

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**Present:**

Mr. Justice Athar Minallah  
Mr. Justice Irfan Saadat Khan  
Mr. Justice Malik Shahzad Ahmad Khan

**Criminal Petitions No.1457/2023 & 1683/2022**

Against the judgment dated 16.11.2022 and 15.11.2023 in of the High Court of Sindh Bench at Sukkur passed in Crl.JA D-61/21 and M.A.No.340 of 2023)

Dilbar Ali  
Nawab @ Tharo Gadani

(In Cr.P.1683/22)  
(In Cr.P. No.1457/23)  
**Petitioner(s)**

**VERSUS**

The State and others  
The State and another

(In Cr.P.1683/22)  
(In Cr.P. No.1457/23)  
**Respondent(s)**

For the Petitioner(s):

Mr. Rukhsar Ahmed Junejo, ASC  
Mr. Hameed uz Zaman, AOR  
(in Crl.P.1457/2023)

Mr. Ubedullah Ghoto, ASC  
(in Crl.P.1683/2022)

For the State:

Mr. Rahat Ahsan, Addl. PG

Date of Hearing:

08.05.2025

**JUDGMENT**

**Athar Minallah, J.**- Cr.P.L.A No.1683 of 2022 has been filed by Dilbar Ali ('petitioner/complainant') seeking leave against the judgment of the High Court dated 16.11.2022 whereby the convictions of Nawab and Nizamuddin, (collectively they shall be referred to as 'the respondents') were upheld but their sentences were modified from death to imprisonment for life. The petitioner/complainant is therefore seeking enhancement of their sentences to death.

2. In the connected petition i.e. Cr.P.L.A. No.1457 of 2023, the respondents have sought leave against the order of the High Court dated 15.11.2023 whereby their application under section 561-A of the Code of Criminal Procedure, 1898 ('Cr.P.C.') was dismissed on the ground that the aforementioned petition was pending before this Court, however, the High Court while dismissing their petition had observed that they shall be at

liberty to move fresh application following disposal of the matter pending before this Court.

3. The respondents were tried in crime report 13/2010 registered at Police Station Khanpur Mehr for commission of the alleged offences under section 302 read with sections 148 and 149 of the Pakistan Penal Code, 1860 ('PPC'). The respondents, upon conclusion of trial, were convicted by the trial court vide judgment dated 16.09.2021 and they were sentenced to death on two counts. They were further ordered to pay Rs.500,000/- each as compensation under section 544-A of Cr.P.C. to the legal heirs of the deceased and in default thereof the same shall be recovered as arrears of land revenue. They were also convicted under section 148 read with section 149 of PPC and sentenced to suffer rigorous imprisonment for two years and ordered to pay Rs.10,000/- each as fine. In default of payment of fine they were ordered to undergo simple imprisonment for one month. The respondents challenged their convictions and sentences before the High Court and their appeal was partly allowed by modifying their respective sentences of death to imprisonment for life. The payment of compensation as well as the conviction and sentences under sections 148 and 149 of PPC were maintained. It was also ordered that the sentences shall run concurrently. The reference for confirmation of death sentence was answered in the negative.

4. The High Court had modified the respective sentences from death to imprisonment for life on the basis of mitigating factors explicitly mentioned in paragraph-9 of the impugned judgment. It is noted that neither the trial court nor the High Court had extended the benefit to the respondents under sections 382-B of Cr.P.C. and it appears to have been on account of an inadvertent omission.

5. We have heard the learned counsels for the petitioner/complainant, the respondents as well as the learned Additional Prosecutor General, Sindh

appearing for the State. We have also perused the record with their able assistance.

6. It is not disputed that the respondents have not challenged their convictions nor the sentences which were modified by the High Court from death to imprisonment for life. They had filed an application before the High Court under section 561-A of Cr.P.C. seeking extension of the benefit under section 382-B of Cr.P.C. The impugned order of the High Court, dated 15.11.2023 shows that the application was dismissed on the sole ground that Cr.P.L.A.No.1683 of 2022 was pending before this Court. It appears from the order of the High Court that the benefit under section 382-B of Cr.P.C. was not withheld as a conscious application of mind, rather it was an inadvertent omission.

7. The trial court had awarded the sentence of death to the respondents on two counts but it was modified by the High Court vide impugned judgment dated 16.11.2022. The High Court has recorded reasons in paragraph-9 of the impugned judgment which had led to the modification of the sentence. With the assistance of the learned counsels, we have perused the record and the evidence brought on the record clearly establishes that the prosecution was not able to prove the factum of motive. Moreover, in the crime report the motive was attributed to the absconding accused Ali Sher. It is also evident that the specific motive set out by the prosecution was not put to the respondents while recording their respective statements under section 342 of Cr.P.C. These mitigating factors had led the High Court to partly allow the appeal of the respondents and modify the sentence of death to imprisonment for life. The learned counsel for the petitioner/complainant could not point out any misreading or non-reading of evidence. The reasons recorded by the High Court have not been found by us to be arbitrary, perverse, without any substance or in breach of the settled principles of law. The sentence of a convict can be enhanced but



while deciding the matter the court must act judiciously and take into account all relevant considerations. A sentence may be enhanced when it is not justified by law or where a convict has been sentenced on wrong factual basis. A sentence may also be enhanced, if while determining the quantum of sentence, the court has improperly taken into consideration irrelevant matters. In order to justify enhancement of a sentence the court ought to be satisfied that there was serious misdirection of appreciation of evidence or there has been a blatant miscarriage of justice.<sup>1</sup> The order should either be perverse, arbitrary or the reduction in sentence by a court manifestly shown to be without any substantive reason.

8. In the case before us, the reasons recorded by the High Court in the impugned judgment dated 16.11.2022 were neither arbitrary nor perverse and the mitigating factors highlighted therein justified the modification of the sentence from death to imprisonment for life. The learned counsel for the petitioner/complainant has not been able to persuade us that a case for enhancement of the sentence is made out keeping in view the facts and circumstances of the case. We have also carefully perused the impugned judgment of the High Court dated 16.11.2022 and we are of the opinion that withholding of the benefit under section 382-B of Cr.P.C. was not due to conscious application of mind since no reasons were recorded in this regard. It is obvious that it was an inadvertent omission and was against the mandate of the said provision.<sup>2</sup> It also appears to us from the impugned order dated 15.11.2023 assailed in Cr.P.L.A. No.1457 of 2023 that the High Court was mindful of the mandate of section 382-B of Cr.P.C. and, therefore, the respondents were given an opportunity to approach the High Court again after the disposal of Cr.P.L.A. No.1683 of 2022 which was pending before this Court.

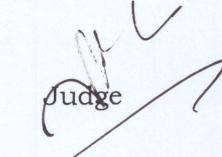
<sup>1</sup> Raja Khurram Ali Khan and others v. Tayyaba Bibi and another (PLD 2020 SC 146)

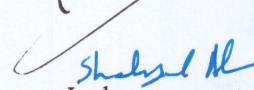
<sup>2</sup> Ghaffar Ali v. The State and another (2021 SCMR 354)

9. In view of the above, the petitions are converted into appeals and the same are allowed only to the extent of the modification of the impugned judgment of the High Court dated 16.11.2022 by extending the benefit under section 382-B of Cr.P.C. in favour of the respondents. The appeal whereby enhancement of the sentence has been sought by the petitioner/complainant is without merit and, therefore, dismissed.

The above are the reasons for our short order of even date.

  
Judge

  
Judge

  
Judge

Islamabad the  
8<sup>th</sup> May 2025  
**"Not Approved for Reporting"**  
Aamir Sh./