

**2012 P.Cr.R. 809**

**[Lahore]**

**Present: MALIK SHAHZAD AHMAD KHAN, J.**

**Gulzar Hussain**

**Versus**

**Tehseen Khan etc.**

**Criminal Revision No. 579 of 2011, decided on 2nd June, 2011.**

**CONCLUSION**

**(1) Under Section 408(b), Cr.P.C. as amended, if the term of sentence, awarded by**

**Judicial/Special Magistrate or Magistrate S. 30, exceeds four years appeal shall**

**lie to the Court of Session.**

**(a) Criminal Procedure Code (V of 1898)---**

**---S. 408(b) (as amended by Law Reforms Ordinance (XII of 1972))---  
Provision of---**

**Mandate---In a case where sentence of imprisonment exceeding 4 years is passed by a**

**Magistrate Section 30, the appeal would lie before the Court of Session.**

**(Para 4)**

**SENTENCE OF IMPRISONMENT EXCEEDING 4 YEARS BY MAGISTRATE  
S. 30 ---**

**(Remedy)**

**(b) Criminal Procedure Code (V of 1898)---**

**---Ss. 439, 408(b) as amended by Law Reforms Ordinance (XII of 1972)---  
Pakistan**

**Penal Code, 1860, Ss. 420/406/467/468/471---Impugned sentence of imprisonment**

**exceeding 4 years---Contention was that appeal against impugned judgment would lie**

**to High Court and appeal filed by respondent-convict before Court of Session was liable**

**to be dismissed as not maintainable---Amended provisions---Effect---The words “or a**

**Magistrate specially empowered under Section 30” were omitted by Law Reforms**

**Ordinance (XII of 1972)---After said amendment under Section 408, Cr.P.C. in a case**

**where sentence of imprisonment exceeding 4 years passed by a Magistrate Section 30,**

**the appeal would lie before the Court of Session---Criminal review petition was**

**dismissed by High Court .**

**(Paras 4, 5)**

**Ref: 2005 P.Cr.LJ. 1435, 2006 YLR 1718.**

**Key Terms:- Sentence exceeding 4 years and remedy.**

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**[In instant case, respondent/accused was convicted by Magistrate S. 30 and sentence**

**to imprisonment exceeding 4 years, therefore, appeal before Court of Sessions was**

**competent. High Court dismissed criminal revision].**

**For the Petitioner: Syed Muhammad Nawaz, Advocate.**

**Date of hearing: 2nd June, 2011.**

**ORDER**

**MALIK SHAHZAD AHMAD KHAN, J. ---** Through the instant revision petition,

the petitioner has challenged the order dated 21.05.2011 whereby the learned

Additional Sessions Judge, Nankana Sahib has admitted for hearing the criminal appeal

filed by respondent No. 1 in case F.I.R. No. 137/2009 23.05.2009 offences under Sections 420, 406, 467, 468 & 471, PPC registered at Police Station Sangla Hill, District

Nankana Sahib. Respondent No. 1 was convicted and sentenced in the above case vide judgment dated 25.04.2011 passed by learned Magistrate Section 30, Nankana Sahib as under:---

I. Under Sections 406, PPC sentenced to 3 years' RI with fine of Rs.

5,00,000/- or in default thereof to further undergo 9 months' SI.

II. Under Section 420, PPC sentenced to 7 years' RI with fine of Rs.

5,00,000/- or in default thereof to further undergo 1½ year's SI.

III. Under Section 467, PPC sentenced to 7 years' RI with fine of Rs.

5,00,000/- or in default thereof to further undergo 1½ year's SI.

IV. Under Section 468, PPC sentenced to 7 years' RI with fine of Rs.

5,00,000/- or in default thereof to further undergo 1½ year's SI.

V. Under Section 471, PPC sentenced to 7 years' RI with fine of Rs.

5,00,000/- or in default thereof to further undergo 1½ year's SI.

Respondent No. 1, thereafter filed an appeal which was admitted for hearing by the learned Additional Sessions Judge, Nankana Sahib vide his impugned order dated 21.05.2011.

2. It is contended by the learned counsel for the petitioner that respondent No. 1 was awarded sentence of imprisonment exceeding four years, therefore, the appeal would lie before High Court . It is added that in light of provisions of Section 408(b), Cr.P.C., the appeal in such-like cases would lie before this Court and impugned

order whereby appeal has been admitted for regular hearing is liable to be set aside. He

has lastly argued that as judgment of conviction against respondent No. 1 was passed by Magistrate Section 30, therefore, appeal against said judgment is not maintainable in

Sessions Court. In support of the above contentions, learned counsel for the petitioner

has placed reliance on cases reported as "Khadim Hussain v. The State" (2006 YLR

1718) and "Muhammad Yaqoob v. The State" (1991 MLD 2203).

3. Arguments heard. Record perused.

4. Respondent No. 1 was convicted by Magistrate Section 30, Nankana Sahib and was sentenced as per detail given above. The relevant provision of law which deals with the instant case is Section 408 of Criminal Procedure Code, 1898. The said provision is reproduced hereunder:---

"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, 1860 the appeal shall lie to the High Court .

It is evident from bare reading of Section 408, Cr.P.C. that any person who is convicted

on a trial held by Judicial Magistrate, Special Magistrate or sentenced under Section 349, Cr.P.C. may appeal to the Court of Sessions. So far as sub-section (b) of Section 408, Cr.P.C. is concerned it is clearly mentioned in the said provision that in any case if

Assistant Sessions Judge passes any sentence of imprisonment for a term exceeding four years, the appeal of accused convicted at such trial shall lie to the High Court. The

said Section deals with the sentences passed by an Assistant Sessions Judge whereas the judgment of conviction of respondent No. 1 has not been passed by an Assistant Sessions Judge, the same has been passed by Magistrate Section 30, Nankana Sahib.

In the above-referred case of "Muhammad Yaqoob v. The State" (1991 MLD 2203), the

judgment was passed in light of un-amended provisions of Section 408(b), Cr.P.C.

Section 408(b) of Cr.P.C. as it stood before amendment is reproduced here-under:-

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"When in any case an Assistant Sessions Judge or a Magistrate specially empowered under Section 30 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 ."

The appeal, under the said un-amended provision of Criminal Procedure Code, 1898 was competent before High Court against the judgment passed by a Magistrate Section

30, wherein sentence of imprisonment for a term exceeding four years was awarded to

the accused. The words "or a Magistrate specially empowered under Section 30", were

omitted by Law Reforms Ordinance (XII of 1972), therefore, after the above-said amendment under Section 408, Cr.P.C. in a case where sentence of imprisonment exceeding 4 years is passed by a Magistrate Section 30, the appeal would lie before the

Court of Sessions. The same view was taken by this Court in above-referred case of "Khadim Hussain v. The State" (2006 YLR 1718). I am also fortified on the above-mentioned point of law by a judgment of Hon'ble Division Bench of this Court in case of

"Amanullah v. The State" (2005 P.Cr.L.J. 1435).

5. In the light of above discussion, it is clear that under Section 408(b), Cr.P.C. as amended by Law Reforms Ordinance (XII of 1972), if the term of sentence, awarded by Judicial/Special Magistrate or Magistrate Section 30, exceeds four years, appeal shall lie to the Court of Sessions, therefore, this petition is without any force and

the same is hereby dismissed in limine.

Criminal revision petition dismissed.