

IN THE FEDERAL SHARIAT COURT
(Revisional Jurisdiction)

PRESENT

MR. JUSTICE HAZIQUL KHAIRI, CHIEF JUSTICE

JAIL CRIMINAL REVISION NO. 13/1 OF 2006

1. Tarique alias Tahir alias Tahiro ---
son of Rustam Khan, resident
of Goth Muhammad Umer
Korai, Tehsil Usta Muhammad
--- Petitioners

2. Jalal son of Suleman, resident
of Goth Jattak near Punir
Choki Mehrabpur Tehsil
Usta Muhammad

Versus

The State --- Respondent

For the Petitioners --- Syeda B.H. Shah, Advocate

For the State --- Mr. M. Shoaib Abbasi,
Advocate

Date of the Order of the --- 16.2.2006
Trial Court

Date of Institution --- 30.3.2006

Date of Hearing --- 15.9.2006

Date of Decision --- 26.9.2006

JUDGMENT:

HAZIQUL KHAIRI, CHIEF JUSTICE.-This Jail criminal revision petition is on behalf of two petitioners namely, Tarique alias Tahir alias Tahiro and Jalal who were charged under section 14 of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as "the said Ordinance") and both were convicted under section 380 PPC by the Judicial Magistrate/FCM, Usta Muhammad to suffer R.I. for three years and each of them was directed to pay Rs.15,000/- or in default thereof to further undergo imprisonment for six months S.I. The petitioners preferred an appeal before the Court of Sessions, Usta Muhammad which, was dismissed and the learned Judge upheld the decision of the learned Judicial Magistrate.

2. Now it is urged on behalf of the petitioners that neither the learned Judicial Magistrate could have convicted the

petitioners for more than two years nor the learned Sessions Judge could have upheld the decision of conviction of the said Judicial Magistrate when it was a conviction for more than two years in which an appeal lies to Federal Shariat Court. The petitioners were charged under section 14 of "the said Ordinance" where under "whoever commits theft liable to tazir shall be awarded the punishment provided for the offence or theft under the Pakistan Penal Code (Act XLV) of 1860. Now the said Ordinance by virtue of section 24 thereof provides "the provisions of the Code of Criminal Procedure shall apply mutates mutandis in respect of case under the Ordinance."



3. Such being the case all matters falling under section 24 of "the said Ordinance" except sections 9 or 17 were to be tried by a Magistrate authorized under section 30 Cr.P.C. Accordingly the Judicial Magistrate purporting to exercise his powers under law proceeded with this case and charged the petitioners under section 14 of "the said Ordinance" which attracts the provision of

section 380 of Pakistan Penal Code prescribing maximum punishment up to 7 years. What, however, the learned Judicial Magistrate lost sight of was that he had jurisdiction to award punishment only up-to two years and not more. However, in this case the petitioners were convicted for three years, which was beyond his jurisdiction.

4. Similarly there was a lapse on the part of the learned Sessions Judge to over looked mandatory provisions of section 14 of "the said Ordinance" read with section 380 of Pakistan Penal Code whereby the petitioners were sentenced to more than two years. Again the learned Sessions Judge had failed to see that where the award of sentence is more than two years the appeal would lie before the Federal Shariat Court and not to him.

5. Be that as it may, the learned counsel for the petitioners has not questioned the conviction of the petitioners but requested his sentence may be reduced to two years R.I. to which learned counsel for the State Mr. M. Shoaib Abbasi also has no objection.

The petitioners are young and not previous convicts and in such a situation it is in the interest of justice that the petitioners/convicts should not be allowed to suffer for the over sight of the trial Court and the appellate Court. I therefore, in exercise of my powers under Article 203DD of the Constitution of the Islamic Republic of Pakistan read with section 561-A of the Code of Criminal Procedure Act 1898 reduce the sentences of the petitioners from three years R.I. each to two years R.I. each. Both the petitioners, however, shall pay Rs.15,000/- or in default thereof to further suffer six months S.I. Both the petitioners would be entitled to the benefit under section 382-B Cr.P.C.



(JUSTICE HAZIQUL KHAIRI)
Chief Justice

Islamabad, the
26th September, 2006.
Bashir/*

FIT FOR REPORTING 
