ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

SPL. CR. A.T. APPEAL NO.35/2024

Date | Order with signature of Judge

BEFORE: MR. JUSTICE SALAHUDDIN PANHWAR, &
MR. JUSTICE ADNAN-UL-KARIM MEMON

1. For order on MA No.2397/2024
2. For hearing of main case.
3. For hearing of MA No.2398/2024
   CRO filed is taken on record.

08.11.2024

Mr. Muhammad Waseemuddin Abid Shaikh advocate for appellants.
Mr. Mamoon A.K. Shirwany advocate for appellant No.2.
Mr. Muhaymin Aizaz advocate for complainant.
Mr. Ali Haider Saleem, Additional Prosecutor General Sindh alongwith Saleem Akhtar, CRO Branch, CIA.

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Salahuddin Panhwar, J: Appellants have challenged impugned judgment dated 15.01.2024 in SC No.46/2023 arising out of FIR No.1081/2022, under section 385, 386/34 PPC read with section 7 of the Anti-Terrorism Act, 1997, Police Station Aziz Bhatti, Karachi, whereby the appellants were convicted and sentenced to suffer R.I. for five years with fine of Rs.10,000/- each and in default of payment of fine to further undergo S.I. for six months.

2. Precisely, relevant facts are that complainant Arif Solangi lodged FIR on 15.11.2022 stating that he runs a local/Indigenous Medical Clinic for mending bones and joints in a shop at Ayesha Manzil; that on 15.08.2022 one Waseem Abbas Hashmi alongwith Cameraman of Baqa News Channel arrived at his clinic and recorded video and also made enquires and finally threatened to make deal with them, otherwise they will get complainant's business closed. As per complainant, the same person had also given his mobile number 0313-3992519 and thereafter demanded Rs.3,00,000/- and complainant finally agreed to pay Rs.1,50,000/-. As per FIR on 17.08.2022 at about 6 O'clock in the evening complainant alongwith his brother went to office of Baqa News Channel situated at Makka Carpet building, Hassan Squire, Block-13-A, Gulshan-e-Iqbal, Karachi and saw the owner of the Baqa News channel namely

Muzzamil Sheikh and Reporter Waseem Abbas there and Muzzamil Sheikh asked complainant to meet Waseem Abbas in other room and by extending threats they had taken Rs.1,50,000/- from the complainant, complainant paid money to them through Easy Paisa hence present FIR was registered. After full dressed trial, trial court found both of them guilty as aforesaid.

3. At the outset learned counsel for the appellants contend that there is delay in lodgment of FIR; there are contradiction in allegations levelled in FIR and subsequent recorded evidence; that complainant in collusion with police falsely implicated the appellants/accused in order to settle personal vendetta; that ingredients of offence of extortion are not attracted to present case. Learned counsel for the appellant No.2 further contends that appellant No.2 Muzammil has no concern with appellant No.1 Waseem Abbas.

4. In contra, learned APG contends that both accused in collusion with each others and by showing them as member of media threatened the complainant and his brother that in case extortion money is not paid they will get the business of complainant closed, they also received extortion money which is proved at trial, that complainant had no other reason to lodge FIR except when the accused approached him for extortion money; that at trial witnesses were examined and offence was proved.

5. At this juncture, learned counsel for the appellants contend that each appellant has served for more than 5 months including remission as per Jail Roll dated 15.05.2024, they are sole bread earner for their families. Learned counsel for the appellants 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). Learned APG extends his no objection regarding reduction of sentence.

6. ***Quantum of punishment*** is an independent aspect of Criminal Administration of Justice which, *too,* requires to be done keeping the concept of ***punishment*** in view. At this juncture, it would be conducive to refer paragraphs 6 and 7 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 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 *Kashif Ali v. Judge, ATA Court No.II* 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 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 the Appellant under Section 7(i)(f) is hereby set aside.

7. The Appellant has been convicted for fourteen (14) years for offences, punishable under Section 5 of Explosive Substances Act, 1908 which itself provides as **'be punishable with imprisonment for a term which may extend to (fourteen years)**, therefore, it was *obligatory* upon the trial Court to have appreciated the attending circumstances too while awarding maximum sentence which *prima facie* is not done. The Appellant has pleaded himself to be first offender which the *prosecution* did not dispute; and also claimed to be the *only* bread earner of family, which includes five sisters. The *detention* of only bread earner shall compel the *females* to step-out for survival least bread which it result in bringing a *slightest* spot towards such *helpless* ladies shall ruin their lives."

7. 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;; these are circumstances which justify reduction in sentence.

8. In view of above, it would be in the interest of justice to reduce the sentence awarded to appellants to already undergone. Accordingly, conviction is maintained but sentence is reduced to one already undergone by the appellants including fine. Appellants shall be released forthwith if not required in any other custody case.

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