

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Sarmad Jalal Osmany
Mr. Justice Qazi Faez Isa

CRIMINAL APPEAL NO. 465 OF 2006

(Against the judgment dated 11.11.2005 passed by Lahore
High Court, Lahore in CrI. A. No. 688 of 2004)

Mian Khalid Rauf

Appellant

VERSUS

Chaudhry Muhammad Saleem & another

Respondents

For the appellant: Mr. Munir Ahmad Bhatti, ASC

Respondent No. 1: Mr. M. Inayatullah Cheema, ASC

On Court call: Mr. Naveed Rasool Mirza, A.G., Pb.

For the state: Ch. M. Waheed, A.P.G. Pb.

Date of hearing: 14.04.2015

JUDGMENT

SARMAD JALAL OSMANY, J. This Appeal impugns the Judgment of the Learned Lahore High Court, Lahore in Criminal Appeal No. 688 of 2004 filed by the Appellant whereby same was dismissed.

2. Briefly stated the facts of the case are that the Respondent No. 1 Ch. Muhammad Saleem, Chief Engineer (North) Highway Department, Government of the Punjab, Lahore was tried by the Senior Special Judge, Anti Corruption, Punjab in FIR No. 26 of 1998 dated 11.04.1998 for offences under Sections 409/161 P.P.C. read with Section 5(2) of the Prevention of Corruption Act, 1947. The Learned Special Judge while allowing an application under Section 265-K Cr.P.C. acquitted the Respondent from the said charges. The Appellant/Complainant challenged such acquittal under Section 417 (2) of Cr.P.C. before the Learned High Court which as stated above

dismissed the Appeal on the ground that such right being a creature of the statute was specifically confined to the Federal Government under Section 10(2) of the Pakistan Criminal Law Amendment Act 1958, and so also it cannot be arrogated to the Appellant/ Complainant on the strength of Section 417(2-A) of the Cr.P.C. which provides that any person aggrieved from an order of acquittal by any Court other than a High Court may within 30 days, file an appeal against such order on the reasoning that where a Special Law is silent with regard to the right of filing an appeal, it cannot be inferred on the basis of general law.

3. In the Leave Granting Order (which was common in both Criminal Petition No. 394 of 2005 out of which the present Appeal arises and Criminal Petition No. 301 of 2001 which upon being converted was numbered as Criminal Appeal No. 464 of 2006 but since then the latter has been withdrawn) it has been noted that per Section 10 (1) of the Pakistan Criminal Law Amendment Act 1958 the High Court being the highest forum to which an Appeal from the Judgment of a Special Judge lies, therefore it retains the power of revision against the Judgment of a Special Judge which can be exercised suo moto under Section 439 of the Code of Criminal Procedure 1898. Furthermore it has been observed that the bar contained in sub-section (2) of the Act 1958 would be confined to the acquittal of a person tried by a Special Judge appointed by the Central government under Section 3 barring an appeal, except at the instance of a Public Prosecutor under the direction of the Central Government. Hence such restriction or legal bar, prima-facie, did not extend to an Order of acquittal passed by a Special Judge appointed under Section 3(ibid) by the Provincial Government. Leave was

therefore granted to consider, inter-alia, the question whether the High Court was legally barred from entertaining a criminal revision petition against the Judgment of a Special Court and whether the bar of maintainability of appeal contained in Section 10 (2) of the Act 1958 would be extended to a Special Court created under Section 3 of the Act 1958 by an appropriate Provincial Government.

4. Mr. Naveed Rasool Mirza, Learned Advocate General, Punjab appearing on Court call has submitted that Section 10 (1) creates a right of Appeal for any aggrieved person from the Judgment of a Special Court whether it has been set up by any Province or the Federal Government in accordance with Section 3 of the Act 1958. Hence no distinction can be made or the right of Appeal taken away from any such aggrieved person whether such Appeal be filed against acquittal, conviction or for that matter enhancement of the sentence. According to the Learned A.G. therefore Section 10 (2) cannot be read as to confine the right of Appeal against an Order of acquittal recorded by the Special Court to the Federal Government since at the most it is a corollary to the general right of Appeal contained in Section 10(1) (Ibid). Explaining further Learned A.G. Punjab has submitted that in Section 417 of Cr.P.C. only the Provincial Government has been authorized to file an Appeal to the High Court from an original Order of acquittal passed by any other Court and hence the right of Appeal against an acquittal was conferred upon the Federal Government also by said sub-section. He has therefore submitted that the impugned Judgment is defective to the extent that it did not consider the ramifications of Section 10(1) of the Act 1958.

5. Mr. Ch. Muhammad Waheed, Learned Additional Prosecutor General, Punjab has fully supported the arguments of the Learned Advocate General and so also Mr. Munir Ahmad Bhatti,

learned ASC appearing for the Appellant and in this regard has relied upon Federal Government of Pakistan through Director, Intelligence and Investigation, Customs and Excise Vs. Akhtar Javed (2002 YLR 2444) and The State through Collector Customs and Excise, Quetta Vs. Azam Malik and others (PLD 2005 SC 686).

