

IN THE FEDERAL SHARIAT COURT  
( Appellate Jurisdiction )

PRESENT

MR.JUSTICE CH. EJAZ YOUSAF CHIEF JUSTICE

JAIL CRIMINAL APPEAL NO.74/I OF 2004

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|--|------------|
| 1. Tahir Mehmood son of<br>Mumraiz Khan, resident of<br>Rani Wah, Distt:Haripur.                           | Appellants |
| 2. Ishtiaq Ahmed son of<br>Muhammad Akhtar, Resident<br>Of Kali Tarar, P.S.Khanpur,<br>District Haripur.   |            |
| 3. Muhammad Arshad son of<br>Muhammad Aslam, resident of<br>Kali Tarar, P.S.Khanpur,<br>District, Haripur. |            |

Versus

|                                      |    |                                  |
|--------------------------------------|----|----------------------------------|
| The State                            | -- | Respondent                       |
| No.date of FIR and<br>Police Station | -- | No.48 dt:21.8.2003<br>Donga Gali |
| Date of judgment of<br>Trial Court   | -- | 11.3.2004                        |
| Date of Institution                  | -- | 29.3.2004                        |
| Date of hearing                      | -- | 14.5.2004                        |
| Date of decision                     | -- | 14.5.2004                        |

JUDGMENT:

CH. EJAZ YOUSAF, CHIEF JUSTICE.- This jail appeal is directed against the judgment dated 11.3.2004 passed by the learned Judge, Anti-Terrorism Court, Hazara Division at Abbottabad whereby appellants Ishtiaq Ahmad son of Muhammad Akhtar, Muhammad Arshad son of Muhammad Aslam and Tahir Mehmood son of Mumraiz Khan were convicted under section 20 of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979 (hereinafter referred to as "the Ordinance") read with section 7 of the Anti-Terrorism Act, 1997 (hereinafter referred to as "the ATA, 1997") and sentenced to undergo R.I. for ten years each alongwith a fine of Rs.fifty thousand each or in default thereof to further undergo R.I. for two years each. They were also convicted under section 412 PPC read with section 7 of "the ATA, 1997" and sentenced to undergo R.I. for ten years each alongwith a fine of Rs.twenty thousand each or in default thereof to further undergo R.I. for one year each. They were further directed to pay Rs.twenty thousand each to every victim as

compensation under section 544-A Cr.P.C. or in default thereof to further undergo six months imprisonment. Both the substantive sentences of imprisonment were ordered to run concurrently. Benefit of section 382-B Cr.P.C. was, however, extended to all the appellants.

2. The facts out of which this appeal has arisen are shortly as follows:-

On 21.8.2003 report was lodged by Jehanzeb Rahim, Advocate-General, NWFP with Ghulam Sarwar, S.H.O, P.S. Donga Gali alleging that on the said date at about 11.15 a.m. in the vicinity of Ayubia the complainant alongwith his family members, in order to have a walk, had started from Donga Gali to Ayubia on a pedestrian track. At about 12.00 noon, after covering half of the distance, they saw that three young boys, armed with pistols, were busy in robbing valuable articles from a couple. When the complainant and his family members reached near them, the complainant was also robbed and on gun point was deprived off a licensed pistol, cash amounting to Rs.7,000/- and a mobile telephone bearing No.0303-7385309. It was further alleged by

the complainant that two golden bangles weighing 25 Tolas and 8 golden rings weighing 5/6 Tolas were also taken away by the culprits; alongwith a sum of Rs.700/- from his driver Wali Khan. It was added that the culprits, before fleeing, had also snatched a sum of Rs.15,000/- from Dr.Shahid-ul-Hassan and 10 golden bangles weighing 10 Tolas from his wife.

3. Record reveals that in the instant case the accused persons were charged on four counts. On three counts they were charged under; section 17(3) of "the Ordinance" read with section 7 of "the ATA, 1997" and on fourth count under section 412 PPC read with section 7 of "the ATA, 1997" and on conclusion of the trial each of them were convicted under section 20 of "the Ordinance" read with section 7 of "the ATA, 1997" and sentenced to the punishments as mentioned in the opening para hereof.

