

ORDER SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Revision No. 16 of 2013,
Jehanzeb & 3 Others-VS-The State & Another:

| S. No. of order proceedings | Date of order/ proceedings | Order with signature of Judge and that of parties or counsel where necessary. |
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11-03-2013: Sardar M. Aftab Advocate for petitioner,
Mr. Tariq Mehmood Jehangiri, learned DA-G with Shamas SI,
Mr. Binyamin Abbasi, Advocate for respondent No.2.

ORDER
MUHAMMAD ANWAR KHAN KASI, CJ:

This Revision Petition challenges the order dated 11.02.2013, passed by Mr. Rafaqat Ahmed Khan Awan, learned Addl. Sessions Judge-VI [West] Islamabad, whereby the appeal of the appellants [petitioners herein] under **Section 408(b) Cr.PC** was returned for presenting before a appropriate forum as being coram non-judice within the purview of **Section 408(b) Cr.PC**.

2- It is inter alia contended that the appeal was filed by the petitioners-appellants against their conviction & sentence of seven years and fine of Rs.50,000/-, passed by Mr. Nasrumminallah, learned Judicial Magistrate Section-30 Islamabad, vide order dated 30.01.2013 and, therefore, the learned Addl. Sessions Judge as Appellate Forum had the jurisdiction over the matter, because the case was transferred to him by the leaned Sessions Judge West Islamabad. It is further contended that return of appeal is without any lawful justification and condemnation of petitioner without hearing. In support of his contentions, learned counsel relied upon case laws cited as **2005 P Cr L J 1435, 1991 MLD 2203 and 2006 YLR 1718** which are on the point that an appeal shall lie before a Sessions Court against an order of Magistrate Section 30 if a sentence of imprisonment for a term exceeding four years is passed.

3- Learned Deputy Attorney-General assisted by learned counsel for private respondent supported the impugned order by maintaining that an appeal against the conviction exceeding four years shall lie before the High Court within the purview of **Section 408(b) Cr. PC**, therefore, appeal merits outright dismissal.

4- Heard and record perused.

5- For convenience & ready reference, Section 408(b) Cr.PC is reproduced hereunder:-

408(b): When in any case an Assistant Sessions Judge [...] passes any sentence of imprisonment for a term exceeding four years, [...]the appeal of all or any of the accused convicted at such trial shall lie to the High Court:

6- The language of the above section is very clear and unambiguously state that a sentence of imprisonment for a term exceeding 4 years, passed by Assistant Sessions Judge, shall be appealable to the High Court, Magistrate / Judicial Magistrate finds no mentions in this section. It is evident that certain words from this section were omitted by Ordinance XII of 1972 and, therefore, the relevant section shall be main part of Section 408 Cr.PC which reads as under:-

Sec: 408. Appeal from sentence of Assistant Sessions Judge or [Judicial Magistrate]

“Any person convicted on a trial held by an Assistant Sessions Judge, [or any judicial Magistrate] [Special Magistrate] or any person sentenced under Section 349 [...] may appeal to the Court of Sessions.”

7- The proviso clause i.e 408(b) Cr.PC, therefore, is not applicable in the case of sentence, passed by a Magistrate under Section 30 Cr.PC.

8- The law on the subject is very specific. In case reported as **Aman Ullah-VS-The State** [2005 P Cr L J 1435] it was held that:-

“Section 408 (b), Cr.PC. read, “when in any case an Assistant Sessions Judge passes any sentence of imprisonment for a term exceeding four years, the appeal of all or any of the accused convicted at such trial shall lie to the High Court”. Reading of both forms of section 408 shows that words “or a Magistrate specially empowered under section 30” have been omitted in section 408(b). This omission is understandable and consistent with provisions of sections 6, 7, 9, 12, 17, 28, 30, 31, 32 and 34 of Code of Criminal Procedure. All the three Courts i.e. Assistant Sessions Judge, Additional Sessions Judge and

Sessions Judge are but one Court exercising jurisdiction in the same Sessions Division. The reason and logic of the amendment is that if a sentence is passed by an Assistant Sessions Judge exceeding 7 years, appeal against an order of Assistant Sessions Judge cannot be filed before a Sessions Judge since they are part of a one Court as noted above. Whereas, a Court of Magistrate may it be Magistrate of Section 30, is not part of Court of Session; the Court of Magistrate Section 30 belongs to a class of Magistrates. Therefore, appeal against the decision of Magistrate Section 30 lies before a Court of Session which is an immediate superior Court. A lot of confusion would have been avoided had Legislature itself provided in section 408(b) that appeal shall lie before a Sessions Court against an order of Magistrate Section 30 if it passes a sentence of imprisonment for a term exceeding four years."

9- Learned Addl. Sessions Judge Islamabad, instead of giving any interpretation based his findings on his "humble understanding" which do not find any support from any provision of law.

10- The perusal of impugned order shows that the learned Addl. Sessions Judge, passed the order without applying the judicial mind and wrote 408(b)-PPC instead of Section 408(b) Cr.PC. Such disposal of matter on judicial side cannot be considered as judicious decisions, therefore, without touching merits of the case on the point of conviction or sentence, the present petition is accepted, order dated 11.02.2013 is set-aside and the appeal filed before Mr. Rafaqat Ahmed Awan Khan, learned Addl. Sessions Judge Islamabad, shall be considered as pending, and shall be decided on its merits after hearing both the parties preferably within 30 days, as the case has already been delayed.

~~CHIEF~~ JUSTICE

M. Suhail
11-03-2013

APPROVED FOR REPORTING