

Sh.P.No.4/I of 2007.

3 Zafar et al
vs
Federation of p-histo

- 3- 06.04.2007. Mr.M. Shuaib Abbasi, Advocate for petitioner/
Islamabad. Applicant.

ORDER

Dr. Fida Muhammad Khan, J.— The facts giving rise to this Shariat Petition, briefly stated, are that the petitioners Zafar son of Dil Meer and Muhammad Nawaz son of Amir were tried for the murder of Muhammad Suliman in a case registered vide F.I.R No.61/91 under section 302/34 PPC at Police Station Shorkot, Jhang. On completion of the trial, they were found guilty and convicted vide judgment dated 12.8.1991 by the learned Sessions Judge, Jhang under section 302 (b) PPC and sentenced each to death as Tazir.

2. Feeling aggrieved, the petitioners filed appeal before the Hon'ble High Court and subsequently the same was dismissed. After that one legal heirs of the deceased namely Iftikhar Ahmad moved an application before the District and Sessions Judge, Jhang under section 338-E, PPC, whereby he had waived his right of Qisas without compensation, but it was dismissed, writ petition was also dismissed by the Hon'ble High Court

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and death sentence was confirmed. Subsequently a petition for leave to appeal was filed before the Hon'ble Supreme Court of Pakistan but leave was refused and the petition was dismissed vide order dated 10.1.2007.

3. Now the petitioners through their learned counsel have filed the instant petition wherein, inter-alia, they have prayed that section 302 (b) of PPC, 1860 so far as stipulates death penalty, even if qualitative evidence provided for grant of death penalty as 'Qisas' is not available, and section 345 (2) Cr.P.C so far it stipulates that it is mandatory for all legal heirs of the victim to agree on compromise, is repugnant to the Qur-an and Sunnah of Holy Prophet (P.B.U.H) and may therefore, be declared as such. He has also prayed vide Misc.A. No.4/I of 2007, that the death sentence awarded to the petitioners, which are likely to be executed very shortly, be suspended during pendency of the petition. In view of urgency of the matter, the Cr.Misc. was fixed for hearing today.

4. We have heard the learned counsel and have
 anxiously perused the record.

5. We may point out that this court is vested with powers to exercise its jurisdiction under Articles 203-D and 203-DD of the Constitution of Islamic Republic of Pakistan, 1973. While exercising its powers under Article 203-D, this Court may, on its own motion or on petition by any citizen of Pakistan, examine the repugnancy or otherwise of any law or provision of law, on the touch stone of Islamic Injunctions as contained in the Holy Qur-an and Sunnah of the Holy Prophet (P.B.U.H). However, it is pertinent to highlight that while exercising its jurisdiction under this provision it cannot grant any Injunction in respect of relief in personem. While exercising its powers under Article 203-DD, it is worth mentioning that this Court can hear and decide the appeals as well as revisions only in cases which carry charge under the Hudood laws and cannot pass order or temporary injunction pertaining to other laws not relating to Hudood laws or conviction thereunder.

6. Since in the instant case, there is neither any charge pertaining to Hudood Laws nor any conviction



thereunder, this Court for want of jurisdiction, as stated above, cannot pass any order in the instant case as far as staying the order for execution of the petitioner is concerned, especially when an order has already been passed in the case by the Hon'ble Supreme Court. However, so far as the repugnancy or otherwise ^{of} the impugned law is concerned, that will be taken up alongwith similar petitions and examined at appropriate time under the jurisdiction of this court under Article 203-D.

7. For the reasons stated above, we dismiss the miscellaneous application No.4/I of 2007 for grant of stay of the execution of death sentence of the petitioners.


JUSTICE DR.FIDA MUHAMMAD KHAN
Judge


JUSTICE SALAHUDDIN MIRZA
Judge


JUSTICE MUHAMMAD ZAFAR YASIN
Judge.