

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
BANNU BENCH

(Judicial Department)

Cr.A No. 103-B of 2018.

Muhabat Khan etc
Vs
The State etc

JUDGMENT

Date of hearing 01/11/2018.

Appellant-Petitioner: **Muhabat Khan &**
Amin sons of
Muhammad Sharif
Khan in Person.

Respondent: **By Qudrat Ullah Khan**
Gandapur, Asstt: AG.

SHAKEEL AHMAD, J.- This appeal is directed
against the judgment of learned Additional
Sessions Judge-III, Lakki Marwat dated
19/04/2018, whereby Cr. Appeal No.11, filed by
the appellant was dismissed by upholding the
judgment/ order dated 14/04/2018 of the learned
SCJ/Judicial Magistrate, empowered with Section
30 Cr.P.C, whereby bail bonds, furnished by the

appellants were forfeited to the State and they were directed to pay a penalty of Rs.60,000/- each, in default they shall undergo further SI in civil prison for three months.

2. The petitioner stood sureties of one Shafi Ullah an accused nominated in Crime No, 401 dated 12.7.2013, registered U/Ss. 324/353 PPC r/w Section 13 AO registered at PS Lakki District Lakki Marwat; but on failure of the said accused to appear on the date fixed for hearing, the learned trial Court cancelled his bail, forfeited surety bonds directed the petitioners to deposit the amount of Rs.60000/- each as penalty out of amount of surety Rs.80000/- vide order dated 14.4.2018 passed by the learned Senior Civil Judge/Judicial Magistrate empowered U/S. 30 Cr.P.C, Lakki Marwat. Being aggrieved by the said order, the petitioners filed criminal revision U/S. 435 & 439-A Cr.P.C instead of appeal U/S. 515 Cr.P.C, before the learned Sessions Judge, Lakki, which was marked for disposal to the Additional Sessions Judge-III, Lakki Marwat.

Vide order dated 19.4.2018, the learned Additional Sessions Judge-III, Lakki Marwat dismissed the same, hence, this appeal.

3. The petitioners contended that they had stood surety for Shafi Ullah accused being his uncle, purely out of benevolence, and they got no benefit for this act. It was further urged that the accused is wanted to the local police in a murder case and has gone into hiding. They made their best efforts to produce him, but in vain and his whereabouts is not known to them. They lastly contended that imposition of penalty upon each petitioner is harsh and prayed for its reduction.

4. The learned Asst: A.G appearing on behalf of the State has got no objection on reduction of penalty imposed upon the petitioner.

5. I have considered the contentions of the petitioners and have gone through the record.

6. A plain reading of Section-515 Cr.P.C reveals that all orders passed by any

Magistrate is appealable to the Sessions Judge or if no appeal is preferred against any such order, may be revised by the Sessions Judge suo moto. In the instant case, the petitioner being aggrieved by the order of the Judicial Magistrate passed U/S. 514 Cr.P.C, filed criminal revision before the learned Sessions Judge instead of appeal as provided U/S. 515 Cr.P.C, and after dismissal of criminal revision by the learned Additional Sessions Judge, filed criminal appeal. However, instead of going into technicality, their appeal filed before the learned Sessions Judge decided by Additional Sessions Judge-III is treated as criminal appeal and this appeal is treated as Criminal Revision in the interest of justice.

7. Perusal of the record reveals that the petitioners stood surety of the accused Shafi Ullah out of benevolence and not for ulterior motive or monetary gain, therefore, they are not to be treated harshly nor punished severely without there being extra ordinary circumstances. The accused Shafi Ullah for whom the petitioners had stood surety is fugitive

from law in a murder case and as such it is humanly not possible for the petitioners to ensure his availability before the Court and further taking into consideration financial position of petitioners, I hold that forfeiture of bonds, submitted by the petitioners to the extent of Rs.60,000/- each shall be aggressive, hence, the petitioners deserve leniency. In this behalf reliance can be placed on the following judgments:-

- (1) ***Sardar Khan & others V. The State 1969 P.Cr.L.J 447.***
- (2) ***Ghulam Haidar V Karim Bakhish PLD 1963 SC 47.***
- (3) ***Muhammad Khan Vs The State 1986 P.Cr.L.J 2028.***
- (4) ***Bahadur Khan V The State 1976 P.Cr.L.J 1283 and***
- (5) ***Dilshad Alam V The State 2000 P.Cr.L.J 172.***

8. Taking all the circumstances into account, I consider that the amount of Rs.60,000/- need not have been required from them and that in all the circumstances their default will be adequately punished by requiring each of them to pay Rs.40,000/-, and this

revision petition is allowed to that extent. The bond shall be forfeited to the extent of Rs.40,000/- each. Order accordingly.

Announced.
01.11.2018.

J U D G E