

Judgment Sheet
**IN THE LAHORE HIGH COURT,
MULTAN BENCH, MULTAN
JUDICIAL DEPARTMENT**

Criminal Appeal No.669 of 2023
Ahmad Muneel VERSUS The State etc.

JUDGMENT

Date of Hearing:	26.06.2023
Appellant by:	Syed Musa Raza Shah, Advocate.
Respondent by:	Mr. Zawar Hussain Qureshi, Assistant Attorney General.

SAFDAR SALEEM SHAHID, J.– The instant appeal has assailed order dated 17.06.2023, whereby the learned Additional District Judge, Multan has convicted the appellant under Section 228, P.P.C. and sentenced him to 07 days.

2. Brief facts necessary for decision of the instant appeal are that the appellant Ahmad Muneel S.I./F.I.A. was summoned as a witness, being a raiding officer in a case titled “The State vs. Muhammad Nasir”, registered under Sections 3 and 4 of the Money Laundering Act, 2010, but since he was avoiding to appear on the pretext that he was busy before the High Court without pointing out any specific case, the learned trial Court issued him a show cause notice under Section 228, P.P.C. for deliberately causing hindrance in the judicial proceedings as well as show cause notice under Section 155-C, Police Order, 2002. However, on the next date neither the appellant appeared before the Court nor filed reply to the show cause notice, therefore, the learned trial Court convicted and sentenced him in the above terms.

3. Arguments heard. Record perused.

4. Record reveals that in the afore-referred case the appellant was present before the trial Court as PW on 14.06.2023, but his statement could not be recorded. However, the appellant did not appear on next two consecutive dates i.e. 15.06.2023 & 16.06.2023. It was informed by the SHO concerned on 16.06.2023 that the appellant was avoiding to appear on the pretext that he was busy

before the High Court and the learned trial Court keeping in view the said statement issued him show cause notice for deliberately avoiding appearance before the Court and causing hindrance in the judicial proceedings. However, when the appellant again did not appear on the date fixed or submit reply to the show cause notice, the learned trial Court convicted and sentenced him under Section 228, P.P.C. with the observation that he was deliberately and intentionally disobeying the direction of Court and creating hindrance in the judicial proceedings.

5. In order to properly appreciate the contentions of the parties it would be appropriate to go through the provisions of Section 228, P.P.C. as also the definitions of 'contempt of Court', 'violation' and 'disobedience'. Section 228, P.P.C. reads as under:--

"S.228.---Intentional insult or interruption to public servant sitting in judicial proceedings. Whoever intentionally offers any insult, or causes any interruption to any public servant, while such public servant is sitting in any stage of a judicial proceeding, shall be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to three thousand rupees, or with both."

The Contempt of Court has been defined in section 3 of the Contempt of Court Ordinance, 2003, which reads as under:--

"S.3.---Whoever disobeys or disregards any order, direction or process of a Court, which he is legally bound to obey or commits a willful breach of a valid undertaking given to a Court or does anything which is intended to or tends to bring the authority of a Court or the administration of law into disrespect or to disrepute, or to interfere with or obstruct or interrupt or prejudice the process of law or the due course of any judicial proceedings, or to lower the authority of a Court or scandalize a Judge in relation to his office or to disturb the order or decorum of a Court, is said to commit "Contempt of Court."

Violation means an act of irreverence or desecration, whereas disobedience means refusal or failure to obey rules, laws, etc.

6. It is apparent from the plain reading of Section 228, P.P.C., reproduced above, that mens rea/intention to offer any insult or to cause any interruption are necessary ingredients for constituting an offence under Section 228, P.P.C. As such the only point to be

determined would be ‘whether act of the appellant amounted to intentional insult and/or interruption to public servant while such public servant was sitting in any stage of a judicial proceeding’.

7. It is settled that a man is responsible, not for his acts in themselves, but for his acts coupled with the mens rea or guilty mind with which he did those acts. Before penalizing a person the Court must be satisfied that an act has been done which, by reason of its harmful tendencies or results, is fit to be repressed by way of penal discourse and that the mental attitude of the doer towards his deed was such as to render punishment effective as a deterrent for the future. Criminal liability may require the wrongful act to be done intentionally or with some further wrongful purpose in mind, or it may suffice that it was done recklessly and in each case the mental attitude of the doer is such as to make punishment effective. Similarly, an intention is the purpose or design with which an act is done. This may consist of an intention to perform some further act, an intention to bring about certain consequences or perhaps merely an intention to do the act itself.

8. It is also well-settled that in order to hold and determine that accused/contemner actually contravened the law of contempt of Court, all the circumstances relating to the act of contempt will have to be scanned and scrutinized. The contempt has been classified by the American Encyclopedia of Law and Procedure, in four categories i.e. direct, constructive, criminal and civil:

- a. A direct contempt is open insult in the presence of the Court to the person of the presiding judge, or defiance in his presence to his powers or authority.
- b. A constructive contempt is an act done in the presence of the Court but at a distance which tends to be little, to degrade or to obstruct, interrupt, prevent, or embarrass the administration of justice.
- c. A criminal contempt is conduct that is directed against the dignity and authority of the Court. Acts punishable as criminal contempt are in the nature of crimes, in that they involve the idea of punishment as a penalty for the commission of the unauthorized act.

