

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT: MR. JUSTICE EJAZ AFZAL KHAN
MR. JUSTICE MAQBOOL BAQAR
MR. JUSTICE MAZHAR ALAM KHAN MIANKHEL

CIVIL PETITION NO.826 OF 2016

(On appeal from the judgment dated 01.02.2016
passed by the Islamabad High Court, Islamabad
in ICA No.249 of 2015)

Asjad Javed @ Javed Akhtar

...Petitioner

VERSUS

**Federation of Pakistan thr. Secretary Interior,
Islamabad and others.**

...Respondents

For the Petitioner

Sardar Muhammad Latif Khan Khosa, Sr.ASC.
Ch. Akhtar Ali, AOR.

For the Respondents:

Mr. Sohail Mehmood, DAG.
Mr. M.S. Khattak, AOR
(R.1-2)
Mr. Razzaq A. Mirza, Addl. AG Pb.
(R-4)

Date of hearing

18.04.2017

ORDER

MAZHAR ALAM KHAN MIANKHEL, J.- This petition for leave to appeal has arisen out of judgment dated 01.02.2016 of the Islamabad High Court, Islamabad whereby the Intra Court Appeal of the respondent was allowed by the learned Division Bench in the following manner:

“In view of the above, we hold that the petition filed by the Respondent No.1 was not maintainable under Article 199 of the Constitution. We, therefore, allow the instant appeal and set-aside the impugned order. In order to claim any entitlement under Section 12 or any grievance relating to section 9(4) of the Ordinance, the Respondent No.1 shall be at liberty to approach the Competent Authority as defined

in clause (C) of section 2 of the Ordinance. We expect that if the respondent No.1 makes a representation to the Competent Authority the later shall consider the same, and thereafter proceed in accordance with the law.”

2. Learned counsel for the petitioner contended that the petitioner being a convict of the Crown Court in United Kingdom was entitled to be released as he has served out much of his corporal sentence of imprisonment by extending the remissions under section 12 of the Transfer of Offenders Ordinance, 2002 (XXXVII of 2002). He further argued that the High Court has fallen into an error of law by allowing the Intra Court Appeal of respondent in this behalf.

3. Learned Deputy Attorney General while supporting the judgment of the learned Division Bench of the High Court submitted that writ petition of the petitioner to seek remissions in his sentence of imprisonment was not maintainable and was rightly dismissed by the learned Division Bench of the High Court. He further argued that the petitioner is also entitled for the remissions under the relevant law in this behalf but for that purpose he was supposed to approach the concerned authority as was asked by the High Court.

4. Learned counsel for the parties were heard and the record of the case was perused. Perusal of the record would reveal that petitioner was arrested in United Kingdom on 23.12.2003 under the offence of conspiracy to supply drugs (196 kilogram of the powder containing Cocaine). He was tried and convicted by the Crown Court of United Kingdom (U.K.) and thereby was sentenced to imprisonment for a period of twenty five years on 23.7.2004. After serving about 6 years and 28 days sentence in U.K. petitioner was transferred to Pakistan pursuant to an agreement entered into between Government of Islamic Republic of Pakistan and Government of United Kingdom of Great Britain for

transfer of prisoners in view of the transfer of Offenders Ordinance 2002 (XXXVI of 2002) and was admitted in Central Prison Karachi on 21.8.2010. Thereafter, he managed to get himself released with the collusion of Mr. Ali Muhammad Malik, Section Officer (Law), Government of Pakistan, Ministry of Interior, Islamabad, but was arrested again on the intervention of Government of United Kingdom of Great Britain. The petitioner-convict through Constitutional Petition had questioned his arrest and also sought his release from the prison which was partially allowed but the Division Bench of the High Court by allowing the I.C.A. set aside the impugned order passed in the Writ Petition. Hence instant petition.

5. Before we proceed further it would be worthwhile to reproduce the relevant provisions of Transfer of Offenders Ordinance, 2002 (XXXVII of 2002).

2. **Definitions.**—In this Ordinance, unless there is anything repugnant in the subject or context.-

- (a).....
- (b).....
- (c) “Competent Authority” means the Secretary, Ministry of Interior and Narcotics Control (Interior Division) or any other person as the Competent Authority may be notified in official Gazette, authorize to exercise powers and perform functions, of the Competent Authority under this Ordinance;
- (d)
- ..
- ..

