

In the Supreme Court of Pakistan
(Appellate Jurisdiction)

Present:

Mr. Justice Anwar Zaheer Jamali
Mr. Justice Umar Ata Bandial

C.P.L.A. No.689-L of 2015

(On appeal from order of Lahore High Court, Lahore
dated 4.3.2015 passed in W. P. No.9233 of 2014)

Kareem Nawaz Khan

Petitioner

Versus

The State through PGP & another

Respondents

For the petitioner: Mr. Abid Saqi, ASC

Respondents: N.R.

Date of hearing: 1.6.2015

Order

Anwar Zaheer Jamali, J – By this civil petition, leave to appeal is sought by the petitioner against the order dated 4.3.2015, in writ petition No.9233 of 2014, passed by learned Division bench of the Lahore High Court, whereby his petition under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, seeking the following relief, was dismissed:-

“For the foregoing reasons it is most respectfully prayed that by accepting the instant writ petition order dated 19.2.2014 passed by learned Special Judge, Anti-Terrorism Court, Sargodha may kindly be modified, application moved by the petitioner regarding the compromise having been arrived at between the petitioner and legal heirs of the deceased may kindly be accepted in respect of offence under section 7 read with section 21(I) of Anti-Terrorism Act of 1997 and the

petitioner may very graciously be acquitted of the charges against him forthwith.

Any other relief, which this Honourable court deems fit and proper may also be granted.”.

2. The brief facts of the case are that petitioner was the nominated accused in F.I.R. No.101 dated 30.6.2007, Police Station Moch, District Mianwali, for commission of offence under section 302 PPC, read with section 7 of the Anti-Terrorism Act 1997 (“the Act of 1997”), for committing *qatl-i-amd* of Mst. Qudsia Yasmeen, Karam Dad and Mst. Tasleem Akhtar. After the completion of investigation, he was sent up for trial before the Anti Terrorism Court, Sargodha, where, after conclusion of trial, vide judgment dated 2.2.2009, he was convicted and sentenced as under:-

- “(i) Under section 302(b) PPC, for *qatl-i-Amd* of Qudsia Yasmeen, Karam Dad and Tasleem Akhtar sentenced to death on three counts with direction to pay Rs.1,00,000/- on each account as compensation to legal heirs of deceased as required under section 544-A Cr.P.C. and in case of default in payment thereof, to undergo S.I. for six months. He is also burdened to pay *diyat* to the legal heirs of the deceased.
- (ii) Under section 7(a) of the Anti-terrorism Act, 1997, he was sentenced to death with fine of Rs.1,00,000/- and in case of default in payment of fine, to undergo S.I. for three years.
- (iii) Under section 21(L) of the Anti-Terrorism Act 1997, he was sentenced to undergo R.I. for five years alongwith with fine of Rs.20,000/-.”.

3. The above referred judgment of the Anti-Terrorism Court, Sargodha was challenged by the petitioner before the Lahore High Court, Lahore through criminal appeal No.187 of 2009, which was dismissed, vide judgment dated 16.11.2010, thus, all the sentences awarded to him were accordingly confirmed. These two judgments were then challenged by the petitioner before the Apex Court through criminal petition No.1245-L of 2010, which was dismissed and leave was refused, vide order dated 5.6.2012. In this manner, conviction of the petitioner, and the sentences awarded to him by the Anti-Terrorism Court attained finality.

4. On 20.9.2013, the petitioner filed an application under section 338-E PPC before the trial Court for effecting compromise with the legal heirs of the three deceased/victims of the occurrence, whereupon further proceedings, as required by law, were held and on that basis such application was allowed by the trial Court, vide its order dated 19.2.2014 to the extent of compoundable offences under section 302 PPC, while the conviction and sentence awarded to the petitioner under sections 7(a) and 21-L of the Act of 1997, being non-compoundable, were maintained. Against this order of the trial Court, on 3.4.2014 the petitioner preferred writ petition No.9233

of 2014 before the Lahore High Court, Lahore, which was heard and dismissed vide impugned order dated 4.3.2015.

5. We have heard Mr. Abid Saqi, learned ASC for the petitioner and perused the material placed on record. During his arguments, after summarizing the relevant facts, learned ASC has referred an order of this Court dated 23.4.2015, whereby making reference to an earlier order dated 22.4.2015, hearing of appeal No.1772 of 2008 and civil petition No.1708 of 2011 were adjourned and execution of sentence to the appellants/petitioners was suspended with the observation that the issue whether after compromise in an offence under section 302(b) PPC sentence under section 7 of the Act of 1997 can be maintained independently, was *sub-judice* before a larger Bench. Suffice it to say that leave granting order has no binding effect as against the settled legal proposition in this regard as discussed, *inter alia*, in the above cited cases.

6. The only short point for consideration before us is whether compounding of an offence under section 302(b) PPC with the legal heirs of the deceased will *ipso-facto* dilute the effect of conviction of an accused under section 7 of the Act of 1997 or once such conviction has been maintained upto the level of Supreme Court, subsequent compromise with the legal heirs of the

deceased will have no bearing on it, being a past and closed transaction.

7. Admittedly, the conviction and sentences awarded to the petitioner by the Anti-Terrorism Court, Sargodha had attained finality upto the level of Apex Court. The petitioner had, thereafter, moved an application under section 338-E PPC for effecting compromise with the legal heirs of the three victims of the occurrence, which was accepted to that extent by the trial Court in terms of the order dated 19.2.2014. However, his conviction and sentence under sections 7(a) and 21-L of the Act of 1997, being non-compoundable, were maintained. Before the High Court the legality and propriety of such order of the trial Court was re-examined in detail and the petition was accordingly dismissed with the observation that the offence under section 7(a) and 21-L of the Act of 1997, were independent and non-compoundable, therefore, the order of the trial Court was in accordance with law and needed no interference from the High Court.

8. In so far as the facts of the case are concerned, the same are not disputed. In this background as to the independent nature of conviction under the provisions of the Act of 1997, being non-compoundable, further guidance can be sought from the judgments of this

Court in the case of Muhammad Amin versus the State (2002 SCMR 1017), Muhammad Rawab versus the State (2004 SCMR 1170), Shahzad versus Judge, Anti-Terrorism Court (2005 SCMR 1162) and Muhammad Akhtar versus the State (PLD 2007 S.C. 447), which clearly provide that the offence under section 7(a) of the Act of 1997 is an independent one, which is non-compoundable, thus the sentence awarded under this provision of law is also independent to other sentences under section 302(b) PPC etc., which may be compoundable in nature. Therefore, in view of the bar contained in sub-section (7) of section 345 Cr.P.C., conviction of an accused under the Act of 1997 will remain intact despite compromise in other sentences in compoundable offence.

9. This being the position, we have no doubt in our mind to hold that the impugned order as well as the order of the trial Court, passed on the application of the petitioner under section 338-E PPC are in conformity with the relevant provisions of law, thus call for no interference.

10. As a result of above discussion, leave is refused and this petition is dismissed.

Islamabad,
1st June, 2015
Not approved for reporting.
Riaz

Judge

Judge