- d. A civil contempt consists in failing to do something ordered to be done by a Court in a criminal action for the benefit of the opposing party therein.

Admittedly, the trial Court has powers to punish for committing the Contempt of the Court under section 228, P.P.C., but it was to be seen that the act of contempt by disobeying/violating the order was committed on the face of the Court. However, in the instant case the appellant was not present before the Court and there was a request for adjournment on the ground that he was busy before the High Court, when the trial Court issued notice under Section 228, P.P.C. observing that he was deliberately and intentionally avoiding to appear before the Court, without having conducted any inquiry with regard to his presence before the High Court on that date. The appellant was also not present before the Court when he was held guilty of contempt of Court as against the afore-referred categories of contempt of Court, as in the first two categories, the words used are ‘in presence of the Court’, whereas the third category relates to criminal contempt are in the nature of crimes and fourth category consists in failing to do something ordered to be done by a Court in a criminal action for the benefit of the opposing party therein. Admittedly, neither the appellant acted in violation/disobedience of any order in presence of the Court, as required in first two categories, nor his acts were in the nature of crimes punishable under third category, or for benefit of other party as required by fourth category.

9. So far as the acts of ‘violation’ and ‘disobedience’ allegedly committed by the appellant, punishments for the same have been provided in the Code of Criminal Procedure, as such the trial Court erred in law in holding the appellant guilty of contempt of Court for the said acts. Even otherwise, procedure has been provided in the Criminal Procedure Code in certain cases of contempt. Section 480 Cr.P.C. emerges that when any such offence as is described in Section 175, Section 178, Section 179, Section 180, or Section 228 of the P.P.C. is committed in the view or presence of any Civil,

Criminal or Revenue Court, the Court may cause the offender to be detained in custody and at any time before the rising of the Court on the same day may, if it thinks fit, take cognizance of the offence and sentence the offender to fine not exceeding two hundred rupees; and, in default of payment to simple imprisonment for a term which may extend to one month, unless such fine be sooner paid. Section 481, Cr.P.C. further emerges that (1) in every such case the Court shall record the facts constituting the offence, with the statement (if any) made by the offender, as well as the finding and sentence and (2) if the offence is under Section 228, P.P.C., the record shall show the nature and stage of the judicial proceedings in which the Court interrupted or insulted was sitting and the nature of the interruption or insult. Section 482, Cr.P.C. further provides that (1) if the Court in any case considers that a person accused of any of the offences referred to in Section 480, Cr.P.C. and committed in its view or presence should be imprisoned otherwise than in default of payment of fine, or that a fine exceeding two hundred rupees should be imposed upon him or such Court is for any other reasons of opinion that the case should not be disposed of under Section 480, Cr.P.C., such Court, after recording the facts constituting the offence and the statement of the accused as hereinbefore provided, may forward the case to a Magistrate having jurisdiction to try the same and may require security to be given for the appearance of such accused person before such Magistrate, or if sufficient security is not given shall forward such person in custody to such Magistrate and (2) the Magistrate, to whom any case is forwarded under this section, shall proceed to hear the complaint against the accused person in the manner hereinbefore provided.

10. From the plain reading of the provisions of the above mentioned sections of the Code of Criminal Procedure, it reveals that a specific procedure has been provided in law for punishing a contemnor under section 228, P.P.C. He can be punished under section 480 of the Code of Criminal Procedure till the rising of the Court and to pay a fine not exceeding two hundred and in default of

the payment to simple imprisonment for a term which may extend to one month. The procedure provided in Section 480, Cr.P.C. is attracted to the cases where the Court in whose view or presence the contempt has been committed or the Court, which has been insulted or the proceedings have been interrupted by the offender.

11. Section 480 Cr.P.C. deals with what is known as direct Contempt of Court and in such an exigency, the Court has an option to proceed either under section 480, Cr.P.C. or under section 476, Cr.P.C. The alleged acts of ‘violation’ or ‘disobedience’ would not be taken as interference or interruption in the Court's work. Although the trial Court had jurisdiction to convict any person for committing contempt of the Court, but only in the circumstances mentioned in Section 228, P.P.C. The law has provided the procedure for proceeding against a contemnor who committed contempt of Court or insulted the Court on its face. In such-like cases, the Court is bound to follow the procedure provided in Sections 480 and 476, Cr.P.C. and where the Courts have not followed the procedure provided in section 480, Cr.P.C. the conviction and sentence are not maintainable. In this context, reference can be made to the cases of *Haji Khawar Saleem vs. The State* (2000 SCMR 1856), *Muhammad Mushtaq vs. State* (PLJ 2003 SC 450), *Agha Siraj Khan Durrani vs. The State* (2000 P.Cr.L.J. 1329) and *Muhammad Afzal vs. State* (PLJ 2015 Cr.C.(Lahore) 433).

12. For the foregoing reasons and following the dictum laid down in the precedents (supra), the instant appeal is accepted, the impugned order dated 17.06.2023 awarding conviction & sentence to the appellant is set aside and he is acquitted of the charge.

(Safdar Saleem Shahid)
Judge

Approved for reporting

Judge