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ORDER SHEET

IN THE FEDERAL SHARIAT COURT

cr PETITION/APPEAL No. 237/9 OF 2001

Muhammed Tayyab

Appellant
Petitioner

VERSUS

Respondent

PRAYER:—

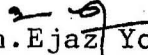
The State

Date of order of proceeding	Order of Chief Justice/Judge
1. 26.11.2001 Islamabad	<p>Malik Muhammad Kabir, Advocate, for the appellant.</p> <p>In this case the appellant has been simultaneously convicted under Article 4 of the Prohibition(Enforcement of Hadd) Order, 1979 as well as section 9(c) of the Control of Narcotic Substances Act, 1997. Learned counsel appearing on behalf of the appellant has submitted that the sentences have been inflicted on the appellant by the learned Additional Sessions Judge Talagang who is also a Special Judge under the Control of Narcotic Substances Act, 1997 and title of the impugned judgment also</p>

(b)

reflects the same. Having been questioned as to whether if the sentences were recorded against the appellant under the provisions of two different enactments which provide for appeals at different forums how, this appeal is competent before this Court, the learned counsel for the appellant seeks time to further prepare the brief. We would like to hear the Advocate General Punjab as well because in this matter question of jurisdiction and maintainability of appeal is involved. Issue pre-admission notice to the State for a date in the Office.



(Khan Riaz-ud-Din Ahmad)
Judge


(Ch. Ejaz Yousaf)
Judge

'Akram'

2. 13.12.2001 Mr. Nadeem Mukhtar Chaudhry, Advocate, for the State.
Islamabad Nemo for the appellant.

Called. No body has appeared on behalf of the appellant. Obviously in the absence of the learned counsel for the appellant the case cannot proceed. Adjourned. To be fixed after Winter Vacations.


(Khan Riaz-ud-Din Ahmad)
Judge


(Ch. Ejaz Yousaf)
Judge

'Akram'

3.2002
Islamabad

Mr.Nadeem Mukhtar Chaudhry, Advocate, for the State.

Malik Muhammad Kabir, Advocate, learned counsel for the appellant has sought adjournment through written application. Adjourned. Date in Office.

(Ch. Ejaz Yousaf)
Judge

(Khan Riaz-ud-Din Ahmad)
Judge

tram'

4. 3.5.2002
Islamabad

Malik Muhammad Kabir, Advocate for the appellant.
Mr. Muhammad Sharif Janjua, Advocate for the State.

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This appeal challenges the judgment dated 15.10.2001 passed by the Additional Sessions Judge, Talagang, who is also a Judge Special Court, for Control of Narcotic Substances.

The judgment delivered by the learned Additional Sessions Judge, was in a case registered under F.I.R. No.119 dated 10.08.2000 of Police Station City Talagang, which was a case registered for the offences under Article 3 and 4 of the Prohibition (Enforcement of Hadd) Order, 1979 in addition to the offence under section 9-C of the Control of Narcotic Substances Act, 1997.

After the challan the charge in the case was also framed under the two above noted offences, which were covered by two separate

enactments of law. After the trial the learned Judge found the appellant guilty of the offences falling under both the enactments viz under article 4 of the Prohibition (Enforcement of Hadd) Order, 1979 for which the appellant was sentenced to suffer R.I for one year and pay fine of Rs. 5,000/- in default whereof he had to further undergo three months S.I.

Under the other enactment viz section 9-C of the Control of Narcotic of Substances Act, 1997, The appellant was sentenced to undergo R.I for ten years and pay fine of Rs. 25,000/- in default whereof to undergo further S.I for two years.

The present appeal has challenged the conviction and sentence of one year R.I and fine of Rs. 5,000/- for the offence under article 4 of the Prohibition (Enforcement of Hadd) Order, 1997 only, as the appeal for the other sentence awarded under section 9-C of the Control of Narcotic Substances Act was filed before the High Court, at Lahore.

The appeal was not admitted to regular hearing as the question arose whether this court had the jurisdiction to hear it, specially when sentence/under article 4 of P.O-IV was less than 2 years.

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The learned counsel for the appellant after arguing the case to certain extent, conceded for return of memo of appeal for producing it before High Court, ~~as~~ on account of the existence of the provisions of section 27 of the Prohibition (Enforcement of Hadd) Order, 1979 (as interpreted by PLD 1999 S.C. 1063).

This appeal was filed only challenging the sentence of one year R.I u/a 4 of the Prohibition Order, while in respect of the offence under other enactment, (the offence 9-C of the Control of Narcotic Substances Act, 1979) the appeal had been filed before the High Court as provided under the provisions of section 48 of the Narcotic Substances Act, 1997.

The learned counsel for the appellant after arguing the matter to some extent agreed to withdraw this appeal with permission to file the

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same in the High Court and moved such as application. The contents of the said application, are being reproduced in extenso to make the things clear for decision of this matter:-

“PETITION FOR PERMISSION TO WITHDRAW THE APPEAL WITH PERMISSION TO FILE IN THE HIGH COURT WITH CONDONATION OF DELAY.”

