THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeal No.38 of 2024

Present: *Mr. Justice Salahuddin Panhwar*
Mr. Justice Adnan-ul-Karim Memon

Appellant: Pervez Islam through Mr. Ajab Khan Khattak advocate

Respondent: The State through Mr. Ali Haider Salim, Additional Prosecutor General, Sindh.

Date of Hearing: 25.11.2024

Date of decision: 25.11.2024

J U D G M E N T

SALAHUDDIN PANHWAR, J.-Appellant Pervez Islam was tried by learned Judge, ATC No.XIII, Karachi in Special Case No. 429/2023 arising out of FIR No.384/2023 for offence punishable under Sections 4/5 Explosive Substance Act read with Section 7 of ATA 1997 registered at PS Keamari, Karachi. After regular trial, vide judgment dated 21.02.2024, the appellant was convicted under Section 4(b) of Explosive Substance Act 1908 and sentenced to undergo 14 years as R.I. and to pay the fine of Rs.50,000/- and in case of default of payment of fine, he shall suffer further R.I for six months, and under Section 7(ff) of ATA 1997 and sentenced to undergo 14 years R.I and to pay the fine of Rs.50,000/- and in case of default of payment of fine, he shall suffer further R.I for six months. However, benefit as provided under section 382(b) Cr.P.C was extended to the appellant by the trial Court.

2. At the very outset, the learned Counsels for the appellants contend that they would be satisfied and shall not press these appeals on merits, if the sentence awarded to the appellant is reduced to one already undergone by them. He further submits that appellant is poor persons and is surviving bread earners of his family and while taking lenient view, his sentence may be reduced to one already undergone.

3. In contra, learned Addl.P.G. contends that evidence is unimpeachable; maximum punishment is awarded by the trial Court however, if this Court

deems fit to reduce the sentence, he would not seriously oppose that proposition.

4. We have examined material available on record and have considered the proposal of the learned counsel for appellant.

5. It is necessary to mention here that awarding of the punishment is only meant to have a balance in the *society* because normally all the divine laws speak about hereafter. Thus, conceptually, punishment to an accused is awarded on the concept of *retribution*, *deterrence* or *reformation* so as to bring *peace* which could only be achieved either by keeping *evils* away (*criminals inside jail*) or strengthening the society by reforming the guilty. The law itself has categorized the offences. There are certain offences, the punishment whereof is with phrase ***'not less than'*** while there are other which are with phrase ***'may extend up-to'***, Such difference itself is indicative that the Courts have to appreciate certain circumstances before setting quantum of punishment in later case which appear to be dealing with those offences, the guilty whereof may be given an opportunity of ***'reformation'*** by awarding less punishment which how low-so-ever; may be, will be *legal*. The concept of *reformation* should be given much weight because conviction normally does not punish the *guilty* only but whole of his family/dependents too. A *reformed* person will not only be a better *brick* for society but may also be helpful for *future* by properly raising his dependents. The plea of reduction in sentence however shall not be available to hardened criminals, guilty of serious offences.

6. As per prosecution case, the appellant was arrested on 24.09.2023 at 0030 hours with the allegation that he was possessing live hand-grenade, but it was never proved by prosecution that such allegedly recovered article was 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 recovery 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 <u>*Kashif Ali v. Judge, ATA Court No.II*</u> (PLD 2016 SC 951) wherein it is held as:-

> "12. ..... 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 of the accused. In other words, the motive and 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 also been convicted under section 7 subsection (ff) of Anti-Terrorism Act, 1997. Second part of section 6(2)(ee) reads as:

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

If one is convicted for offence i.e. 'merely possessing explosive', 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 Substances Act. In such circumstances, the conviction awarded against the appellant under section 7(ff) is not sustainable under the law. From the evidence available on record, offence under Section 5 of the Explosive Substances Act, 1908 is made out and ingredients of Sections 4 of the Explosive Substances Act, 1908 are not satisfied. Addl. Prosecutor General also conceded that from the evidence available on record only offence u/s 5 of Explosive Substances Act, 1908 is made out.

7. In the present case, learned Advocate for the appellant did not press appeals on merits and stated that appellant is sole supporter of his family and he is not previous convict. Learned Addl. Prosecutor General has admitted that there is no previous record of the appellant that he is previous convict in such like case. In the case of **State through Deputy Director (Law), Regional Directorate, Anti-Narcotics Force vs. Mujahid Naseem Lodhi (PLD 2017 SC 671),** in the matter of sentence, it is observed that "*in a particular case carrying some special features relevant to the matter of sentence a Court may depart from the*

norms and standards prescribed above but in all such cases the Court concerned shall be obliged to record its reasons for such departure."

8. Consequent to above discussion, we dismiss the appeal, but convict the appellant on the basis of evidence under Section 5 of the Explosive Substances Act, 1908 and reduce the sentence to one already undergone. However, conviction awarded to the appellant under Section 4(b) of the Explosive Substance Act 1908 and under Section 7(ff) of ATA 1997 are set aside. Appeal is dismissed on merits and sentences are modified/reduced in the above terms. The appellant shall be released forthwith if not required in any other custody case.

JUDGE

JUDGE