

THE SUPREME COURT OF PAKISTAN
(Review Jurisdiction)

24/25

Bench:

Mr. Justice Jamal Khan Mandokhail
Mr. Justice Athar Minallah
Mr. Justice Malik Shahzad Ahmad Khan

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**Criminal Review Petitions No.23 & 24 of 2023 in
Criminal Petitions No.1723-L and 1724-L of 2017**

*(For review of order of this Court dated 31.01.2023 passed in
Crl. Petitions No.1723-L and 1724-L of 2017 filed against
judgment dated 30.10.2017 of the Lahore High Court, Lahore
passed in Crl.Appeals No.151 and 72 of 2015)*

Noor Muhammad
Muhammad Ameer @ Meera

... (in CRP-23/2023 and Cr.P.1723-L/17)
... (in CRP-23/2023 and Cr.P.1723-L/17)

Petitioners

Versus

The State and another

... **Respondents** (in both cases)

For the petitioner(s): Mr. Muhammad Ilyas Siddiqui, ASC

For the State: Mr. Irfan Zia, Additional Prosecutor General,
Punjab

Date of hearing: 26.03.2025

ORDER

Athar Minallah, J. The petitioners have invoked the jurisdiction of this Court under Article 188 of the Constitution of the Islamic Republic of Pakistan, 1973 seeking review of the judgment of this Court dated 31.01.2023 passed in Criminal Petitions No.1723-L and 1724-L of 2017. This Court by majority of two to one had dismissed the petitions. Consequently, the convictions and sentences handed down by the trial court and later affirmed by the High Court were upheld.

2. The petitioners were nominated in crime report No.12/2012 dated 30.01.2012, registered at Police Station Musa Khel, District Mianwali under sections 4/5 of the Explosive Substances Act, 1908 read with section 216 of the Pakistan Penal Code, 1860 ('PPC'). The petitioners were also alleged to have committed offences under sections 13/20/65 of the Arms Ordinance, 1965 ('A.O.'). The petitioners were tried by the Special Judge, Anti Terrorism, Sargodha. The petitioner Muhammad Ameer alias Meera was convicted and sentenced as under:

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“Under section 5 of the Explosive Substances Act, 1908 for having in possession the explosive material i.e. a hand grenade (P-6) to undergo fourteen years R.I. and his whole property shall be forfeited under section 5-A to the government.

2. Under section 13 of the Pakistan Arms Ordinance, 1965, for having in possession of Kalashnikov (P-1) with magazine (P-2), one bondolier (P-3) containing three magazines (P-4)/ 1-3) and 100 live bullets (P-5/ 1-100) from all the four magazines, to undergo 7 years R.I. with fine of sum of Rs.10000/-in default whereof, he will further undergo fifteen days’ S.I.

3. Under section 7(ff) of the Anti Terrorism Act, 1997 for having in possession of explosive material viz. a hand grenade without any lawful justification, to undergo imprisonment for life, as according to record he appears to be a habitual offender being involved in as many as 54 criminal cases, with forfeiture of his property.

Accused Noor Muhammad was convicted and sentenced as under:

1. Under section 5 of the Explosive Substances Act, 1908 for having in possession the explosive material i.e. a hand grenade (P-17) to undergo fourteen years R.I. and his whole property shall be forfeited under section 5-A to the government.


2. Under section 7(ff) of the Anti Terrorism Act, 1997 for having in possession of explosive material viz. a hand grenade without any lawful justification, to undergo 14 years R.I. since he is first offender, with forfeiture of his property.”

The sentences of imprisonment awarded to both the accused for all the offences was ordered to run concurrently with benefit of Section 382-B Cr. P.C.


3. The petitioners challenged their convictions and sentences before the High Court and their appeals were dismissed *vide* judgment dated 30.10.2017. Their Criminal Petitions for leave to appeal before this Court were dismissed by majority of two to one *vide* judgment dated 31.01.2023. The petitioners have now sought review of the aforementioned judgment.

4. We have heard the learned counsel for the petitioners and the learned Additional Prosecutor General, Punjab. We have also perused the record with their able assistance.

