

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

FORM 'A'
FORM OF ORDER SHEET

Date of Order or Proceedings	ORDER OR PROCEEDINGS WITH SIGNATURE OF JUDGE/JUDGES
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03.10.2017	<p><u>Review Petition NO. 07-A/2017.</u></p> <p>Present:- M. Arshad Awan Advocate for petitioner. Mr. Yasir Zahoor Abbasi, AAG for the State.</p> <p>***</p> <p><u>Syed Arshad Ali J.-</u> Through the instant criminal review petition, the petitioner seeks review of the order dated 15.09.2014, whereby appeal of petitioner against the judgment passed by learned Special Judge Anti-Corruption (Provincial) Khyber Pakthunkhwa Campat Abbottabad on 16.11.2012 was dismissed.</p> <p>2. The petitioner was sentenced the learned Special Judge Anti-Corruption to undergo</p> <p>i. 3 years RI with a fine of Rs. 500,000/- or in default thereof shall undergo six months SI under Section 471 PPC.</p> <p>ii. 2 years RI with a fine of Rs. 300,000/- or in default thereof shall undergo six months SI under Section 5 (2) PC Act.</p> <p>Along with the appeal, the petitioner also filed an application under Section 426 Cr.P.C. This Court vide order dated 26.12.2011, allowed the said application and ordered the</p>

	<p>release of petitioner on bail subject to furnishing of bail bonds in the sum of Rs. 100,000/- with two sureties each in the like amount. On 18.11.2013, since the petitioner was absent when the case came up for hearing, hence, non-bail-able warrant of arrest were issued against him as well as against sureties. However, the sureties of the petitioner filed an application for cancellation of the warrant of arrest which came up for hearing before this Court on 08.07.2014. This Court was pleased to cancel the warrant of arrest issued against the sureties with the directions that they shall produce the present petitioner on 11.08.2014. The order sheet dated 11.08.2014 shows that “Present: parties in persons” and on the request the case was adjourned. On 28.08.2014 again the order sheet reflects “Present: the parties in person”. However, due to the absence of the learned counsel for the parties, case was adjourned. The case finally came up for hearing on 15.09.2014 before this Court. This Court vide order dated 15.09.2014 dismissed the appeal of the present petitioner and also ordered forfeiture of the bail bonds and initiation of proceeding under Section 514-A Cr.P.C. This Court has specifically mentioned in Para 3 of the judgment dated 15.09.2014, “On merit, the prosecution has proved the charge against the convict/appellant, beyond any shadow of doubt and as such he was rightly convicted and sentenced by the trial Court”.</p>
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	<p>3. Along with the review petition, the petitioner has also filed an application for condonation of delay in filing the review petition.</p> <p>4. Mr. Muhammad Arshad Awan, learned counsel appearing on behalf of the petitioner has argued that through the impugned order the appeal was not dismissed on merit and this Court while dismissing the appeal, has not appreciated the evidence. He further argued that indeed the petitioner was present before this Court on the date preceding on which the impugned order was passed, however, this fact was not brought to the notice of this Court, hence the impugned order has been procured through misrepresentation, hence review petition is maintainable. He has relied on “Manzoor Ahmed and 2 others-- --vs----Muhammad Nawaz <u>PLD 2013 Lahore 123</u>” and “Mian Muhammad Nawaz Sharif---Vs---The State <u>PLD 2009 Supreme Court page 814</u>”.</p> <p>5. Learned AAG appearing on behalf of the state while controverting the arguments of learned counsel for the petitioner has stated that the review petition is not maintainable and this Court has no authority or jurisdiction to alter the sentence of conviction in view of bar contained in Section 369 of Cr.P.C.</p> <p>6. Arguments heard and record perused.</p> <p>7. Like an appeal or revision, the power to review judgment</p>
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or order is a creation of statute. Unless this power has been specifically conferred upon a Court through an explicit provision of law, the court can't review its order/judgment. The Court has no inherent power to review its judgment or order even if the same is based on incorrect appreciation of evidence qua law. The august Supreme Court of Pakistan in case "Hussain Bakhsh vs. Settlement Commissioner, Rawalpindi and others, PLD 1970 Supreme Court 1" held:-

The right to claim review of any decision of a Court of law, like the right to appeal, is a substantive right and not a mere matter of procedure. An appeal, as observed by Branwell, L. J., in the case of Sandback Charity Trustees V. North Staffordshire Railway Co. (1)---

"does not exist in the nature of things ; a right to appeal from any decision of any Tribunal must be given by express enactment."

