

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

MR. JUSTICE MUSHIR ALAM

MR. JUSTICE DOST MUHAMMAD KHAN

CIVIL PETITION NO.332-P/2017

(On appeal from the judgment dated 9.5.2017 passed by the
Peshawar High Court, Bannu Bench in W.P.No.488-B/2016)

Govt. of KPK through Secretary Home & Petitioners
Tribal Affairs Department Peshawar & others

Versus

Mehmood Khan

Respondent

For the Petitioner : Mr. Umar Farooq Adam, Addl.AG-KPK

For the State : N.R.

Date of Hearing : 13.9.2017

JUDGMENT

Dost Muhammad Khan, J.— Government of KPK (the petitioner) seeks leave to appeal against the judgment of the Peshawar High Court, Bannu Bench, Bannu dated 9.5.2017, whereby the Constitution Petition of the respondent was accepted and he was allowed the benefit of section 382-B Cr.P.C. along with general and special remissions earned during the period of detention/imprisonment like his co-prisoners.

2. Learned Additional Advocate General, KPK urged with vehemence that if any Court omits to grant the benefit, referred to above, subsequently, the same cannot be sought through independent petition because that will amount to a review of the original judgment which is not permissible under the criminal law and criminal justice system.

3. The second limb of his submissions was that a cell

respondent inside the jail premises thus, he was denied remissions according to law.

4. The un-amended section 382-B Cr.PC. was couched in words/ language where for awarding benefit of detention period pending trial the Court was required to record reasons there for, however, after amendments, to refuse such concession the Court has to record reasons for such refusal.

5. In the present case, as has been rightly pointed out, while partly accepting the appeal against death sentence awarded under section 302 PPC to the respondent, it was reduced to life imprisonment, however, the learned Division Bench of the High Court conveniently ignored the mandatory provision of section 382-B Cr.PC, which was an omission of technical nature and not substantive one, which would not attract any bar to amend the original judgment but through the impugned judgment the omission made was rectified and the command of the law was given effect in letter and spirit.

6. It is the obligatory duty of the Judges to apply the correct law to a lis, and not of the litigant to point out the law applicable. Even the parties to a lis are under no obligation to hire the services of a lawyer/ counsel for pleading their case because the primary duty to do the justice and to apply the correct law to the facts of a case, is the exclusive duty of the Judges. This principle has a legitimate background based on well entrenched

‘law is written on the sleeves of the Judges and they are supposed to know each and every law by heart’, thus any inadvertent omission on the part of the Court/Judges shall not

deprive the party entitled to any relief if the law directs in clear language to be granted.

7. As highlighted and explained above, now extension of benefit of pre-conviction detention period be deducted from the sentence awarded is mandatory and for refusal to grant the same, cogent, strong and convincing reasons are to be recorded. In the instant case it was a simple omission on the part of the learned Bench of the High Court to look at the substance of the mandatory provision of section 382-B Cr.PC, thus it can be rectified at any stage and even the Jailer in whose custody the prisoner is undergoing sentence, is bound to award such benefit even if the judgment is silent unless the Court for cogent and convincing reasons has expressly refused to grant such benefit.

8. Similarly the general and special remissions earned by the other co-prisoners of the respondents if are denied to him, would amount to discriminatory treatment, prohibited by the command of Article 25 of the Constitution.

9. The Jail Manual, particularly Chapter 8 regulates the grant and refusal of remissions to prisoners, which requires no debate, however, the Federal Government through amendments in certain offences has denied such remissions, which are expressly mentioned therein.

10. In the instant case, allegedly a cell phone/ mobile respondents, however, whether any inquiry was held that for what purpose he was having it and whether it was actually recovered from his possession or someone else, is a question mark because on the mere statement of the lower staff he was netted into this

, it

was a useless article like a child toy and nothing more, therefore no rule of the jail manual permits to decline re-arrangements on this ground, thus the direction given by the High Court to grant special and general remissions to the respondents is fully justified in law. Both the submissions, on the basis of which this petition has been filed, appear flimsy and unfounded, rather against the mandatory provision of law. Therefore, this petition is found without legal merits and is dismissed. Leave to appeal is declined.

Copy of this judgment be sent to the Registrar of the Peshawar High Court and the Superintendent Jail where the respondent is confined.

Judge

Judge

Islamabad, the
13th September, 2017
Nisar/-