Respected Sir,

In case FIR.No.119 dated 10/08/2000 the petitioner was sentenced for one year R.I, fine Rs. 5,000/- and in default to undergo 3 months S.I., Under Article-4 of Prohibition (Enforcement of Hadd Order, 1979 and for ten years R.I. alongwith fine of Rs. 25,000/- and in default to undergo two years R.I. Under Section 9-C CNSA of 1997 by Special Court for Control of Narcotics Substances, Talagang.

2. The appeal under section 48 CNSA, 1997 has been preferred before the High Court against the conviction and sentences under section 9-C CNSA, 1997.

3. Under Article-27 Prohibition (Enforcement of Hadd) Order, 1979 (as amended by P.O.6 of 1982) the appeal shall lie before the High Court, in case the imprisonment does not exceed for the term of two years.

4. The matter of jurisdiction has also been decided in case Muhammad Sharif Versus. The state PLD-1999 Supreme Court page 1063 that;

“Jurisdiction of Federal Shariat Court is confined to a certain category of cases mentioned in the second proviso of Article of the Prohibition (Enforcement of Hadd) Order, 1979, jurisdiction to hear appeal against other judgments i.e. conviction entailing less than two years imprisonment must necessary be covered by the provision of Cr.P.C.”



5. As CNS Act, 1997 is a Special Act and section 48 deals with the appeals, and in Cr.Appeal No.112/I/1998 (Muhammad Nadeem Vs. The State) it has been decided by the Full Bench of Federal Shariat Court that appeals against the Conviction under CNS Act, 1997 will lie before the High Court. For the same reason the petitioner has presented the appeal against the sentence awarded under section 9-C of CNS, Act 1997 before the Lahore High Court Rawalpindi Bench.

6. It is clear that as the sentence under Article-4 of Prohibition (Enforcement of Hadd) Order, 1979 is less than two years awarded by the Special Court so because of proviso-II under Article 27 Prohibition (Enforcement of Hadd) Order, 1979 which was inserted by P.O.6 of 1982 and the Full Court Judgement of the Supreme Court in case PLD 1999 Supreme Court 1063 the forum for appeal is High Court.

7. As the petitioner has been persuing the appeal before this Hon'ble Court in good faith so it is humbly prayed that;

(A).“The petitioner may be allowed to withdraw the instant appeal with permission to file in the Lahore High Court Rawalpindi Bench Rawalpindi.

B). The delay may very graciously be condoned.

PETITIONER

THROUGH

Sd/-

(MALIK MUHAMMAD KABIR)

ADVOCATE

SUPREME COURT OF PAKISTAN

The learned counsel for the appellant also relied on the case of Muhammad Sharif Vs The State reported in PLD 1999 Supreme Court

1063, which is judgment of Supreme Court (Shariat Appellate Jurisdiction). It was held in the above case as under ;-

“The amendment so introduced in the second proviso to Article 27 of the Prohibition Order and section 24 of the Offences Against Property Ordinance made the Federal Shariat Court appellate forum against the orders imposing punishment of more than two years imprisonment. Legislative history of these enactments, as was rightly pointed out by the learned Judges of High Court of Sindh, Karachi, shows that the jurisdiction of the Federal Shariat Court was enlarged progressively and even now it is confined to a certain category of cases mentioned in the second proviso and that the jurisdiction to hear appeals against other judgments i.e. conviction entailing less than two years imprisonment or acquittal must necessarily be covered by provisions of the Code of Criminal Procedure. They are, however, not right in holding that appeal against any order of acquittal would lie to High Court and not to Federal Shariat Court.”

The learned counsel for the appellant also referred to an unreported judgment of this Court passed in Criminal Appeal No. 112/I of 1998 (Muhammad Nadeem Vs. The State) which is a Full Bench Judgment wherein it was held that appeals against the conviction under the Control of Narcotic Substances Act, 1997 will lie before the High Court.

Due to a peculiar position in the present case that the same judgment is appealable before two different forums, the appellant had

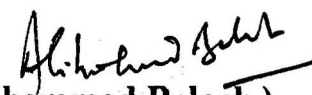
no other go but to file appeals against the two different enactments for which he was convicted, before the two forums viz. The High Court and the Federal Shariat Court.

Since the learned counsel for the appellant has withdrawn the appeal pending before us as he wants to approach the High Court before whom already the appeal challenging the conviction under the provisions of the Control of Narcotics of Substances Act, 1997 is pending, we feel that the present appeal which otherwise falls under the Criminal Procedure Code which means that it is appealable before the High Court, we direct that it be sent to the Hon'ble High Court which shall consider the same on merits and decide it alongwith the other appeal already pending before it and also consider the question of limitation. We have thus accepted the application withdrawing this appeal, so that this appeal may be produced before the proper forum viz High Court. The conflict of opinion against the same judgment will, thus be justifiably avoided. The office is directed to send the memo of

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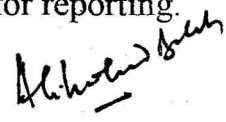
this appeal alongwith all the relevant papers to the High Court
alongwith the copy of this order. Disposed of.


(Ali Muhammad Baloch)
Judge


(Khan Riaz-ud-Din Ahmed)
Judge

Approved for reporting.

Jaleel/...


Judge

Islamabad the 3rd
May, 2002.