6. Mr. M. Inayatullah Cheema, Learned ASC appearing for Respondent No. 1 has fully supported the impugned Judgment while submitting that an Appeal was a creature of the statute and hence no person/authority which was not specifically authorized to file an Appeal can do so. He has mainly relied upon Section 10 (2) of the Act (Ibid) which specifically authorizes the Federal Government to file an Appeal against the Order of acquittal passed by the Special Court and hence the Appeal in question before the Learned High Court having been filed by Appellant/Complainant was not at all maintainable.

7. We have heard the Learned Advocate General, Punjab as well as the Learned Additional Prosecutor General, Punjab and both the Learned ASCs.

8. It would be seen that the Pakistan Criminal Law Amendment Act 1958 is a special law which provides for the creation of Special Judges both by the Federal Government as well as the Provincial Governments who are empowered to take cognizance of and try offences committed by public servants as specified in the schedule appended to such Act. In this regard reference may be made to Sections 3, 4 and 5 of the Act. In the procedure to be followed by such special Judges for the trial of such offences the provisions of the Criminal Procedure Code 1898 would fully apply except those contained in Chapter XXXVII of said Code insofar as they are not

inconsistent with the Act. Such chapter only deals with the supplementary provisions regarding appointment of public prosecutors etc.. Again insofar as appeals are concerned Section 10 (1) of the Act provides that an appeal from the Judgment of a Special Judge shall lie to the highest Court having appellate jurisdiction in the territorial limits in which the offence is tried by the Special Judge and the same Court shall also have powers of revision. Thereafter Section 10 (2) provides that notwithstanding the provisions of Section 417 Cr.P.C., in any case tried by special Judge appointed by the central Government under Section 3, in which such Special Judge passed the order of acquittal the Federal Government may direct the public prosecutor to present the appeal to said Court as aforesaid.

9. Considering the aforementioned provisions of the Act 1958 it would be seen that per Section 10(1) the forum for filing an appeal from the Judgment of a special judge is the High Court and the same Court has also been given the powers of revision. However per Section 10 (2) only the Federal Government has been clothed with the power to file an appeal from an order of acquittal passed by such Special Judge. Nevertheless this would not then mean that the Provincial Government is denuded of the power of filing an appeal from an Order of acquittal passed by a Special Judge appointed by such Government or for that matter the accused would have no remedy of appeal against his conviction by any such Special Judge. To read as much into the provisions of Section 10 of the Act would certainly amount to denying access to justice to an accused person which would certainly be in violation of his fundamental rights as guaranteed under the Constitution particularly Articles 4 and 25 thereof and Article 10-A as an appeal is a continuation of the trial. So also it would be seen that the Special Court/Judge is a Court inferior

to the High Court and hence the High Court's revisional powers under Section 435 Cr.P.C. to check the correctness, legality or propriety of any finding or order recorded or passed by an inferior Court would not stand excluded particularly as the Act itself does not exclude the same. Consequently it would be quite appropriate to observe that any aggrieved person whether it be the Federal or the Provincial Government or an accused or a complainant could approach the High Court in appeal against either an order of conviction or acquittal or for that matter for the purpose of enhancement of a sentence passed by any Special Judge appointed under the Act 1958 and as much should be read into Section 10(1) of the Act. In this regard, it may also be observed that perhaps this was the legislative intent, as Section 10(2) of the Act was added to cater for the right of the Federal Government to file an appeal against acquittal as such right was not given to it under Section 417 Cr.P.C.

10. It may also be observed that in **Habib Bank Ltd. Vs. The State and 6 others** (1993 SCMR 1853) it was held that with reference to Offences in Respect of Banks (Special Courts) Ordinance (IX of 1984) that although such Ordinance was silent about the conduct of the proceedings of a trial, the provisions of the Code of Criminal Procedure, 1898 would apply as a special Court being a Court inferior to the High Court, its powers under Section 435 and 439 Cr.P.C. remained in tact inspite of the prohibitory and negative provisions contained in Section 10 of the Ordinance which only provides for an Appeal against a sentence passed by the Special Court and there is no provision for an appeal against an order of acquittal. So also this Court in the case of **Abdul Hafeez Vs The State** (PLD 1981 SC 352) while interpreting a similar provision of the Drugs Act held that sections 435 and 439 of Cr.P.C. are fully

attracted to the Drugs Act whereto there was no provision for filing an appeal against an order of acquittal by the Drugs Court. Finally in the case of **State Vs. Qaim Ali Shah (1992 SCMR 2192)** it was observed that none of the remedial powers enjoyed by the High Courts under the same are curtailed or superseded by the Suppression of Terrorist Activities (Special Courts) Act 1975.

11. For the foregoing reasons this Appeal is allowed. Criminal Appeal No. 688 of 2004 filed by the Appellant shall be treated as pending before the Learned High Court and shall be disposed of at the earliest convenience.

Judge

Judge

Judge

Islamabad, the

14th April, 2015

Atif*/

APPROVED FOR REPORTING