

PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Date of Order or Proceedings	Order/Proceedings with Signature of Judge.
21.11.2019	<p><u>W.P No.5617-P/2019</u></p> <p>Present:</p> <p>Mr. Shabir Hussain Gigyani, Advocate, for the petitioner.</p> <p>Mr. Rab Nawaz Khan, AAG, for respondents.</p> <p>****</p> <p><u>AHMAD ALI, J.</u> Through the petition in hand, filed under Article 199 of the Constitution of Islamic Republic of Pakistan, 1973, the petitioner (Fazal-e-Haq) has prayed this Court for the following relief:-</p> <p><i>“It is most respectfully prayed that this Hon’ble Court may graciously be pleased to issue a writ in favour of the petitioner by directing the respondents</i></p> <p><i>i. To direct reduction of 02 years SI in default of payment of fine to 06 months;</i></p> <p><i>ii. To direct concurrent running of substantial imprisonment with the imprisonment in default of payment;</i></p> <p><i>iii. To grant any other adequate remedy or remission not specifically asked but deemed fit by this august Court. ”</i></p> <p>2. In essence, the petitioner, after having been</p>

tried by the learned trial Court in a criminal case under section 9-C CNSA, 1997, was convicted and sentenced to 14 years RI with fine of Rs.500,000/- or in default thereof to suffer 02 years S.I. It is further averred in the petition that the convict/petitioner has already served 06 years & 11 months of his substantial sentence while has earned 07 years & 9 months remission and his date of release has already expired on 15.02.2019, but he is still behind the bars and serving the simple imprisonment of 2 years in default of payment thereof, hence the instant writ petition.

3. Before parting with this order, it is necessary to have a look at the provision of Section-65 of the Pakistan Penal Code (PPC) which reads as under:-

“S.65. Limit to imprisonment for non-payment of fine, when imprisonment and fine awardable.—The term for which the Court directs the offender to be imprisoned in default of payment of a fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed for the offence, if the offence be punishable with imprisonment as well as fine.”

Bare perusal of above section of law reveals that it does not provide minimum but contemplates maximum i.e. not more than 1/4th of a sentence actually passed by Trial Court. Section 35, Cr.P.C. empowers Trial Court to allow substantive sentences to run concurrently, but this power is not conferred

upon it, in case of sentence or sentences provided in lieu of default of payment of fine. Sentence of imprisonment in lieu of default of payment of fine is a separate and distinct punishment and is in addition to the main sentence or substantive sentence. No Court has power to direct that sentence in default of payment of fine shall run concurrently with substantive sentences or even when sentences of fine are awarded for more than one offences. Section 65-P.P.C. only governs the question of sentence in lieu of default in payment of fine and S.35, Cr.P.C. only deals with the substantive punishments. Section 65-P.P.C. refers to 1/4th of a "sentence" and not of "sentences". Reliance could be placed on case titled **“Mian Khan v. Government of the Punjab and others”** reported in **2005 P.Cr.L.J 627 & PLD 2008 Lahore 497.**

4. Even otherwise, the sentence in lieu of payment of fine awarded to the present petitioner is 02 years S.I, whereas the maximum punishment awarded to him for the offence is 14 years R.I. If reckoned with ratio of 1/4th in light of provision of Section 65-PPC referred to above, the sentence in default of payment of fine would become 3 & ½ years. Therefore, the learned trial Court has fully complied with the governing provision and also

	<p>shown its leniency in awarding the default sentence, which cannot, at all, be reduced, by this Court while exercising the Constitution jurisdiction under Article 199.</p> <p>5. In view of the forgoing discussion, the instant writ petition, being meritless, is dismissed, in limine.</p> <p>Announced; 20.11.2018</p> <p><i>J U D G E</i></p> <p><i>J U D G E</i></p>
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