

JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Cr.R. No. 1-M/2014

JUDGMENT

Date of hearing: 11.12.2017

Petitioner: - (Ali Mohammad) by Mr. Amir Gulab Khan, Advocate.

Respondents: (Nazir-ul-Islam & 1 another) by Mr. Sher Muhammad Khan (Shangla) Advocate and Mr. Rafiq Ahmad, Astt: Advocate General.

MOHAMMAD IBRAHIM KHAN, J.- Impugned

herein is the judgment dated 04.12.2013 passed by the learned Sessions Judge/Zila Qazi Shangla Camp Court at Swat, whereby the accused/Respondent No. 1 Nazir-ul-Islam has been convicted and sentenced under section 302 PPC to 14 years RI on two counts alongwith fine of Rs. 300,000/- (three lacs) on two counts payable to the Legal Heirs of deceased or in default thereof shall further undergo two years SI. The accused/Respondent was further convicted under section 353 PPC to six months RI. Likewise, he was also convicted and sentenced under section 13 A.O to three years

rigorous imprisonment, all the sentences shall run concurrently, however, benefit of section 382-B Cr. P.C. was extended to him.

2. Here this is a Criminal Revision for enhancement preferred by the complainant/Petitioner within the meaning of section 435 read with section 439 of the Code of Criminal Procedure with the following prayer:-

"For the reasons stated above it is therefore most humbly prayed that by accepting this Revision Petition the judgment/order of the trial Court dated 04.12.2013 may graciously be modified and set aside to the extent of sentence and Respondent No. 1 be awarded with the capital sentence of death or any other order this Honorable Court may deem just and proper be passed by accepting this Revision Petition."

3. Having heard arguments of learned counsel for the Petitioner, learned Astt: Advocate General for the State and learned counsel for the Respondent No. 1, record with their assistance gone through.

4. Before arguments were to be further heard on merits, learned counsel for the Petitioner pointed out that impugned judgment has been rendered by the learned trial Court in violation of section 367 Cr.P.C as the learned trial Court has not determined points in the impugned judgment for determination, rather the findings were delivered in slipshod manner without applying his judicial mind to the real facts and circumstances of the case. Before delivering any further findings in this behalf, it would be appropriate to reproduce section 367 Cr. P.C for ready reference:-

S.367. Language of judgment:

Contents of judgment: (1) Every such judgment shall, except as otherwise expressly provided by this Code, be written by the presiding officer of the Court or from the dictation of such presiding officer in the language of the Court, or in English, **and shall contain the point or points for determination**, the decision thereon and the reasons for the decision and shall be date and signed by the presiding officer in

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open Court at the time of pronouncing it and were it is not written by the Presiding Officer with his own hand, every page of judgment shall be signed by him.

(2) It shall specify the offence (if any) of which, and the section of Pakistan Penal Code or other law under which the accused is convicted and the punished to which he is sentence.

(underline is emphasized)

5. It is the main theme of section 367 Cr.P.C that the judgment of the Court shall contain the points for determination, the decision thereon and the reasons for the decision. In this respect reliance has been placed on case law cited as **1997 SCMR 871 " Sahib Khan and 4 others vs The State and others"**.

The relevant of the said judgment speaks of:-

" For reasons to be recorded later, we set aside the impugned judgment in both these appeals for the reason that the impugned judgment does not contain valuation of evidence and discussion in the manner it should be and also

16/11/17

does not assign reasons for arriving at the conclusion as required under section 367 Cr.P.C.

On the same analogy another dictum of the Hon'ble Supreme Court of Pakistan can be referred to cited as 2003 SCMR 698 "Ashiq Hussain and others vs The State and two others".

Likewise, the use of word "shall" in section 367 Cr.P.C has been purposely used in order to put emphasis that compliance of the provision of *ibid* section is mandatory and non-compliance whereof would render the judgment inherently defective and illegal. In case titled "Khalid Mehmood vs The State" (2004 P Cr. LJ 984 (FSC)), this principle has been enunciated in the following manner:-

" As to the second limb of argument in the contention that the learned trial Judge has also failed to formulate the points for determination, it may be pointed out here that use of the word "shall" in provision of section 367

Cr.P.C, in accordance with the terms, is mandatory."

In this behalf reliance can safely be placed on case titled as " Farrukh Sayyar and 2 others vs Chairman NAB Islamabad and other (2004 SCMR 1), wherein it has been held:-

" It is mandatory requirement of section 367 Cr.P.C that a Court while writing a judgment shall refer to the point or points of determination, record decision thereon and also give reasons for the decision. The Court shall also specify the offence of which, and the section of the Pakistan Penal Code or other law under which the accused is convicted and the punishment to which he is sentenced. In the present case the learned trial Court overlooked the mandatory provisions of section 367 Cr.P.C and rendered a judgment which falls short of the requisite standard. Failure to specify the points for determination as required under section 367 Cr.P.C is an

12/11/20

omission which is not curable under section 537 Cr.P.C and absence of decision on the points for determination and reasons in the judgment amount to an illegality which prejudice the case of the accused."

6. In the light of above-referred dictums of the Hon'ble superior Courts learned counsel for the accused/Respondent No. 1 and learned A.A.G tried their level best to distinguish the case of accused but they badly failed to satisfy the Court in this regard in respect of an illegality being committed by the learned trial Court through the impugned judgment in view of non-compliance of section 367 Cr.P.C.

7. Thus, in the above backdrop, without dilating upon the merits of the case/evidence, lest it may prejudice the case of either side, we are of the absolute view that the impugned judgment rendered by the learned trial Court is violative of the statutory provisions of section 367 Cr.P.C., therefore, is

not sustainable in the eye of law. Thus, on acceptance of this criminal revision the impugned judgment of conviction is set aside and the case is remitted back to the learned trial Court for decision afresh as per spirit of section 367 of the Code of Criminal Procedure within a shortest possible time after affording fair opportunity of hearing to the learned counsel for the parties including the State. The parties are directed to appear before the learned trial Court on 04.01.2018

Announced
Dt: 11.12.2017


JUDGE


JUDGE

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