4. It would not be out of place to mention here that though by dint of proviso one tagged to section 24 of "the Ordinance" the Court while holding trial under the Hudood Ordinance is competent to try and

punish the offender under any other law, for a different offence, if from evidence it so appears and judgment so passed can be assailed in appeal before the Federal Shariat Court yet, in the instant case, since charge alongwith the provisions of Hudood Ordinance was also framed under section 7 of "the ATA, 1997" and the judgment has been pronounced by the trial Court as Judge Anti Terrorism Court, therefore, without entering into the controversy as to whether the Anti Terrorism Court had had jurisdiction to take cognizance, in the case, in my view, appeal against the impugned judgment, does not lie to this Court in view of section 25 of "the ATA, 1997", whereby a final judgment of Anti Terrorism Court can be assailed, in appeal, only before a High Court.

Needless to point out that a Court established under the Anti Terrorism Act while trying any scheduled offence under "the ATA" may also try any other offence with which the accused "under the Code" be charged, "at the same trial", yet, in my view, the power so conferred is limited to the trial of cases under the Pakistan Penal Code only because under section 28(c) and 29(1) of the Criminal Procedure Code offences

under other laws are required to be tried by the Courts mentioned in that behalf, in such laws. Here it would be advantageous to have a glance at sections 28(c) as well as 29(1) and (2) of the Cr.P.C. which read as follows:-

“S.28. **Offences under Penal Code.**—Subject to the other provisions of this Code any offence under the Pakistan Penal Code may be tried—

- (a) by the High Court, or
  - (b) by the Courts of Sessions, or
  - (c) by any other Court by which such offence is shown in the eighth column of the Second Schedule to be triable;
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S.29. **Offences under other laws.**—(1) Subject to the other provisions of this Code, any offence under any other law shall when any Court is mentioned in this behalf in such law, be tried by such Court.

(2) When no Court is so mentioned, it may be tried by the High Court or subject as aforesaid by any Court constituted under this Code by which such offences shown in the eighth column of the second schedule to be triable.”

5. It is well settled that if a Court not possessed of jurisdiction to try a case, wrongly assumes jurisdiction and exercises power not vested in it, appeal from its decision would lie in the same manner as an appeal would lie from a decision made with jurisdiction. Reference in this regard may usefully be made to the cases of Muhammad Ishfaq Vs. The State reported as PLD 1973 SC-363, Rasool Bakhsh and others

Vs. The State and others reported as 1998 P.Cr.L.J.438, Nazamudin

Vs. The State 1999 PSC (Cr) 1025 and Nazar Muhammad and other

Vs. The State reported as 1999 P.Cr.L.J. 1636.

In the above referred case of Rasool Bakhsh and others Vs. The State and others a Full Bench of this Court has also laid down that a party aggrieved of the decision passed without jurisdiction, can raise the controversy before the appellate forum in the same hierarchy and if appellate forum comes to the conclusion that the decision so made was without jurisdiction it can set aside the judgment on the ground of illegal assumption of jurisdiction, leaving the option with the concerned authorities to have the matter decided by the original forum of competent jurisdiction. It was further held therein that on the basis of wrong exercise of jurisdiction by a trial court, its judgment cannot be assailed before any appellate forum other than the one prescribed under the law, against the judgment of the court of first instance.

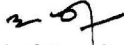
6. The upshot of the above discussion is that this appeal is not maintainable before this Court which is accordingly returned to the

appellants through the Superintendent Jail concerned, for availing  
remedy at the proper forum, if they so desire.

  
(CH. EJAZ YOUSAF)  
Chief Justice

Islamabad,  
the 14<sup>th</sup> May, 2004.  
ABDUL RAHMAN/\*\*

**FIT FOR REPORTING**

  
Chief Justice