

IN THE FEDERAL SHARIAT COURT

(Appellate Jurisdiction)

(17)

PRESENT

MR.JUSTICE MUHAMMAD ILYAS

CRIMINAL APPEAL NO.14/K OF 1994

Muhammad Abbas son of Ghulam ... Appellant
Nabi, resident of Therri Colony,
Rajanpur;

Versus

The State ... Respondent

Counsel for the appellant ... Mr.Javed Aziz Sindhu,
Advocate

Counsel for the State ... Ch.Muhammad Ibrahim,
Advocate

FIR No. , date and Police ... 16, 24.1.1993,
Station Fazilpur, Rajanpur

Date of order of trial Court ... 18.1.1994

Date of institution ... 3-3-1994

Date of hearing ... 23-4-1994

Date of decision ... 23-4-1994

JUDGMENT:

MUHAMMAD ILYAS, J.- This appeal is directed against judgment, dated the 18th January, 1994, passed by Jam Muhammad Ilyas, Additional Sessions Judge, Rajanpur, whereby he convicted the appellant, Muhammad Abbas, under Article 4 of the Prohibition (Enforcement of Hadd) Order, 1979, hereinafter referred to as the Prohibition Order, and sentenced him to undergo rigorous imprisonment for two years and to pay a fine of Rs.5000/- or, in default, suffer further rigorous imprisonment for two months.

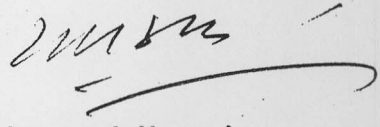
2. According to Article 27 of the Prohibition Order, an appeal before this Court is competent if the term of rigorous imprisonment, awarded under any provision thereof, exceeds two years; but since the term of imprisonment inflicted in the instant case does not exceed two years, the appeal does not lie before this Court, notwithstanding the fact that the sentence of fine has also been imposed and in default of payment of fine the appellant is required to undergo further rigorous imprisonment for two months. In my opinion, the term of imprisonment contemplated by Article 27 of the Prohibition Order is the substantive term of imprisonment awarded for an offence, and the term of imprisonment which is to be undergone for non-payment of fine cannot be added thereto for the purpose of bringing the case within the jurisdiction of this Court. Similar view has been taken by my learned brother Nazir Ahmad Bhatti, J., in Criminal Appeal

MCA

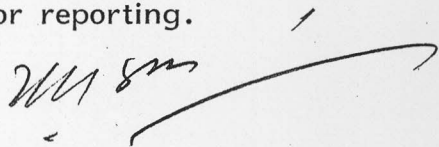
No.62/I of 1994 (Maqsood Vs. The State) decided by him, on 9th April, 1994. In that case also, the appellant was sentenced to suffer rigorous imprisonment for two years and was also ordered to pay Rs.10,000/- as fine, with the direction that in case of non-payment thereof he shall undergo further imprisonment for six months. I, with respect, agree with my learned brother and hold that since the term of imprisonment awarded in the present case, under Article 4 of the Prohibition Order, does not exceed two years, this Court has no jurisdiction to hear the instant appeal.

3. In this view of the matter, the memorandum of appeal shall be returned to the appellant. He may file appeal before a Court of competent jurisdiction, if so advised.

4. The appeal is disposed of accordingly without expressing any opinion on the merits thereof.


(Muhammad Ilyas)
Judge

Approved for reporting.


(Muhammad Ilyas)
Judge

Islamabad, the
23rd April, 1994.