

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Writ Petition No.12453 of 2014

Muhammad Nawaz. *versus* A.S.J., etc.

JUDGMENT

Date of Hearing:	<u>08.12.2015</u>
Petitioner represented by:	<u>Ch.Akbar Ali Tahir, Advocate</u>
Respondents represented by:	<u>Mr.Shahbaz Ahmed, AAG.</u> <u>Mr.Muhammad Alamgir, Advocate for</u> <u>respondents No.3 to 8</u>

Sardar Muhammad Sarfraz Dogar, J:- By virtue of this constitutional petition, Muhammad Nawaz petitioner has questioned the vires of judgment dated 21.10.2013 passed by learned Judicial Magistrate, Ist Class, Pakpattan Sharif, whereby respondents No.3 to 8 were convicted and sentenced in case FIR No.240/2009, dated 15.5.2009, registered under Sections 337-F(v), F-(i), L-(ii), 148, 149 PPC, with Police Station Chakbedi, Pakpattan. It further assails the judgment dated 15.4.2014 passed by learned Additional Sessions Judge, Pakpattan, whereby revision petition filed by the petitioner challenging the judgment dated 21.10.2013 was also dismissed.

2. Brief facts giving rise to the filing of instant petition are that petitioner lodged FIR No.240/2009, dated 15.5.2009, under Sections 337-F(v), F-(i), L-(ii), 148, 149 PPC, with Police Station Chakbedi, Pakpattan, against respondents No.3 to 8. After registration of the case usual investigation was regulated and finally report under Section 173 Cr.P.C. was forwarded by the Investigating Officer to the learned trial Court. The learned trial Court seized with the matter in

terms of judgment dated 21.10.2013 and convicted and sentenced the respondents No.3 to 8 in the following manner:-

“accused namely Nazir Ahmad s/o Suleman is sentenced u/s 337-F5 PPC with Daman, which is fixed as Rs.40,000/-. He is also sentenced u/s 337-L2 PPC with Daman, which is fixed as Rs.5000/-. Above said amount of Daman by accused Nazir Ahmad shall be paid to victim Muhammad Nawaz s/o Goma. The role of accused Yasin s/o Bashir also falls u/s 337-F5 PPC but injury was on non-vital part of body i.e. finger of left hand of injured lady, therefore, he is sentenced u/s 337-F5 PPC with Daman, which is fixed as Rs.30,000/- and payable to injured lady namely Mst:Naziran Bibi. Accused person namely Bashir Ahmad is sentenced u/s 337-L2 PPC with Daman, which is fixed as Rs.5000/- and payable to injured Muhammad Nawaz. Accused person namely Jehangir is sentenced u/s 337-F1 PPC with Daman, which is fixed as Rs.5000/- and payable to injured lady Naziran Bibi. Accused person namely Israr s/o Nazir is sentenced u/s 337-F1 PPC with Daman, which is fixed as Rs.5000/- and payable to injured lady namely Naziran Bibi. Accused person namely Maqbool s/o Anwar is sentenced u/s 337-L2 PPC with Daman, which is fixed as Rs.5000/- and payable to injured Muhammad Nawaz.”

Feeling aggrieved of the said convictions and sentences, the petitioner preferred a revision petition before the learned Additional Sessions Judge, seeking enhancement of sentence awarded to the respondents by the learned trial Court, which was dismissed vide judgment dated 15.4.2014. Hence, this Constitutional petition was germinated.

3. It is argued by learned counsel for the petitioner that the impugned judgments passed by learned courts below are illegal, unlawful, ultra vires and void abinitio and the same are not sustainable in the eye of law. The petitioner has proved its case beyond any shadow of doubt by producing tangible and solid evidence, therefore, respondents No.3 to 8 are liable to be punished with full dose.

4. In opposition, learned counsel appearing on behalf of respondents No.3 to 8 contended that the Constitutional petition against the criminal revision is not maintainable. Even otherwise, there is glaring contradictions in the prosecution evidence and that the sentence awarded to the respondents No.3 to 8 are in accordance

with the provisions of Section 337-N PPC. Therefore, instant constitutional petition deserves merit dismissal.

