

**IN THE FEDERAL SHARIAT COURT**  
( Appellate / Revisional Jurisdiction )

**PRESENT**

**MR. JUSTICE HAZIQUL KHAIRI, CHIEF JUSTICE**  
**MR. JUSTICE ALLAMMA DR. FIDA MUHAMMAD KHAN**  
**MR. JUSTICE SALAHUDDIN MIRZA**

**CRIMINAL MISC. NO.15/I/2008**

1. Mudassar Iqbal son of Nazar Muhammad

2. Ishrat Ali son of Asghar Ali,

Both residents of Tehsil Wazeeerabad,  
District Gujranwala.

--- Applicants

**VERSUS**

The State

--- Respondent

For the applicants

--- Mr. Muhammad Sharif Janjua,  
Advocate

For the State

--- Mr. Azam Khattak,  
Additional Advocate General  
Baluchistan.

F.I.R. No. Date & Police Station

--- 2/01, 26.06.2001, P.S. Levies, Tump.

Date of Institution

--- 25.01.2008

Date of hearing

--- 25.11.2008

**CRIMINAL MISC. NO.49/I/2008**

Ajab Khan son of Awal Khan,  
resident of Jalal Abad, Afghanishtan.

...Applicant

**VERSUS**

The State

...Respondent

For the applicant

--- Mr. Muhammad Ajmal Khan,  
Advocate

For the State

--- Mr. Muhammad Sharif Janjua,  
Advocate

F.I.R. No. Date & Police Station

--- 255/05, 05.04.2005, P.S. Hashtnagri

Date of Institution

--- 01.04.2008

Date of hearing

--- 12.11.2008

Date of decision

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**JUDGMENT:**

**HAZIQUL KHAIRI, CHIEF JUSTICE:** By this

common judgment we will dispose of two Cr. Misc. Applications No.49/I/2008 filed by Ajab Khan and Cr. Misc. Application No.15/I/2008 filed by Mudasar Iqbal and Ishrat Ali in which the applicants have prayed for extension of benefit to them under Section 382-B Cr.P.C.

2. The applicant Ajab Khan was convicted under Section 17(3) of the Offence Against Property (Enforcement of Hudood) Ordinance, 1979, to punishment of amputation of his right hand from the wrist and amputation of his left foot from the ankle and further sentenced for 5 years' R.I. and fine of Rs.30,000/- in default whereof 6 months' S.I. against which the applicant Ajab Khan filed a Criminal Appeal No.5/P/2006 against the judgment of learned Additional District Judge X, Pehsawar dated 26.01.2006 before this Court. By our judgment dated 07.06.2007, we converted the conviction of the applicant

under Section 412 PPC and sentenced him to 5 years' R.I. and fine of Rs.30,000/- and in default thereof to suffer 6 months'

S.I.

3. The applicants Mudasar Iqbal and Ishrat Ali were convicted under Section 17(4) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979, and sentenced to death by Zafar Ali Khoso, Sessions Judge, Mekran at Turbat, vide judgment dated 07.01.2003 against which they preferred Jail Criminal Appeals Nos. 4 & 5/Q/2003 before this Court. By our judgment dated 08.10.2007 while upholding the conviction of the said applicants we converted their sentence to imprisonment for life.

4. It may be stated here that the first named appeal was decided on 07.06.2007 whereas the said two appeals were decided on 08.10.2007, and after signing of judgment this Court became functus officio in terms of Section 369 Cr.P.C. Learned Counsel for the applicants tried to persuade us that we may

invoke our jurisdiction to review our judgments. This surely we cannot do as there is a clear bar under Section 369 Cr.P.C. except to correct a clerical error. However, we inquired the learned Counsel whether we may exercise our inherent power under Section 561-A Cr.P.C. as may be necessary to give effect to the relief prayed for by them or otherwise to secure the ends of justice.

5. Learned Counsel for the appellants Mr. Muhammad Sharif Janjua and Mr. Muhammad Ajmal Khan firstly drew our attention to the case of Khalil Ahmad Vs. The State 1994 MLD 1739 in which it was held that High Court in exercise of its inherent jurisdiction under Section 561-A Cr.P.C. was competent to grant benefit of Section 382-B Cr.P.C. to give effect to its mandatory provisions even after the decision of the case. In Liaquat Vs. the State 1991 P.Cr.L.J. 1721 such orders are neither considered alteration of the judgment nor review of the same as they were in fact passed to give effect to the legal

proposition. In Mukhtiar-ud-Din Vs. The State 1997 S.C.J. 108  
it was also held that where the High Court substitute death  
sentence to that of life imprisonment it is obliged to take into  
consideration Section 382-B Cr.P.C.

