ORDER SHEET THE HIGH COURT OF SINDH, KARACHI SPL. CRL. ATA NO. 320 OF 2018

Date

Order with signature of Judge

For hearing of main case.

10th October 2019.

Mr. Muhammad Imran Meo, advocate appellant.

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Through captioned appeal, appellant Muhammad Faizan s/o Muhammad Mehboob has impugned judgment dated 09.10.2018 passed in Special Case No. 42(III)/2014, related to FIR No. 484/2013, registered under Sections 385/506-B PPC 25-Tele Graph read with section 7 ATA at P.S. Defense, Karachi, whereby he was convicted for offence under Section 385 PPC read with section 7(1)(h) of ATA and sentenced him to suffer R.I. for seven years with fine of Rs.25000/-, in case of non-payment of fine, he was ordered to suffer Simple Imprisonment for 06 months with benefit of section 382-B Cr.P.C.

2. Precisely, relevant facts as per FIR lodged by the complainant Shahid Farooq, the Manager National Medical Centre are that on 12.12.2013 he made an application to the CPLC which was incorporated in 154 Cr.PC book disclosing therein that Dr. Aslam, Khattak, Dr. Salman Sharif, Dr. Umar Farooq and Dr. Salahuddin Akhtar had been receiving the phone calls on their mobile phones from the local number and the international numbers of South Africa whereby the caller was introducing himself to be Babu from the local numbers and whereas he was introducing himself to be Mirza from the international number of South Africa and he was making the demand of huge amount as Bhatta from the aforesaid doctors and the amount of bhatta was being required by the caller to be sent through Western Union. It was also stated that the doctors were receiving the computerized chits as well as live bullets through TCS in order to recover the bhatta amount from them and such practice was going on since 01st October 2013. Thereafter instant FIR was lodged, present appellant and his companions were arrested, investigation was carried out and challan was submitted before the competent forum. After full dressed trial, trial court found him guilty as aforesaid.

- 3. At this juncture, learned counsel for the appellants contends that appellant is young boy and as per jail roll by the Jail Superintendent through letter dated 20.12.2018 he has served 03 year, 04 months and 05 days including remission, he is sole bread earner for his family. Learned counsel for the appellant agreed for reduction of sentence to the one already undergone in view of case reported in 2018 P.Cr.L.J. 959 (Suneil vs. the State), which has not been refuted by the learned Addl. P.G Sindh in view of the fact that a substantial portion of sentence awarded to the appellant has already been served out by him.
- 9. **Quantum of punishment** is not only discretion of the Court, which has to be exercised while considering the circumstances of the case, but also is an independent aspect of Criminal Administration of Justice which, too, requires to be done keeping the concept of **punishment** in view.
- 10. At this juncture, it would be conducive to refer paragraphs 6 and7 of aforesaid judgment, which are that:-
 - "6. As per prosecution case, the Appellant was arrested in the night time with the allegation that he was possessing pistol and riffle grenade but it was never proved by prosecution that such allegedly recovered articles were either used prior to alleged date of offence nor it is established that Appellant was intending to use the same at subsequent date. In short, the prosecution though established recover but never established that such recovery was in fact an act of 'terrorism' for which the object design or purpose behind the said act (offence) is also to be established so as to justify a conviction under Section 7 of the Act. Reliance can safely be placed on the case of Kashif Ali v. Judge, ATA Court No.II pld 2016 SC 951 wherein it is held as:-
 - ... In order to determine whether an offence falls within the ambit of section 6 of the Act, it would be essential to have a glance over the allegations leveled in the FIR the material collected by the investigating agency and the surrounding circumstances, depicting the commission of offence. Whether a particular act is an act of terrorism or not, the motivation, object, design of purpose behind the said act has to be seen. The term "design", which has given a wider scope to the jurisdiction of the Anti-terrorism Courts excludes the intent or motives In other words, the motive and of the accused. intent have lost their relevance in a case under Section 6(2) of the Act. What is essential to attract

the mischief of this section is the object for which the act is designed."

Let us, be *specific* a little further. The Appellant has been convicted under Section 5 of Explosive Substances Act so also under 7 subsection (1)(ff) of Anti-Terrorism Act, 1997 i.e. second part of section 6(2)(ee) which reads as:

"6(2)(ee) involves use of explosives by any device including bomb blast (...)"

If one is convicted for one offence i.e. 'merely possessing explosive' twice i.e. one under Explosive Substances Act and under the Arms Act, it shall seriously prejudice the guarantee, provided by Article 13 of the Constitution, therefore, it would always be obligatory upon prosecution by first establish 'object' thereby bringing an act of 'possessing explosive' to be one within meaning of second part of section 6(2)(ee) of the Act as held in the case of Kashif Ali supra in absence whereof the punishment under Section 7(1)(ff) would not be legally justified particularly when accused is convicted independently for such act (offence) under Explosive Substance Act. In such circumstances, the conviction awarded against Appellant under Section 7(i)(f) is hereby set aside.

- 11. Since, the offences wherein the appellants have been convicted fall within category of offences 'may extend upto'; the appellants claim themselves to be sole bread earner; appellants are of young age; these are circumstances which justify reduction in sentence.
- 12. In view of above, it would be in the interest of justice to reduce the sentence awarded to appellant to already undergone. Accordingly, conviction is maintained but sentence is reduced to one already undergone by the appellant including fine. Appellant shall be released forthwith if not required in any other custody case.
- 12. The above appeal is disposed of in the above terms.

JUDGE