5. I have heard the arguments advanced by learned counsel for the parties, learned A.A.G. and also perused the record.

6. Before discussing the merits of instant case, I would like to decide the point of maintainability of this petition. Learned counsel for the respondents No.3 to 8 has categorically contended that the constitutional petition is not maintainable against the order passed by the learned Additional Sessions Judge in criminal revision. Learned counsel for the petitioner has nothing in hand to rebut the said contention. I am also in agreement with the contention raised by learned counsel for the respondents No.3 to 8 being follower of the dictum laid down by the Hon'ble Supreme Court of Pakistan in the case of Badaruddin v. Mehr Ahmad Raza, Additional Sessions Judge, Jhang and 6 others (PLD 1993 Supreme Court 399), wherein it is observed that:-

“7. Second ground given by the High Court is that writ will not lie if final order is passed by the Revisional Court. There is no dispute about the fact that powers of the High Court for exercise of revisional jurisdiction under section 439, Cr.P.C. are wider in scope than powers in the writ jurisdiction. By amendment in the law now Sessions Court and High Court have concurrent revisional jurisdiction which is allowed in the normal course to be exercised first by lower forum but that does not decrease the scope of jurisdiction as mentioned above. In such circumstances it is said that if there is finding by the Court of competent jurisdiction on the revisional side then it has attained finality. On the same question writ petition would be non-maintainable because otherwise it would amount to allowing question finally decided in one set of forums to be agitated afresh in another set of forums and that way there will be no end to the finality. In support of the proposition reference can be made to the cases of Abdul Rehman Bajwa v. Sultan and other (PLD 1981 Supreme Court 522) and Javaid Iqbal v. Muhammad Din and another (1990 SCMR 1309).”

In this regard, I respectfully refer another case Muhammad Fiaz Khan v. Ajmer Khan and another (2010 SCMR 105) wherein Hon'ble Supreme Court of Pakistan has held as under:-

“Even otherwise the writ petition was not maintainable in the High Court against the order passed by the learned Additional Sessions Judge in criminal revision”

In view of the above quoted dictums laid down by the Hon’ble Apex Court, I have no hesitation to hold that the writ petition is not maintainable against the order passed by learned Additional Sessions Judge in criminal revision.

7. Even otherwise, perusal of the record transpires that the prosecution has alleged that on 09.5.2009, at about 7:30 A.M., respondents No.3 to 8, while armed with sotas and sickles, tried to beat the complainant’s son and when the complainant and his wife tried to interrupt the process, they have also beaten the complainant and his wife. There is nothing on record to establish that the respondents No.3 to 8 are embroiled in any other criminal case to consider them hardened and dangerous criminals or previously convicted, therefore, their case is covered by Section 337-N(2) PPC. The law is by now settled on the point that in all cases of hurt provided for in Chapter XVI of the Pakistan Penal Code, 1860, the normal punishment to be awarded to an offender is payment of Arsh or Daman and the optional additional punishment of imprisonment as Tazir provided for the relevant offence can be awarded to an offender only where the offender is a previous convict, habitual or hardened, desperate or dangerous criminal or the offence has been committed by him in the name or on the pretext of honour and in the case of such an offender the sentence. Guidance is sought from Muhammad Nadeem and another v. The State (2012 P.Cr.L.J. 1502). This Court has already taken a similar view in another case titled Ali Muhammad v. The State (PLD 2009 Lahore 312), the relevant extract is reproduced as under:-

“Provision of S.337-N(2), P.P.C. (as to date), contemplates that in all cases of hurt the normal punishment to be awarded to an offender is payment of Arsh or Daman and the optional additional punishment of imprisonment provided for the relevant offence can be awarded to an offender only where the offender is a previous convict, habitual or hardened, desperate

or dangerous criminal or the offence has been committed by him in the name or on the pretext of honour---Subsequent addition of the proviso to subsection (2) of S.337-N, P.P.C. had done nothing more than stipulating that if the offender is a previous convict, habitual, hardened, desperate or dangerous criminal or the offence has been committed by him in the name or on the pretext of honour then the sentence of imprisonment to be awarded to him as Ta'zir shall not be less than one third of the maximum period of imprisonment provided for the hurt caused."

8. In this case, there is nothing on record that the respondents No.3 to 8 are previous convict, habitual or hardened, desperate or dangerous criminals or the offence has been committed by them on the pretext of honour, therefore, the learned trial Court has rightly convicted them considering their case falling under the ambit of Section 337-N(2) PPC. Simultaneously, learned Additional Sessions Judge has also dismissed the petitioner's revision petition through a well reasoned judgment. I do not find any flaw or legal infirmity in the judgments of learned Courts below.

9. For the reasons stated hereinabove, this constitutional petition being not maintainable is dismissed.

(Sardar Muhammad Sarfraz Dogar)
Judge

Approved for reporting.

Judge