

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)

Cr.M.BA. No.99-D/2017.

JUDGMENT

Date of hearing: **30.3.2017.**

Appellant-Petitioner Mr. Muhammad Salim Marwat
advocate.

Respondent State by Adnan Ali Khan Assistant
Advocate General & Mr. Sheikh Iftikharul Haq
Advocate

MUHAMMAD AYUB KHAN, J.- Petitioner

Rafiq-ur-Rehman was booked under Section 489-F PPC vide FIR No.374 dated 19.5.2016 of police station City, Tank. He applied for bail and his bail application was accepted by learned Judicial Magistrate-I, Tank on 25.5.2016. Respondent No.2/complainant moved application under Section 497(5) Cr.P.C. for cancellation of bail. Vide order dated 30.6.2016, learned Sessions Judge, Tank accepted the bail cancellation application. Dissatisfied with the aforesaid order, present application has been submitted.

2. Arguments heard and record perused.

3. Perusal of record reveals that impugned order dated 30.6.2016 of learned Sessions Judge, Tank was recorded in absence of accused-petitioner. There is nothing on record to show that accused was ever summoned or his sureties were put on notice.

4. Learned Sessions Judge, Tank was at fault to decide BCA in the absence of accused-petitioner, which is nullity in the eye of law, hence impugned order is set aside. Record of the case be sent back to the Court of learned Sessions Judge, Tank with the direction to hear the BCA in the presence of accused-petitioner and then to decide it in accordance with law. Needless to say that the BCA shall be deemed to be pending before learned Sessions Judge, Tank. Accused/petitioner be also released in the manner while he will remain on bail till the decision by Sessions Judge, Tank in BCA, on the strength of bail bond already submitted pursuant to order dated 25.5.2016 of Civil Judge/Judicial Magistrate-I, Tank. This order is made by invoking provisions of Section 439, Cr.P.C., as the impugned order is incorrect, illegal and against administration of criminal justice.

Announced
Dt: 30.3.2017.

JUDGE