

JUDGMENT SHEET
IN THE LAHORE HIGH COURT,
BAHAWALPUR BENCH, BAHAWALPUR.
(JUDICIAL DEPARTMENT)

CRIMINAL APPEAL No. 531/2023.

Kashif Nawaz, etc.

Vs

State, etc.

JUDGMENT

DATE OF HEARING: 19.12.2023.
APPELLANTs BY: Mr. Muhammad Munawar Chughtai,
Advocate.
STATE BY: Mr. Shahid Fareed ADPP & Mr. Javed
Iqbal Bhaayya, ADPP.

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MUHAMMAD AMJAD RAFIQ, J:- This criminal appeal strikes against the order dated 08.11.2023 passed by learned Additional Sessions Judge, Bahawalpur, whereby the appellants were convicted under section 180 PPC and sentenced to undergo fifteen days' simple imprisonment along with fine of Rs.500/-, each. in default to further undergo simple imprisonment for three days.

2. The learned counsel for the appellants contends that a private complaint tilted "*Ghulam Muhammad versus Kashif Nawaz, etc.*" under sections 302/34 PPC was pending against the appellants in which on 08.11.2023 charge was framed against them and learned Additional Sessions Judge called upon them to sign the charge sheet, appellants sought some time for availability of their learned counsel so that in his presence charge sheet could be signed but the learned Additional Sessions Judge considering it contempt of his lawful authority, which is an offence under section 180 PPC, proceeded to pass the aforesaid conviction and sentence. Further submits that obtaining signatures of the accused on the charge sheet is not the legal requirement and, in this respect, has placed reliance on the case reported as "*GHULAM RASOOL versus THE STATE*" (1992 MLD 2455). Adds that learned Judge could not have passed the sentence under

section 180 PPC directly for a period as aforesaid, thus, he prayed for acceptance of the appeal and setting aside the impugned conviction and sentence.

3. The learned Prosecutors on the other hand submit that the appeal is not competent pursuant to section 413 of Cr.P.C. (the Code) because it is a petty sentence, against which no appeal is provided. Further submit that section 195 of the Code formalizes the process of trial in this case which has been followed by the learned Judge, therefore, prayed for dismissal of the appeal.

4. Heard.

5. Before proceeding further, let's see what section 180 PPC says, it is as under;

Refusing to sign statement: Whoever refuses to sign any statement made by him, when required to sign that statement by a public servant legally competent to require that he shall sign that statement, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to one thousand, or with both.

It has been observed that wherever the law requires obtaining the signatures of any person, it has specifically been prescribed under the law. The case reported as “THE STATE versus SARDAR AHMED” (PLD 1967 Karachi 75) throws light that according to provisions of sections 154 and 200 of the Code the complainant is required to sign the statement, whereas, sections 342 and 364 of the Code require obtaining the signatures of the accused but there is no such requirement under sections 243 or 265-E of the Code. Obtaining signatures of the accused on the charge sheet is not the legal requirement but it is in practice since long, therefore, obtaining signatures on the plea of an accused plainly conforms to his admission to charge or otherwise, therefore, it cannot be considered as an illegality; however, if the accused does not sign the charge sheet he cannot be convicted under section 180 of PPC. Reliance in this respect is placed on the case cited supra as “THE STATE versus SARDAR AHMED” (PLD 1967 Karachi 75).

6. The argument of learned Prosecutors that procedure under section 195 of the Code authorizes the learned Judge to convict the accused there and then, is repelled in the light of legal provisions under Sections 480 and 482

of the Code, specially legislated for the purpose to deal with contempt of lawful authority of the Court. Section 480 of the Code reads as under: -

“480. Procedure in certain cases of contempt.- (1) When any such offence as is described in section 175, section 178, section 179, **section 180** or section 228 of the Pakistan Penal Code, (Act KLV of 1860) is committed in the view or presence of any Civil, Criminal or Revenue Court, the Court may cause the offender to be detained in custody and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and **sentence the offender to fine, not exceeding two hundred rupees**, and, in default of payment, to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid.”

(Emphasis supplied)

If the court considers that any disobedience to his order has been committed pursuant to sections mentioned therein then the offender can be imposed a fine of Rs.200/- only after following the procedure under section 481 of the Code but if the Court considers that more severe sentence should be imposed then of course the Court shall send the complaint to the Magistrate for the purpose of trial under section 482 of the Code, which is reproduced as under;

482. Procedure where Court considers that case should not be dealt with under Section 480: (1) If the Court in any case considers that a person accused of any of the offences referred to in Section 480 and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him, or such Court is for any other reason of opinion that the case should not be disposed of under Section 480, such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same, and may require security to be given for the appearance of such accused person before such Magistrate, or if sufficient security is not given, shall forward such person in custody to such Magistrate.

(2) The Magistrate, to whom any case is forwarded under this section, shall proceed to hear the complaint against the accused person in manner hereinbefore provided.

Whereas, in this case it has not been done, rather the learned Additional Sessions Judge has directly passed the conviction and sentence for 15 days' imprisonment, though he was not authorized under section 480 of the Code nor he sent the complaint to Magistrate, therefore, the impugned order on this score is nullity in the eyes of law.

7. The contention of learned Prosecutors that in petty offences no appeal lies as per mandate of section 413 of the Code is also repelled because when

an offender is punished under section 180 PPC pursuant to section 480 of the Code then appeal against such order is provided under section 486 of the Code; therefore, this appeal is competent against the impugned order passed by learned Additional Sessions Judge.

8. Attending to all the above circumstances, the appeal is allowed and the impugned conviction and sentence is set-aside.

(Muhammad Amjad Rafiq)
Judge.

APPROVED FOR REPORTING.

Judge.

This judgment was pronounced on
19.12.2023 and after dictation and
preparation it was signed on
22.12.2023.

Javed*