

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANO

Crl. Appeal No.D-07 of 2022

PRESENT:

Mr. Justice Mohammad Saleem Jessar,
Mr. Justice Shamsuddin Abbasi

Appellant : Ismail Kandrani, through Mr. Shakeel Ahmed G. Ansari,
Advocate.

Respondent : The State, through Mr. Aitbar Ali Bullo,
DeputyProsecutor General.

Date of Hearing : 30-03-2022.

Date of Order : 30-03-2022.

J U D G M E N T

MOHAMMAD SALEEM JESSAR, J.- Appellant Ismail son of Sher Ali Kandrani, through this appeal has impugned the judgment dated 07.9.2015, passed by the learned Judge, Anti-Terrorism Court, Shikarpur, in Special Case No.14/2008, re-The State v. Saleem & others, being outcome of Crime No.42/2003, registered at Police Station Bahoo Khoso, for offence under Sections 365-A, 324, 353, 427, 511, 148, 149, PPC read with Section 17/1, Offences Against Property (Enforcement of Hudood) Ordinance, 1979, Section 3/4, Explosive Substances Act and Section 7, Anti-Terrorism Act, 1997, whereby the appellants along with co-accused Zurthi were convicted in absentia under Section 21-L of Anti-Terrorism Act, 1997.

2. The police submitted challan of this case before the learned trial Court placing the names of appellant and others, except co-accused Saleem, as absconders. The appellant, who was confined in jail in some other case joined trial at subsequent stage. After completion of codal formalities, the learned trial Court framed formal charge against the accused persons, including the appellant/accused. After recording evidence of prosecution witnesses, the appellant jumped the bail and absconded away; whereafter, statements of accused under Section 342, Cr.P.C were recorded. The learned trial Court after hearing the arguments of either side acquitted all the accused present as well as absconders, excluding the appellant and co-accused

Zurthi, from the charge of main case, while convicted and sentenced the appellant and co-accused Zurthi in following terms:

"16. both these absconding accused Zurthi and Ismail are convicted u/s 21-L of Anti-Terrorism Act 1997 in absentia and sentenced to suffer R.I for five years each.."

Mr. Shakeel Ahmed G. Ansari, learned Counsel for the appellant, at very outset, contends that the appellant has been convicted by the learned trial Court in absentia only for offence u/s 21-L of the Anti-Terrorism Act, 1997, whereas no verdict with regard to the main offence has been passed by the learned trial Court in respect of the appellant. He further submits that the conviction of the appellant in absentia is violative of Articles 9 and 10-A of the Constitution of Islamic Republic of Pakistan, 1973, therefore, by setting aside the impugned judgment to the extent of conviction of the appellant u/s 21-L, A.T. Act, the matter may be remanded to the trial Court for passing fresh judgment in the main offence.

Mr. Aitbar Ali Bullo, learned Deputy Prosecutor General, who is present in Court in some other matters, waives the notice of appeal and conceding to the contention of learned Counsel for the appellant, he does not support the impugned judgment passed by trial Court.

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

From the perusal of record, it appears that the appellant was admittedly tried in absentia by the learned Judge, Anti-Terrorism Court, Shikarpur. The learned trial Court has convicted and sentenced the appellant, as mentioned in para-1 (supra) in his absence. The conviction of the appellant recorded by the learned Special Judge, Anti-Terrorism Court, Shikarpur, is violative of Articles 9 and 10-A of the Constitution of Islamic Republic of Pakistan, 1973 as well as Section 19(11-A) of the Anti-Terrorism Act, 1997. The Hon'ble Supreme Court while considering the same point in the case of *Ikhlaq Ahmad v. State* (2008 SCMR 951) was pleased to record following observations:

"14. In view of the above, we feel that the trial of the appellants, in absentia, undertaken by the Special Judge, Anti-Terrorism Court, was violative of Articles 9 and 10(1) of the Constitution and section 19(11-A) of the Anti-Terrorism Act, 1997, thus, cannot be allowed to sustain. Furthermore, the appellants were not afforded any opportunity of hearing and thus, they were condemned unheard which is contrary to the principle of natural justice. We are convinced that the judgments, convictions and sentences rendered and

awarded by both the Courts, in the absence of the appellants, to their extent are not sustainable under the law and violative of the Constitution and law, which has necessitated the retrial of the case."

Record also shows that the appellant without filing an application under Section 19(12) of the Anti-Terrorism Act, 1997 before the trial Court has directly approached this Court through the instant appeal. However, it is relevant to say that Section 25 of the Anti-Terrorism Act, 1997 does not provide any bar that a person convicted and sentenced in absentia cannot file appeal without first making an application under Section 19(12) of the Anti-Terrorism Act, 1997 before the trial Court.

In view of above discussion, the appeal is allowed, the impugned judgment is set aside to the extent of conviction and sentence of appellant only and the case is remanded to the trial Court for *de novo* trial and passing judgment afresh in respect of main offence, in accordance with law.


JUDGE


JUDGE