

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

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PRESENT

MR. JUSTICE MIR HAZAR KHAN KHOSO, CHIEF JUSTICE.

CRIMINAL APPEAL NO.48/Q OF 1993

- | | | |
|------------------------|-----|------------|
| 1. Tor Jan s/o | --- | Appellants |
| Muhammed Wali, caste | | |
| Noorzai, r/o Killy | | |
| Gulistan Kareez, | | |
| Pishin. | | |
| 2. Muhammed Qasim s/o | | |
| Haji Kabir, Caste | | |
| Noorzai, resident | | |
| of Afghan Refugee Camp | | |
| No.C(3), Panjpai. | | |

VERSUS

The State	---	Respondent
Counsel for the	---	Mr. Muhammed Aslam Chishti,
appellants		Advocate.
Counsel for the	---	Ch. Ejaz Yousaf,
State		Addl. Advocate General.
F.I.R. No., date &	---	2157/93, 1-1-1993
Police Station		Lakpass Customs Check Post.
Date of the order	---	30-10-1993
of trial court		
Date of Institution---		29-12-1993
Date of hearing	---	9-3-1994
Date of decision	---	9-3-1994



JUDGMENT:

MIR HAZAR KHAN KHOSO, CHIEF JUSTICE.- The appellants Tor Jan son of Muhammad Wali and Muhammad Qasim son of Haji Kabir were convicted for offence under Article 3(1)(a) of the Prohibition(Enforcement of Hadd) Order, 1979 for transporting charas and under Article 3(2)(1) for trafficking in opium by the learned Sessions Judge, Kalat Division at Mastung and sentenced as under:-

(i) Under Article 3(1)(a) : To suffer R.I. for one year, two stripes and fine of Rs.1000/- each or in default to suffer S.I. for four months.

(ii) Under Article 3(2)(1) : To suffer R.I. for two years, three stripes and fine of Rs.2000/- each or in default to suffer S.I. for six mont

His sentences were ordered to run concurrently with benefit of section 382-B Cr.P.C. Hence this appeal. The appeal was admitted on 6-1-1994 but the question arose whether the concurrent sentences of the appellants of two years under two sub-articles of Article 3 could be aggregated for the purpose of appeal.

2. I have heard Mr. Muhammad Aslam Chishti, Advocate, for the appellants and Ch. Ejaz Yousaf, Additional Advocate General, for the State.

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3. At the very outset the learned Additional Advocate General had raised the preliminary objection that the sentences of the appellants being concurrent and not in excess of two years, this Court has no jurisdiction either to entertain or to hear the appeal. The learned Addl. Advocate General drew my attention to the provisions of section 27 of the Prohibition Order which says that "an offence punishable under Article 8 shall be triable by a Court of Session and not by a Magistrate authorised under section 30 of the said Code and an appeal from an order under that Article or from an order under any other provision of this Order which imposes a sentence of imprisonment for a term exceeding two years shall lie to the Federal Shariat Court." The learned Addl. Advocate Genral then invited my attention to sub-section (3) of section 35 Cr.P.C. which says that " for the purpose of appeal, the aggregate of consecutive sentences passed under this section in case of conviction for several offences at one trial shall be deemed to be a single sentence."

4. The learned counsel for the appellants frankly conceded to such proposition. Besides to supprt the proposition he produced before me the case law reported in 1940 Calcuta-631 and 1935-Allabad-154. The case law is reproduced below:-

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"An accused who has been sentenced to concurrent sentences of imprisonment, no one of which is individually appealable, has no right to aggregate them and appeal against them collectively.
(Woodroffe on the Cr.P.C. 1977 Edition by Shaikh Abdul Halim, Vol.I, Page 113).

"Where an Assistant Sessions Judge or a Magistrate specially empowered under section 30 passes several sentences of imprisonment upon an accused each of which is for a term of four years or under and the sentences are ordered to run concurrently, the appeal from the conviction and sentences lies to the Sessions Court and not to the High Court."

(Woodroffe on the Cr.P.C. 1977 Edition, page 2254).

The proposition being clear, I am inclined to hold that

(i) concurrent sentences of the appellants under two sub-articles of Article 3 shall not be aggregated for the purpose of giving jurisdiction to this Court, (ii) the sentences of the appellants not being in excess of two years this Court has no jurisdiction to entertain the appeal. In such situation the learned counsel for the appellants requested for return of the memo of appeal with permission to file the same before the High Court.

The request was not opposed by the other side.

5. I am, therefore, inclined to order that the memo of appeal alongwith annexures be returned to the learned counsel for the appellants who is at liberty to file the appeal before the High Court within seven days.
The time consumed before this Court shall be deemed to be

condoned. The photostat copy of the appeal and the annexures be retained on the file of this Court.

H. A. Khoso.
(Mir Hazar Khan Khoso)
Chief Justice

Quetta, the 9th of March, 1994.
M. Khalil,

Fit for reporting.

H. A. Khoso.
(Mir Hazar Khan Khoso)
Chief Justice