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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No.D-01 of 2020

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rePresent:Mr. Justice Zafar Ahmed Rajput,
Mr. Justice Shamsuddin Abbasi,Appellants : Zaman Sundrani, through Mr. Mohammad Afzal Jagirani, Advocate.Respondent : The State, through Mr. Aitbar Ali Bullo, Deputy Prosecutor General.Date of hearing : 29-01-2020.Date of Order : 29-01-2020.J U D G M E N T.

Zafar Ahmed Rajput, J.- Appellant/accused Zaman son of Punhal, by caste Sundrani, has filed instant appeal against the judgment dated 07.02.2012, passed by the learned Special Judge, Anti-Terrorism Court, Jacobabad, in Special Case No.48/2009 (Re: State v. Allahdino & others), being outcome of Crime No.192/2009, registered at Police Station Kashmore, District Kashmore at Kandhkot, under Sections 365-A, 506/2, PPC and Sections 6/7 of the Anti-Terrorism Act, 1997.

2. Record shows that the accused persons, namely, 1) Allahdino son of Haji Mohammad Moosa, 2) Ghulam Mustafa alias Baggan son of Abdul Rehman Channa, 3) Shaukat son of Daim Shaikh, 4) Mujeeb-ur-Rehman son of Abdul Rehman channa, 5) Ali Mohammad son of Daim Shaikh, 6) Esso son of Mohammad Moosa Menak, and 7) Mureed son of Aalman Malik, were sent up to face their trial in the above case, whereas appellant Zaman Sundrani and 02 others were shown as absconders, who after requisite proceedings were subsequently declared proclaimed

offenders.

3. On conclusion of trial, the learned trial Court acquitted all the accused persons including the appellant and other proclaimed offenders of the charge for the main offences, with which they were charged, however, the learned trial Court convicted appellant Zaman Sundrani under Section 21-L of the Anti-Terrorism Act, 1997 on account of his absconsion and sentenced him for five (05) years, with forfeiture of his movable and immovable property and perpetual warrants were also ordered to be issued against him.

4. Appellant Zaman Sundrani was subsequently arrested and remanded to jail by the learned trial Court to serve out the above sentence. The appellant instead of filing an application under Section 19(12) of Anti-Terrorism Act, 1997 before the learned trial Court, has challenged the impugned judgment through this appeal.

5. Mr. Mohammad Afzal Jagirani, learned Counsel for the appellant, at very outset, contends that conviction awarded to the appellant in absentia by the learned trial Court is violative of Articles 9 and 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Relying upon the precedents of *Muhammad Arif versus The State (2008 SCMR 829)* and *Mir Ikhlq Ahmed versus The State (2008 SCMR 951)*, the learned Counsel for the appellant contended 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.

6. Mr. Aitbar Ali Bullo, learned Deputy Prosecutor General, concedes to the above legal position and does 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.



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

8. Record reflects that after declaring the appellant and co-accused as proclaimed offender, charge was framed by the learned trial Court against the accused, who were facing trial. Record further reveals that no charge was framed against the appellant under Section 21-L of the Act, 1997. It further appears that no evidence was recorded to prove the ingredients of Section 21-L of the Anti-Terrorism Act. The learned 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. There was absolutely no evidence to show that absconson of the appellant was intentional and no finding has been recorded by the trial Court to the effect that appellant was fugitive from the law. However, in a cursory manner the learned trial Judge has convicted and sentenced the appellant for the aforesaid offence. As such, procedure adopted by the learned trial Judge in convicting and sentencing the appellant under Section 21-L of the Anti-Terrorism Act, 1997 appears to be absolutely illegal. Learned DPG also does not support the impugned judgment.

9. 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.

10. Record reveals that the appellant without filing an application 19(12) of the Anti-Terrorism Act, 1997 before the trial Court has directly

approached this Court through the instant appeal. In this regard, it may be suffice to say that Section 25 of the Anti-Terrorism Act, 1997 does not contain any 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.

11. In view of above discussion, we are of the firm view that conviction of the appellant Zaman Sundrani for offence under Section 21-L of the Anti-Terrorism Act, 1997, recorded by the learned Special Judge, Anti-Terrorism Court, Jacobabad, is violative of Articles 9 and 10-A of the Constitution of Islamic Republic of Pakistan, 1973 as well as Section 10(11-A) of the Anti-Terrorism Act, 1997.

12. 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 07.02.2012, are set aside and the appellant is acquitted. He may be released, if his custody is not required in any other case by any other Court.



JUDGE



JUDGE