was heard on 22.01.2024 and decided, as stated above. Neither of the parties

pointed out the fact of disposal of the appeal by earlier judgment of this Court dated 19.05.2023 by virtue of which the appeal, already disposed of, was no more pending before this Court.

Learned APG has submitted two judgments to show that High Court has jurisdiction under section 561-A CrPC to alter, review or recall, under the exceptional circumstances in rare cases where no specific provision of law is available, its earlier order or judgment passed without jurisdiction or against the mandatory provision of law, has been delivered inadvertently, and out of oblivion of the provision of law, and on the ground that if such order or judgment is left intact it would result in perpetration of manifest injustice. Exercising the powers under the aforesaid provision of law, on the facts and grounds as above, the judgment dated 22.01.2024 is hereby recalled having been passed inadvertently without information of disposal of appeal earlier by this Court vide judgment dated 19.05.2023, having been put up to the undersigned at the time of passing the said judgment. Office to put necessary note on the front page of said judgment with red ink.

Reference is accordingly **disposed of**. Let a copy of this order be sent to the trial Court to proceed with the sessions case No.74 of 2022.

JUDGE