Judgment Sheet

IN THE PESHAWAR HIGH COURT, ABBOTTABAD BENCH
JUDICIAL DEPARTMENT

Cr.Appeal No. 182-A/2025.

JUDGMENT

Date of hearing…….14.10.2025……...

Appellant (Muhammad Shahbaz) By Mr. Muhammad Ibrahim, Advocate.

Respondent (The Superintendent of Police and another) By Mr. Shoaib Ali, Additional General.

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AURANGZEB, J.- Appellant, Muhammad Shahbaz, was convicted under section 174 PPC and sentenced to ten (10) days simple imprisonment alongwith fine of Rs.1000/- and in default further undergo two (02) days S.I by learned Judge, Anti-terrorism Court, Hazara Division Abbottabad vide order dated 28.08.2025, which is impugned herein through instant appeal.

2. In essence, the appellant, who was cited as a prosecution witness in case FIR No. 464 dated 30.06.2024, registered under Section 11-B of the CNSA at Police Station Nawanshehr, failed to appear

before the learned trial Court despite having been duly served with summons. His non-appearance was treated as deliberate disregard of the lawful process of the Court. Consequently, the learned trial Court, exercising powers under Section 174 of the Pakistan Penal Code, proceeded to convict and sentence the appellant in the manner detailed in the preceding paragraph. Feeling aggrieved of such conviction and sentence, the appellant has approached this Court through the instant appeal, seeking setting aside of the impugned order on the grounds of alleged misappreciation of facts, non-consideration of genuine reasons for his absence, and violation of the principles of natural justice.

3. Learned counsel for the petitioner submits that the impugned order of conviction is without lawful authority and contrary to the mandatory provisions of Section 195 of the Code of Criminal Procedure, 1898 (Cr.P.C.). He contends that the trial Court itself could not take cognizance of the alleged offence under

Section 174 PPC, as the law expressly requires a written complaint to be made to a competent Magistrate before any prosecution can be initiated for offences enumerated in Sections 172 to 188 PPC. It is further argued that the act complained of did not occur “in the view or presence of the Court,” therefore, summary punishment under Sections 480–482 Cr.P.C. was wholly inapplicable.

4. Conversely, learned Assistant Advocate-General appearing for the State supports the impugned order, arguing that the petitioner, being a public servant, was duty-bound to obey the Court’s summons, and his willful absence amounted to defiance of judicial authority warranting penal action. However, he could not controvert the legal bar contained in Section 195 Cr.P.C. which limits the Court’s power to take direct cognizance of such offences.

5. I have carefully examined the record and given anxious consideration to the rival contentions. The

pivotal question that arises for determination is whether the trial Court was competent to convict the appellant under Section 174 PPC in the absence of a complaint filed under Section 195 Cr.P.C. by the Court itself or by an authorized officer.

6. Section 195(1)(a) Cr.P.C. clearly provides that no Court shall take cognizance of any offence punishable under Sections 172 to 188 PPC, except on a complaint in writing by the public servant concerned or by some other public servant to whom he is administratively subordinate. The purpose of this provision is to safeguard individuals from arbitrary prosecution for contempt-like disobedience and to ensure that only those cases which, in the opinion of the competent authority, warrant prosecution, are brought before a criminal Court.

7. In the present case, the learned trial Court, instead of making a written complaint to a competent Magistrate, proceeded to summarily convict the petitioner itself. This procedure is legally

unsustainable. An offence under Section 174 PPC pertains to non-attendance in obedience to an order from a public servant, and the cognizance of such offence is specifically barred unless the statutory condition prescribed by Section 195 Cr.P.C. is fulfilled. The trial Court thus acted in excess of its jurisdiction by assuming the role of both complainant and trial forum.

8. It is also well settled through numerous precedents of the superior Courts that failure to appear in response to a summons does not constitute an offence committed “in the presence or view of the Court.” Consequently, summary punishment under Sections 480 to 482 Cr.P.C. cannot be invoked. The proper course for the Court, in such circumstances, is to adopt coercive measures under the Cr.P.C. to compel attendance or, if prosecution is deemed necessary, to file a complaint under Section 195 Cr.P.C. for trial before the competent Magistrate.

9. In view of the above discussion, the impugned order of conviction recorded by the learned trial Court under Section 174 PPC is declared to be without jurisdiction and of no legal effect. The same is hereby set aside and appellant is hereby acquitted.

Announced:
14.10.2025

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