AND

“9. Inspector-General of Prisons to have the custody of an offender transferred to Pakistan.- (1)Every offender being transferred to Pakistan from any specified country, upon an order under Section 4 shall be formally handed over to the Inspector

nominated by the Competent Authority and the concerned Inspector-General of Prisons shall have the authority to keep such offender in custody in any place as may appear to him to be appropriate for giving effect to the sentence of imprisonment imposed on such offender in such specified country for the period of the sentence as if it were a sentence imposed by a Court in Pakistan.

(2) The enforcement of the sentence of imprisonment imposed on any offender who is transferred to Pakistan under sub-section (1) shall be governed by the laws of Pakistan.

(3) Notwithstanding anything contained in sub-section (2) the Competent Authority shall, unless otherwise specified in the agreement, be bound by the legal nature and duration of the sentence of imprisonment imposed on any offender transferred to Pakistan under sub-section (1).

(4) Where the legal nature and duration of the sentence of imprisonment imposed on any offender transferred under sub-section (1), is incompatible with any law of Pakistan, it shall be lawful for a Court of competent jurisdiction in Pakistan to adopt such sentence to make it compatible with laws of Pakistan provided however that the sentence as adopted by such Court in Pakistan corresponds, as far as practicable, to the sentence imposed on such offender in the specified country from which such offender was transferred to Pakistan.

AND

12. Remission and President's powers to grant pardon.—*(1) An offender who is transferred to Pakistan in terms of section 9 shall be subject to any remission of the sentence of imprisonment, imposed on him in the*

specified country where he was convicted, to which he may have become entitled to on the date of his transfer in accordance with the laws relating to remission of a sentence in force in such specified country.

2. Nothing in this Ordinance shall be so construed as to limit or take away the power of the President to grant pardon or remission of sentence to any offender under Article 45 of the Constitution of the Islamic Republic of Pakistan or by any other authority under any law of Pakistan for the time being in force.”

(Emphasis supplied)

6. Perusal of the above provisions of law regulating the Transfer of Offenders would reveal that the convict by competent Court of Law of specified country can be transferred to Pakistan pursuant to mutual agreement between the two countries and if the convict is transferred to Pakistan then he would be governed by the laws of Pakistan as if it was a sentence imposed by a Court in Pakistan and in case the sentence awarded to the convict is not compatible with the laws of Pakistan, a Court of competent jurisdiction in Pakistan can adopt such a sentence to make it compatible with the law of Pakistan. As far as pardon/remissions in the sentence of imprisonment awarded to an Offender is concerned, it can also be granted/extended to him under the Laws of Pakistan and he can also claim any remission of his sentence of imprisonment to which he became entitled to on the date of his transfer in accordance with law relating to the remissions of sentence in such specified country. When we asked the learned Senior ASC, is there anything in black and white to reflect that the offender had earned any remission during his imprisonment in U.K, he could not lay hand on any such order of the concerned authorities in U.K. We also asked the learned Senior ASC as to whether the offender was ever refused any remission, he had

earned, while serving his sentence of imprisonment in Pakistan but again he was unable to refer to any such refusal. Yes; the petitioner has to be dealt with under the law of the land to serve out his remaining sentence as provided in section 9(2) of the Transfer of Offenders Ordinance, 2002 (XXXVII of 2002) which also makes him entitled for grant of pardon or remission of sentence by the President of Pakistan under Article 45 of the Constitution of Islamic Republic of Pakistan or by any other authority under any law of Pakistan for the time being in force as provided in Section 12(2) of the Transfer of Offenders Ordinance, 2002 (XXXVII of 2002) but for that purpose he has to approach the concerned authority as defined in the Law to ask for the relief.

7. For what have been discussed above we are of the considered view that the learned Division Bench of the High Court while handing down the impugned judgment has not committed any illegality or irregularity. Resultantly, this petition having no merits is hereby dismissed and the leave asked for is refused.

8. The above are the reasons for our short order of even date which reads as under:-

“For the reasons to be recorded later, this petition being without merit is dismissed.”

Judge

Judge

Judge

Bench:-III
Islamabad
April 18, 2017
(Saeed Aslam)

Approved for reporting