

FORM NO.HCJD/C  
**JUDGMENT SHEET**  
IN THE ISLAMABAD HIGH COURT,  
ISLAMABAD

JUDICIAL DEPARTMENT

Crl. Misc. No. 42-M of 2014

**Murad Amir Shah.**

**Versus**

**The State.**

**Date of hearing:** 15.04.2014

**Petitioner by:** *Mr Jan Muhammad Khan, Advocate for the petitioner.*

**Respondents by:-** *Raja Khalid Mehmood Khan, Standing Counsel.  
Mr Nusrat Ali SI.*

**Riaz Ahmed Khan, J:-** This judgment is directed to dispose  
of petition under Section 561-A Cr.P.C. filed against the order of learned Sessions  
Judge West, Islamabad, dated 18-05-2013.

2. Brief facts of the case are that the petitioner / complainant lodged FIR No. 33 dated 23-01-2013, under Sections 324, 109, 34 PPC Police Station Golra, Islamabad, alleging therein that the accused / respondents had thrown acid on the petitioner, as a result of which his face and right hand had been effected. Main accused was arrested on the spot; whereas other accused had made his escape good. Originally the case was registered under Sections 324/34 PPC. Challan was submitted in the Court and the learned Judicial Magistrate Section-30, (West) Islamabad, at the time of framing of charge, added Section 336-B PPC. Since the punishment provided under Section 336-B PPC is Imprisonment for Life but not less than 14 years, so the learned Magistrate sent the case to learned Sessions Judge, (West) Islamabad for trial as the same was triable by the learned Sessions Judge. Learned Sessions Judge vide impugned order sent the case back to the Magistrate for trial and the said order has been impugned in the present petition.

3. Contention of learned counsel for the petitioner is that the case was triable by the learned Sessions Judge and order of sending back the case to the



Magistrate was illegal. It was further submitted that once the case was entrusted to the Sessions Judge, it could not be sent back, as the only way to send the case back to the Magistrate, was to set aside the order and remand the case.

4. On the other hand, learned Standing Counsel admitted that the case was triable by the learned Sessions Judge and the order of sending back the case to the learned Magistrate was not legal.

5. I have heard learned counsel for the parties and have perused the record.

6. Under Section 30 Cr.P.C. any Magistrate with the powers of Section-30, is authorized to try any case, where the sentence is not death. However Section 34 Cr.P.C. puts embargo on the Magistrate that the Magistrate cannot award sentence exceeding seven years. In the present case, Section 336-B PPC was added wherein minimum punishment is 14 years and learned Magistrate, could not award such punishment. The case was exclusively triable by the learned Sessions Judge and as such the order of sending the case back to the Court of Magistrate was illegal.

7. In the circumstances, impugned order is set aside with the direction that the case be entrusted to the Court of Sessions Judge for trial in accordance with law and rules.

8. In view of above mentioned facts, petition stands accented.

**(Riaz Ahmed Khan)**  
**Judge**

Approved for reporting.

Asad K/\*