6. It was next contended by the learned Counsel that if the  
benefit under Section 382-B Cr.P.C. has not been extended to  
the accused, the Court is supposed to record its reasons therefor,  
placing reliance on the case of Ehsan Ellahi Vs. Muhammad  
Arif and another PLJ 2001 SC 33 as under:-

“Guiding principles for application of Section 382-B,  
Cr.P.C. are that it is attracted when Court decides to pass  
sentence of imprisonment either in trial, appellate or  
revisional proceedings against an accused for offence  
charged with, and in case sentence is already passed,  
there would be no legal bar for appellate or revisional  
Court to grant benefit of this section to convict, who  
would be entitled to agitate said plea before Appellate  
Court in case Trial Court had failed to consider said  
provision of law while imposing sentence or was  
wrongly denied its benefit and appellate Court would be

bound to examine above question and to rectify error, mistake, if any, committed by Court below; (ii) In case Appellate Court substitute death sentence to that of imprisonment for life or rigorous imprisonment for a certain period, it would be obligatory on its part to take into consideration provisions of this section; (iii) Court has discretion not to grant benefit of this section, but said discretion is to be exercised judiciously on sound judicial principles; (iv) Provisions of Section 382-B Cr.P.C. are mandatory, and in absence of express manifestation of application of mind by Court that it had addressed itself to above provisions at time of imposing sentence on convict concerned, no presumption can be raised in favour of Court having adverted to same.”

7. In the first named application No.49/I/2008 this Court converted punishment of amputation of hand and foot into sentence for 5 years<sup>¶</sup> R.I. and fine of Rs.30,000/- in default whereof 6 months<sup>¶</sup> S.I., whereas in the second application No.15/I/2008, the death sentence of the applicants was converted to imprisonment for life.

8. A bare reading of the judgments in the said appeals reveals that while converting the sentences of the appellants/applicants this Court took into consideration all facts and surrounding circumstances of the case but omitted to consider or give reason for not extending benefits to them under Section 382-B Cr.P.C. They have undergone imprisonment for a number of years. It is, therefore, in the interest of justice that benefit under Section 382-B Cr.P.C. may be extended to Ajab Khan who was appellant in Criminal Appeal No.5/P/2006 and Mudasar Iqbal and Ishrat Ali who were appellants in Criminal Appeals Nos. 4 & 5/Q/2003 respectively. Resultantly Criminal Misc. Applications Nos.49/I/2008 and 15/I/2008 are allowed.

9. The office is directed to send a copy of this judgment to the respective Superintendents of Jail for information.

I agree, respectfully, with Hon. C.J.

*Justice Haziqul Khairi*  
Justice Haziqul Khairi  
Chief Justice

*Justice Dr. Fida Muhammad Khan*  
Justice Dr. Fida Muhammad Khan

*I respect fully judge and have written a separate short note.*

*Justice Salahuddin Mirza*  
Justice Salahuddin Mirza

Announced at: Karachi

on: 2-1-2009

*Appointed for  
returning  
12/1/09  
2/1/09*






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AND

CR.MISC.NO.49/I/2008

**NOTE ON THE JUDGMENT OF THE HON'BLE CHIEF JUSTICE**

**JUSTICE SALAHUDDIN MIRZA:**



I have gone through the judgment recorded by the honorable Chief Justice but, while I am in full agreement with it up to Para-7, I beg to differ with the concluding Para-8 thereof and would submit with respect that we had taken into account the provisions of Section 382 Cr.P.C while passing the judgments in the two appeals. No doubt, it was not specifically stated in both the judgments that "*we have taken into account the provisions of Section 382-B Cr.P.C and in our view the appellant, under the circumstances of the case and in view of the enormity of the crime, is not entitled to the benefit of this section and, therefore, the benefit under this section is not extended to him*". In fact, while reducing the sentence from amputation to 5 years' rigorous imprisonment (or, in the other case, from death to life

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imprisonment), Section 382-B Cr.P.C was very much in our mind. If not specifically mentioning this fact in our judgments was a lacuna, we remove the same now. As such, in my humble view, both the applications have no merit and may, therefore, be dismissed.



**JUSTICE SALAHUDDIN MIRZA**

Amjad/\*