

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal Nos. 295 & 296 of 2024

DATE	ORDER WITH SIGNATURE OF JUDGE(S).
------	-----------------------------------

For hearing of main case.

17.02.2026.

Mr. Majid Ali Rajpar, advocate for the appellant.

Ms. Rubina Qadir, Addl. P.G.

ORDER

TASNEEM SULTANA, J.— By this common order, I propose to dispose of these two Criminal Jail Appeals filed by the appellant Muhammad Fakhar, whereby he has called in question the judgments dated 02.03.2024 passed by the learned IV-Additional Sessions Judge, Karachi East, whereby the appellant has been convicted and sentenced in Sessions Case Nos.1292 and 1293 of 2023, arising out of FIRs No.20 and 21 of 2023, registered at Police Station Brigade, Karachi East, for offences punishable under Sections 397/34 PPC and 23(i)(a) of the Sindh Arms Act, 2013 respectively.

2. At the very outset, learned counsel for the appellant contends that the appellant, being an indigent and destitute person, was denied legal assistance at State expense during the course of trial in both cases. The record unmistakably reflects that the accused was constrained to conduct the trial personally and no counsel was engaged on his behalf. He himself undertook cross-examination of the prosecution witnesses examined at trial, which, by all legal standards, was required to be conducted through a qualified legal practitioner. It is, therefore, contended that the matter warrants remand to the trial Court to afford the appellant a meaningful opportunity to cross-examine the prosecution witnesses through counsel to be provided at State expense.

3. Learned Additional P.G. Sindh has fairly conceded to the above legal position and has offered no objection.

4. From perusal of the trial Court record, it unequivocally transpires that no counsel at State expense was appointed for the accused at any stage of the proceedings, nor does the record suggest that the accused was ever made aware of such constitutional and statutory right. In a prosecution involving a grave charge under Section 397 PPC entailing severe penal consequences,

denial of legal assistance strikes at the very root of fair trial and renders the proceedings legally infirm.

5. The right to fair trial and due process is a fundamental right guaranteed under Article 10-A of the Constitution of the Islamic Republic of Pakistan. The Honourable Supreme Court of Pakistan has consistently held that fair trial encompasses the right of an accused to be defended by a counsel of his choice and, where he lacks means, through counsel provided at State expense. It is by now a settled and entrenched constitutional principle that where an accused, due to financial incapacity, is unable to secure legal representation, the Court is under an affirmative obligation to ensure provision of legal assistance so that the trial is conducted in accordance with law and the settled principles of natural justice. Any deviation from this constitutional mandate vitiates the trial proceedings.

6. In these circumstances, the impugned judgments dated 02.03.2024 in both cases cannot be sustained and are hereby set aside. Consequently, the matters are remanded to the learned trial Court with directions to afford full and effective opportunity to the accused/appellant to cross-examine the prosecution witnesses already examined, either through counsel of his own choice or through a counsel to be provided to him at State expense. Upon completion of the said exercise, the learned trial Court shall decide the cases afresh strictly in accordance with law by passing judgments afresh as expeditiously as possible, preferably within a period of two months from receipt of this order. Office is directed to transmit the record and proceedings to the learned trial Court forthwith along with a copy of this order.

The appeals are disposed of in the above terms

JUDGE