

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Appeal No. 47/2020.

Akhanzada, etc

Versus

The State

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	22.04.2020.	Raja Shahzad Anwar, Advocate for appellants. Mr. Muhammad Atif Khokhar, State Counsel. Shams Akbar and Munir Khan, S.Is.

The question of maintainability of instant appeal has been raised, whereby, learned counsel for the appellants has been confronted with the proposition as to whether conviction awarded to the appellants by the Court of Judicial Magistrate, Section 30 (West), Islamabad could be challenged directly in this Court in terms of Appeal U/S 408 Cr.P.C., whereby he contends that relevant provision refers the concept of Assistant Sessions Judge in Section 408-b Cr.P.C. alongwith Judicial Magistrate, whereby sentence awarded to accused person exceeding 04 years, appeal shall lie to the High Court.

2. In view of above position, Section 408 Cr.P.C. is reproduced hereunder:-

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 Session:

Provided as follows

[(a) Clause (a) Rep by Act 12 of 1923. S 23]

(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.

(c) when any person is convicted by a Magistrate of an offence under section 124-A of the Pakistan Penal Code, the appeal shall lie to the High Court.

3. While considering the above provision, I have gone through the judgments reported as 2006 YLR 1718 (Khadim Hussain Vs. The State), 1991 MLD 2003 (Muhammad Yaqoob Vs. The State), 2005 P.Cr.LJ 1435 (Aman Ullah Vs. The State), PLD 2016 Lahore 255 (Abdul Waheed and another Vs. The State and others), 2013 MLD 1054 (Jehanzeb and 3 others Vs. The State and another), 1994 P.Cr.LJ 1973 (Muhammad Aslam Vs. The State), 1986 P.Cr.LJ 2702 (Allah Ditta Vs. The State) and 1986 P.Cr.LJ 634 (Moula Bux and others Vs. The State). From the examination of case laws and Section 408 Cr.P.C., it is very much obvious that in case of sentence of 04 years passed by Magistrate especially empowered U/S 30 then appeal would lie to the High Court whereas in this case judgment of conviction was passed by Judicial Magistrate, Section 30 who was not specially empowered, hence, appeal would lie to the Sessions Court, even otherwise, other two co-accused convicted in the same case have filed their appeals

before the learned Sessions Judge and present appellants directly approached this Court.

4. Learned counsel for the appellants has put much emphasis on the term "Assistant Sessions Judge" to justify his position regarding maintainability of appeal with the contention that relevant designation is equal to Magistrate as referred in Section 408(b) Cr.P.C. which gives an impression that appeal would lie to the High Court, such view has been considered by this Court but reason and logic of the reference of word "Assistant Sessions Judge" in the above mentioned provision could at the most be considered equal to the Court of Sessions Judge as both are noted to be as one Court whereas Court of Magistrate is not part of Court of Sessions and belongs to class of Magistrate, therefore, appeal against order of Magistrate would lie to the Court of Sessions, which is immediate superior Court, hence, while relying upon the case laws discussed above, instant criminal appeal alongwith record is returned to the appellants to be filed before the Court of learned Sessions Judge (West), Islamabad, who shall proceed in accordance with law or can transmit the same to the Court in which other appeals of co-accused are pending.

5. Instant Crl. Appeal stands disposed of in above terms.

(MOHSIN AKHTAR KAYANI)
JUDGE