This is equally true in case of review, because both appeal and review, though they differ in scope, are substantive rights. As such, neither of them is available unless it has been conferred by law."

Similarly, the stated view was adopted by the august Supreme Court in "Muzaffar Ali vs. Muhammad Shafi, PLD 1981 Supreme Court 94" whereby in para 8 of the judgment it was held:-

"Before proceeding further, it may be pointed out that right of review is a substantive

right and is always a creation of the relevant Statute on the subject. See *Hussain Bakhsh V. Settlement Commissioner, Rawalpindi and others* (1), where at page 5, it was held that :--

“The right to claim review of any decision of a Court of law, like the right to appeal, is a substantive right and not a mere matter of procedure. An appeal, as observed by *Bronwell, L.J.*, in the case of *Sandback Charity Trustees v. North Staffordshire Railway Co.* (1877) 3 Q BD 1—

“does not exist in the nature of things ; a right to appeal from any decision of any Tribunal must be given by express enactment.

This is equally true in case of review, because both appeal and review, though they differ in scope, are substantive rights. As such, neither of them is available unless it has been conferred by law.”

Examining the present case in the light of the above principle, it will be evident that, in the Ordinance under consideration, there does not exist any express power of review of the judgment and order of the High Court passed by it in Second Appeal under section 15 (4). Learned counsel for the respondent herein could not refer to any express provision in the Ordinance which could suggest that existence of any such power in the High Court, and his arguments were of some indirect approach to this subject to which we shall presently attend.”

The same view has also been re-affirmed by the august Supreme Court of Pakistan in **“S.A Rizvi Vs. Pakistan Atomic Energy Commission etc. 1986 SCMR 965.”**

Even otherwise, Section 369 Cr.P.C. placed in Chapter

	<p>XXVI of the Cr.P.C bars the Court administering criminal jurisdiction to alter its judgment after it has been written, signed and pronounced, except to correct a clerical error. For ease reference, Section 369 is reproduced as under:-</p> <p><i>369. Court not to alter judgment. Save as otherwise provided by this Code or by any other law for the time being in force or, in case of a High Court, by the Letters Patent of such High Court no Court when it has signed its judgment, shall alter or review the same, except to correct a clerical error.</i></p> <p>In <u>Muhammad Khalil-ur-Rehman Vs. Mst. Shabana Rahman and another</u> (PLD 1995 SC 633) when the worthy Apex Court was dealing with the alike matter,it was observed that;</p> <p><i>“It is not disputed before us by the learned counsel for the petitioner that there is no provision for review in the Code of criminal Procedure against the order passed by a Court. It is, however, contended by the learned counsel that under section 561-A Cr.P.C. the Court has the jurisdiction to modify or alter the order passed by it. In support of his contention that a Criminal Court passing an order has the jurisdiction under Section 561-A Cr.P.C. to review its order, the learned counsel for the petitioner has relied on the case Gulzar Hassan Shah V. Ghulam Murtaza (PLD 1970 SC 335). The facts in that case were that that the respondents in that case were</i></p>
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allowed bail by the trial Court. The order granting bail to the above respondents was challenged before the High Court and a learned Judge in Chambers of Lahore High Court passed the order for cancellation of the bail of respondents in that case in their absence. The respondents came to know about the ex parte order passed by the learned Judge in that case at about 2 p.m. on the same day and they filed application under section 561-A, Cr.P.C. with the prayer that the order cancelling their bail be set aside and they may be admitted to bail. This application was heard by another learned Judge in Chambers of Lahore High Court who allowed the same. This order allowing the application of the respondents in that case under section 561-A, Cr.P.C. was challenged before this Court and leave was granted to consider, whether the High Court in its inherent jurisdiction under section 561-A, Cr.P.C. can reverse the order made by it? This Court came to the conclusion that the provisions contained under section 369, Cr.P.C. do not control provisions of section 498, Cr.P.C. and that in appropriate case Section 561-A, Cr.P.C. can be invoked. It was further held in that case that order passed under Section 498, Cr.P.C. does not qualify to be a judgment within the meaning of section 369, Cr.P.C. and as such section 369, Cr.P.C. did not apply. It was finally observed by this Court while discussing the scope of Section 561-A, Cr.P.C. as follows:-