5. It is not disputed that the police officials who had conducted the raid and pursuant thereto the premises of the house were searched had not informed nor associated the officials of the police station having the territorial jurisdiction. The raid was conducted without obtaining search



warrant within the jurisdiction of another police station. The petitioner's ownership of the house where the recovery was made was not established nor that he had control over it. Ameer Muhammad Khan, Sub-Inspector (PW-1) had deposed that the recoveries were made while the petitioners were inside a residential house. It is not disputed that the other co-accused were also present and that two of them had managed to escape. According to the testimony of this witness, the petitioners and the other co-accused were in a room of the house where the alleged recoveries were made. The crime report and recovery memos do not mention identification marks regarding each item nor the description of the grenades. The recovered items were not sealed when they were taken into possession. The prosecution had failed to prove that the alleged recoveries were made from each petitioner in the manner as alleged in the crime report. The testimonies of the witnesses were not confidence inspiring to establish the recoveries alleged to have been made from each petitioner. The safe custody of the recovered items is also not free from doubt. The prosecution had also not brought any evidence on record to establish that the raid which had led to the search of the premises within the jurisdiction of another police station, was pursuant to verbal instructions/directions of the District Police Officer (DPO). The latter had not entered the witness-box nor had any other witness deposed in order to establish this crucial factum. The house which was searched had only one entrance and there is no explanation how two persons had managed to escape despite the presence of the police officials who had conducted the raid. It is also not disputed that one of the petitioners i.e. Muhammad Ameer alias Meera was sought by the police officials and a substantial amount was announced as head money. The learned Additional Prosecutor General, could not persuade us that the aspects of the case highlighted in the dissenting opinion were based on misreading of evidence.



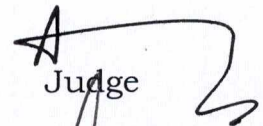
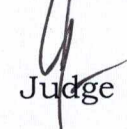

6. We have carefully examined the evidence and it is obvious that the prosecution had failed to prove its case beyond doubt. It appears from the opinion of the majority that the above crucial aspects were not taken into consideration while dismissing the petitions. As already noted above, there is no plausible explanation nor any evidence was adduced to establish that conducting the raid by the police officials without informing or associating the In-charge of the police station vested with the jurisdiction, was unavoidable. Moreover, the story of the prosecution has not been found to be plausible. In our opinion, the prosecution was not successful in proving the guilt of the petitioners beyond a reasonable doubt. The error is floating on the surface of the record. The aspects highlighted in the dissenting opinion have not been controverted and they were not taken into consideration by the majority as is obvious from their opinion. We are mindful that the scope of review in a criminal case is of a limited nature and can only be exercised when there is a legal error on the face of the record. A larger Bench of this Court in Dilawar Hussain's case (2013 SCMR 1582) has held that legal error on the face of the record amounts to an error that is so apparent and glaring that no court would permit it to remain a part of the proceedings and that such an error must emanate from the record on the basis of its own existence and it must not be a result of analytical logic and scrutiny of the evidence. The error apparent on the face of the record manifestly be of a nature that if ignored, then complete justice could not be done. This Court has further held that in appropriate and suitable cases the jurisdiction of review would be exercised only for the cause of dispensation of justice. We are of the opinion that the case before us definitely justifies exercising the power of review otherwise it would cause grave miscarriage of justice.

7. In the facts and circumstances of the case, we are of the opinion that the convictions are not sustainable and the petitioners were

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entitled to the benefit of doubt as of right. We, therefore, allow these review petitions and consequently, the petitions are restored to their respective original numbers. Resultantly, the criminal petitions No.1723-L and 1724-L of 2017 are converted into appeals and the same are allowed. The appellants are acquitted of the charges framed against them and consequently, their convictions and sentences are set aside. The judgments of the trial court and the High Court are also set aside.

The above are the reasons for our short order dated 26.03.2025.


Judge

Judge

Judge

Islamabad

26th March, 2025

'NOT APPROVED FOR REPORTING'

M. Azhar Malik/ *