

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

CrI. Appeal No.D-128 of 2011

PRESENT:

Mr. Justice Naimatullah Phulpoto,
Mr. Justice Aftab Ahmed Gorar,

Appellant : Attur Kehar, through Mr. Shahbaz Ali M. Brohi,
Advocate.

Respondent : The State, through Mr. Khadim Hussain
Khooharo, Deputy Prosecutor General.

Date of hearing: 28-01-2015.

Date of Judgment: 28.01.2015.

J U D G M E N T .

AFTAB AHMED GORAR, J.- Appellant/accused Attur son of Mehrab, by caste Kehar through the instant appeal has challenged the judgment dated 29.05.2010 passed by the learned Judge, Anti-Terrorism Court, Jacobabad in Special Case No.14/2009, re State v. Abdul Rehman alias Rehmoon & others, arising out of Crime No.11/2009, registered at Police Station Mian Jo Goth, District Shikarpur, for offences under Sections 365-A, 148, 149, PPC and Section 7 of the Anti-Terrorism Act, 1997.

2. According to the case of prosecution, on 18.2.2009 complainant Professor Shakar Ali lodged F.I.R at P.S Mian Jo Goth stating therein that about 4/5 months back he, his cousin Muhammad Ibrahim and maternal uncle Atta Muhammad were going on his motorcycle from their village Luqman Brohi to Village Qazi Pati, Taluka Khanpur, to visit their relatives. At about 5.00 p.m., near Zarkhail Shakh they were intercepted by five armed persons with open faces, out of whom they identified two persons to be 1. Abdul Rahman alias Rahmoon Kehar and 2. Muhammad Hayat Kehar, both armed with K.Ks, while

remaining three persons, who were armed with guns, were not known to them previously, who could be identified if seen again. The culprits then abducted complainant Shakar Ali for ransom. According to the F.I.R., during the captivity of complainant accused Muhammad Hayat contacted the relatives of the complainant for payment of ransom of Rs.500,000/- to his father Attur Kehar for the release of abductee/complainant. Thereafter, on 21.01.2009 accused Attur son of Mehrab Kehar visited the accused persons and on his instructions the complainant/abductee was released. It was alleged in the F.I.R. that an amount of Rs.300,000/- was allegedly paid by the relatives of the complainant as ransom for his release.

3. After usual investigation, challan was submitted against accused Rehmoon alias Abdul Rehman Kehar and Muhammad Hayat Kehar, wherein appellant Attur Kehar was shown as an absconder. On return of N.B.Ws issued against him by the trial Court unexecuted, case was ordered to proceed under Section 512, Cr.P.C. Proceedings under Sections 87 and 88, Cr.P.C were concluded against him and he was declared proclaimed offender.

4. On conclusion of trial, the learned trial Court acquitted all the accused persons including appellant Attur Kehar of the charge for offence under Sections 365-A, 148, 149, PPC and Section 7 of the Anti-Terrorism Act, 1997, however, the learned trial Court convicted appellant Attur Kehar under Section 21-L of the Anti-Terrorism Act, 1997 on account of his absconsion and sentenced him to 05 years imprisonment, his movable and immovable properties were forfeited.

5. Appellant Attur Kehar thereafter surrendered before this Court by filing the aforesaid appeal against his conviction and sentence recorded in his absentia, as stated above.



6. Mr. Shahbaz Ali M. Brohi, learned Counsel for the appellant, has argued that conviction of the appellant under Section 21-L of the Anti-Terrorism Act, in his absentia, is violative of Article 9 of the Constitution of Islamic Republic of Pakistan, 1973. Counsel for the appellant further argued that trial of appellant in his absentia was also illegal. Relying upon the precedents of *Muhammad Arif versus The State*, reported in 2008 SCMR 829 and *Mir Ikhtlaq Ahmed versus The State*, reported in 2008 SCMR 951, the learned Counsel for the appellant contends that the Hon'ble Supreme Court has held that trial in absentia is repugnant to Article 9 of the Constitution of the Islamic Republic of Pakistan, 1973.

7. Mr. Khadim Hussain Khooharo, learned Deputy Prosecutor General, conceded the above legal position and did not support the impugned judgment passed by trial Court in respect of conviction and sentence awarded to the appellant for an offence under Section 21-L of the Act, 1997.

8. We have heard the learned Counsel for the parties and have carefully perused the record.

9. Record reflects that proceedings under Sections 87 and 88, Cr.P.C were initiated for declaring the accused Attur Kehar as proclaimed offender for the purpose of proceeding with the case in his absentia. Thereafter, charge was framed against present accused and others for offences under Sections 365-A, PPC and Section 7 of the Anti-Terrorism Act, 1997. Record of the trial Court reflects that no charge was framed against the appellant under Section 21-L of the Act, 1997. Record further reveals that no evidence was recorded to prove the ingredients of Section 21-L of the Anti-Terrorism Act. Trial Court also failed to formulate a point for determination regarding the offence under Section 21-L of the Act, 1997 in the impugned judgment. Absolutely, there was no evidence that absconsion of the appellant was intentional and no finding has been recorded to

the effect that appellant was fugitive from the law. However, in the cursory manner learned trial Judge has convicted and sentenced the appellant for the aforesaid offence. Thus, procedure adopted by the learned trial Judge in convicting and sentencing the appellant under Section 21-L of the Anti-Terrorism Act, 1997 was absolutely illegal.

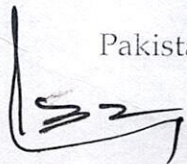
10. We have gone through Section 21-L of the Anti-Terrorism Act, 1997, which reads as under :-

"21-L. Punishment for an Absconder. — Whoever being accused of an offence under this Act, absconds and avoids arrest or evades appearance before any inquiry, investigation or Court proceedings or conceals himself, and obstructs the course of justice, shall be liable to imprisonment for a term not less than [five years] and not more than [ten years] or with fine or with both.

11. The appellant without filing an application 19(12) of the Anti-Terrorism Act, 1997 before the trial Court directly approached this Court through the instant appeal. In this regard, it may be suffice to say that under Section 25 of the Anti-Terrorism Act, 1997, there is no bar that a person convicted and sentenced in absentia cannot file appeal without first making application under Section 19(12) of the Anti-Terrorism Act, 1997.

12. In the present case, appellant was acquitted for offences under Section 365-A, PPC and Section 7 of the Anti-Terrorism Act, 1997. Absolutely, there is no evidence on record against the appellant to prove the offence under Section 21-L of the Anti-Terrorism Act, 1997. Learned Deputy Prosecutor General also did not support the impugned judgment.

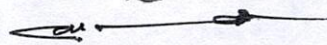
13. In view of above discussion, we are of the firm view that conviction of the appellant Attur Kehar for offence under Section 21-L of the Anti-Terrorism Act, 1997, recorded by the learned Judge, Anti-Terrorism Court, Jacobabad, is violative of Articles 9 and 10A of the Constitution of Islamic Republic of Pakistan, 1973.



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14. For the above-stated reasons, the appeal is allowed, conviction and sentence awarded to the appellant by the trial Court for offence under Section 21-L of the Anti-Terrorism Act, 1997, by judgment dated 29.05.2010, are set aside and he is acquitted.

15. Above are the detailed reasons for our short order passed in Court on 28.1.2015.


JUDGE


JUDGE