

Judgment Sheet

PESHAWAR HIGH COURT,
ABBOTTABAD BENCH.

JUDICIAL DEPARTMENT

Cr.M.Q No. 27 -A of 2017

JUDGMENT

Date of hearing.....12.07.2017.....

Appellant...(Syed Asghar Shah etc) by Mr. Sajjad Afzal Khan, Advocate.....

Respondent...(State) by Mr. Yasir Zahoor Abbasi, Assistant Advocate General

SYED MUHAMAMD ATTIQUE SHAH, J:-

Petitioners, through instant petition have approached this Court for setting aside the impugned orders passed by the learned lower Courts below with the following prayer:

“It is humbly prayed that the judgments and orders of both the Courts below may graciously be set aside.”

2. Brief and essential facts leading to institution of instant revision petition are, that a case under Section 365-B/34 PPC was registered on report of one Syed Muzaffar Shah regarding abduction of his wife, Mst. Chand Bibi vide F.I.R No.81 dated 03.07.2013 in PS

Phulra. After recovery, the said Mst. Chand Bibi in her statement recorded under section 164 Cr.P.C before Judicial Magistrate-III, Mansehra, showed her willingness to go with her paternal cousin, namely, Syed Asghar Shah, (petitioner No.1); learned Judicial Magistrate, Mansehra allowed her to go with petitioner No.1, subject to his furnishing of personal bond in the sum of Rs.500,000/- to the satisfaction of SHO/I.O concerned, to ensure safety and security of Mst. Chand Bibi and to produce her before any Court as and when required; petitioners submitted requisite surety bonds in Court of learned Judicial Magistrate and she was handed over to petitioner No.1; subsequently, she was murdered by her husband, Syed Muzaffar Shah and case was registered against him; later on, learned Judicial Magistrate-II, Mansehra forfeited the bond submitted by the petitioners vide order dated 26.10.2013 and show cause notices dated 10.01.2014 were served upon them, who

submitted their written reply thereto on 18.01.2014 and consequently, the petitioners were directed by learned Judicial Magistrate to deposit one third($1/3^{\text{rd}}$) portion of the amount i.e. Rs.166,666.66/- each, vide order dated 14.03.2015; that the petitioners filed a revision petition against the said order, which was dismissed by learned Additional Sessions Judge-V, Mansehra vide order dated 08.06.2015. Hence, the present petition before this Court.

4. Learned AAG appearing for State, at the very outset of proceedings, has objected to the maintainability of present revision petition and stated that petitioners have already exhausted the remedy of revision before the Court of learned Additional Sessions Judge-V, Mansehra, therefore, the present Revision Petition is not maintainable; further stated that impugned orders of learned Courts below are the result of proper appreciation of material available on record of the case and both the

learned Courts below have not committed any illegality or irregularity in exercise of their jurisdiction

5. Learned counsel for petitioners while rebutting arguments on question of maintainability stated that this Court has ample power to convert present Criminal Revision Petition into a quashment petition under section 561-A Cr.P.C in the larger interest of justice, and in this respect placed reliance on case reported as **Muhammad Akhtar Vs. The State** (1993 MLD 370).

On merits of the case, learned counsel for petitioners argued that the impugned orders of the learned lower Courts below are illegal and have been passed against the material available on record of the case, thus the same are not sustainable in the eye of law, further urged that the same are also violative of the true spirit of section 514 Cr.P.C, further submitted that the petitioners stood sureties and furnished surety bonds on

humanitarian grounds without any consideration or financial gain/benefits out of the same and prayed for setting aside of the impugned orders of lower Courts below.

6. Arguments of learned counsel for petitioners and learned AAG heard and record perused with their able assistance.

7. So far as the maintainability of the petition in hand is concerned, this Court in view of case law cited at the bar convert the present criminal revision petition into a petition under section 561-A Cr.P.C for its disposal on merits in the larger interest of justice. Office is directed to make necessary entries in the relevant record.

8. Perusal of record reveals that petitioners stood sureties for safety and security of Mst. Chand Bibi and in this respect they furnished personal surety bonds before the Court, however, later on they failed to discharge their legal obligation for which they stood sureties. As the petitioners stood sureties

for safety and security through their own sweet will, therefore, it was mandatory upon them to discharge their said obligations and duties diligently but they miserably failed to do so. Had there been any issues regarding her safety and security, then they should have applied to the Court concerned for discharge of their surety bonds under the law. Moreover, their replies to the show cause notices are worth perusal in which they have clearly stated that they have allowed her to go to her home where she was murdered by her husband. In view of above stated facts, it becomes crystal clear that petitioners have miserably failed in performance of their legal obligations/duties which they willingly accepted by submitting surety bonds, therefore, in the given circumstances of the case in hand, they cannot be absolved from their responsibilities as due to their irresponsible attitude and uncalled for conduct, an innocent human being lost her life. The learned Courts below while imposing

penalty upon the petitioners has taken a very lenient view. Thus, in view of peculiar facts and circumstances of the present case, it is held that the findings rendered by both the Courts below are based on proper appreciation of material available on record of the case, and the law applicable thereto, thus warranting no interference by this Court in its jurisdiction under section 561-A Cr.P.C.

9. Keeping in view the above referred reasons and discussion made thereupon, this petition being devoid of any substance is dismissed.

J U D G E

Announced.
Dt.12/07/2017.
/M. S.Awan/