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IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA
Criminal Appeal No.D-50 of 2016

Present:

*Mr. Justice Zafar Ahmed Rajput,
Mr. Justice Irshad Ali Shah,*

Appellants : 1). HC Manzoor Ali Tootani,
2). PC Gulfam Sodhar,
3). PC Abdul Razzaq Solangi,
Through Mr.Habibullah Ghouri, Advocate

State : Through Mr.Sharafuddin Kanhar, A.P.G

Date of hearing : 07.08.2018

Date of decision : 15.08.2018

J U D G M E N T

IRSHAD ALI SHAH, J.- The appellants being aggrieved by order dated 17.08.2016 of learned Judge A.T.A Court Larkana, have impugned the same before this Court by way of instant appeal, whereby they were convicted and sentenced to undergo R.I for two years each and to pay fine of Rs.200,000/- each for an offence punishable under section 27 of Anti Terrorism Act, 1997.

2. The facts in brief necessary for disposal of instant appeal are that on 24.08.2014, complainant SIP Ali Muhammad Soomro, SHO, P.S Warrah, while on patrolling with the appellants and others when reached Ali Waris Chowk, at about 2315 hours, he on fire shot report, went to nearby street, there he and the appellants found five unknown bandits, armed with Kalashnikovs and rifles, who

during course of robbery of official SMG rifle from PC Yar Ali were found firing at him. SIP Ali Muhammad Soomro and the appellants fired at said bandits, who by taking advantage of the streets made their escape good. PC Yar Ali was found dead. The incident was reported by SIP Ali Muhammad Soomro by way of lodging FIR of the above said incident at P.S Warrah. The investigation of the case then was conducted by Joint Investigation Team. The appellant it is said during course of their examination under section 161 Cr.PC disclosed the names of the bandits to be Zaib, Zulfiqar alias Bhutto, Ghulam Rasool, Mushtaq and one unknown bandit. On conclusion of the investigation, the challan of the case was submitted by the police before the learned Anti Terrorism Court Larkana, u/s. 512 Cr.PC.

3. On arrest, one after other accused Zaib and Zulfiqar alias Bhutto were produced before learned Anti Terrorism Court, Larkana by way of supplementary challan(s). They were charged, to which they did not plead guilty and prosecution to prove it, examined PW-01 PC Abdul Razzaq, PW-02 SIO/SIP Karim Dino Chandio, produced through him order of S.S.P Qamber-Shahdadkot whereby a Joint Investigation Team to conduct investigation of the present case was constituted, mashirnamas of arrest of accused Zaib and Zulfiqar alias Bhutto, PW-03 Mashir Ali Gul, PW-04 PC Gulfam, PW-05 Tapedar Khawar Hussain alias Fahad, PW-06 Medical Officer

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Dr.Jalaluddin Mangi, PW-07 appellant/complainant, PW-08 HC Manzoor Ali and then prosecution closed its side.

4. The statements of the said accused were recorded u/s.342 Cr.PC, whereby they denied the prosecution allegation by pleading innocence. They did not examine anyone in their defense or themselves on oath in disproof of the prosecution allegation.

5. On evaluation of the evidence so produced by the prosecution, the learned Judge, Anti Terrorism Court Larkana acquitted said accused (Zaib and Zulfiqar alias Bhutto) vide judgment dated 12.07.2016. By acquitting the said accused, he served the appellants with a notice to show-cause as to why he should not be proceeded and convicted under section 27 of the Anti Terrorism Act, 1997, for their failure to carry out the investigation properly, diligently and pursuing the case properly in breach of their lawful duties.

6. The appellants furnished their reply to above show-cause notice stating therein that they did not carry out the investigation of the case. By submitting so, they sought for recalling of the notice which was issued against them.

7. The replies so furnished by the appellants to the above said show-cause notice were found unsatisfactory and consequently they were convicted and sentenced by learned Judge Anti Terrorism Court Larkana by way of impugned order, as stated above.

8. It is contended by learned counsel of the appellants that the appellants were witnesses of the case, they as such could not be burdened with liability of the investigation of the case, which was conducted by Joint Investigation Team; that the appellants have been convicted and sentenced by learned trial Court in summarily manner without affording them chance of fair defense, which is against the spirit of natural justice. By contending so, he sought for their acquittal.
9. Learned A.P.G supported the impugned order.
10. We have considered the above arguments and perused the record.
11. Section 27 of the Anti Terrorism Act, 1997 reads as under;

"section 27. Punishment for defective investigation.---If Special Court or an Appellate Court comes to the conclusion during the course of or at the conclusion of the trial that the Investigating Officer or other concerned officers have failed to carry out the investigation properly or diligently or have failed to pursue the case properly and in breach of their duties, it shall be lawful for such Court or, as the case may be, Appellate Tribunal to punish the delinquent officer with imprisonment which may extend to two years or with fine or with both by resort to summary proceedings".

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12. The plain reading of the above provision of law shows that if Special Court or Appellate Court comes to the conclusion that during course of proceeding or at conclusion of the trial that the investigation officer or other concerned officer have failed to carry out the investigation properly or diligently or have failed to pursue the case properly and in breach of their duties shall be lawful for such Court or, as the case may be, the Appellate Court to punish the concerned officer for imprisonment.

13. Admittedly, the appellants were witnesses of the case, the investigation of the case was conducted by Joint Investigation Team, there is no allegation against them that they have failed to pursue the case diligently. Whatever they stated in their 161 Cr.PC statements, was stated by them in their evidence before the trial Court. No doubt, some replies in their cross-examination benefited the accused, but for that they could not be alleged to have "failed to carry out the investigation or pursue the case properly" to attract the provision of Section 27 of the Anti Terrorism Act, 1997 against them.

14. In view of the facts and reasons discussed above, the conviction and sentence recorded against the appellants by way of impugned order could not be sustained, which is set aside accordingly. Consequently, the appellants are acquitted of the charge, for which they were convicted and sentenced by the learned trial Court. They

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are present in Court on bail, their bail bonds are cancelled and sureties discharged.

15. The instant appeal is disposed of in above terms



Above judgment
complied on dated
05-09-2018

S. O. Sanyal
Accountant

The above order has been complied
On 21-06-2023

S. O. Sanyal
Accountant