“I am conscious of the fact that general principles of finality of judgment

attaches to the decision or order of the High Court passed in criminal cases. But it will not apply to cases where an order is passed without jurisdiction or without giving any opportunity to the parties of being heard. In such cases section 561-A, Cr.P.C. can be invoked for the purpose of doing justice between the parties and for seeing that the act of the Court does not injury to any of the parties. This is an inherent power of the Court and has been preserved by the above provision of law. In my opinion in rare and exceptional cases the High Court has inherent power to invoke, review or alter its own earlier decisions in cases which are not governed by Sections 369, 424 and 430, Cr.P.C. with a view to give effect to any order under the Code or to prevent abuse of the process of any Court or otherwise to secure the ends of justice. It is, however, not possible to enumerate the circumstances in which this provision can be invoked. It may, however, be mentioned that the learned counsel for the appellant has conceded that application for bail can be made from time to time on fresh material. There is thus no difficulty in such cases.”

We are, therefore, of the view that the above case cited by the learned counsel for the petitioner is no authority for the proposition that an order passed by a Criminal Court can be reviewed under section 561-A, Cr.P.C. Section 561-A, Cr.P.C. deals with the inherent power of the Court and therefore, keeping in view the principle that no one should suffer on account of the act of the Court, it cannot be denied that in all such cases the Court can correct a wrong done to a party in exercise of its inherent power under Section 561-A Cr.P.C. the facts of the above-cited case clearly

	<p><i>show that the bail granted to respondents in that case was cancelled by the Court without hearing the affected party. It was in this context that this Court observed that an order without jurisdiction could be recalled and varied by the Court in exercise of its inherent power under Section 561-A Cr.P.C.”</i></p> <p>Similarly in case “<u>Imdad Ali Khawaja vs. The State and others (2016 SCMR 2057)</u>”it was held by the august Supreme Court in para 5 of the judgment that:-</p> <p><i>“Once an order is passed by one Bench, the other Bench cannot review such an order ordinarily. In proceedings with the matters in criminal jurisdiction, the High Court does not have the power to review an order.”</i></p> <p>This view also reflects in judgments reported in judgment reported in “2016 PLD 195 Peshawar, 2013 PCrLJ 767 Peshawar, 1971 PCrLJ S.C 483, PLD 2015 S.C 322, PLD 2004 SC 911, 2014 SCMR 1609, 2012 SCMR 334, 2008 SCMR 165, 2008 SCMR 880, PLD 2004 SC 32, 2002 SCMR 1239, 2002 SCMR 1611 and PLD 2001 S.C 433.”</p> <p>8. Now moving to the judgments produced by the learned counsel for the petitioner. In Manzoor Ahmed’s supra case the learned Lahore High Court was dealing with an issue of review of the order passed by the High Court under its constitutional jurisdiction. In that case, the petitioner sought quashment of FIR through a writ petition. The said writ petition was allowed and the FIR was quashed, however, later, the respondent of that</p>
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	<p>case challenged the order of the learned High Court through a petition under Section 12 (2) CPC. The said application was also dismissed where after, the applicant/respondent challenged the said order through intra-court appeal which was also dismissed by the learned High Court. It was in that scenario, the learned High Court held that in case of fraud and misrepresentation, the High Court had the jurisdiction to review its order as CPC is applicable to constitution jurisdiction. In Mian Muhammad Nawaz Sharif's case, the facts and circumstances of the case are altogether different as the august Supreme Court was hearing an appeal from judgment of Sindh High Court. In the circumstances, I hold without any hesitation that this Court has no jurisdiction to review the order passed by this Court dated 15.09.2014 which was passed under the criminal appeal jurisdiction of this Court. Resultantly, the instant petition along with Criminal Miscellaneous application No. 447-A of 2017 and Cr.M application No. 448-A of 2017 are dismissed being not maintainable.</p> <p><u>Announced.</u> 03.10.2017</p> <p style="text-align: right;"><i>JUDGE</i></p>
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