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IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Sardar Tariq Masood
Mr. Justice Mazhar Alam Khan Miankhel

Jail Petition No.441 of 2019

[Against the judgment dated 31.05.2019, passed by the Peshawar High Court, Peshawar in Criminal Appeal No.283-P of 2019]

Abdul Khaliq. ...Petitioner(s)
Versus
The State. ...Respondent(s)

For the Petitioner(s) : Mr. Muhammad Usman Mirza,
ASC

For the State Mr. Altaf Khan, Additional
Advocate General, KP

Date of Hearing : 20.09.2024

ORDER

Mazhar Alam Khan Miankhel, J.— Through this jail petition the petitioner has challenged the judgment dated 31.05.2019 **(the impugned judgment)** of the Peshawar High Court, Peshawar **(the High Court)**, whereby his appeal filed under Section 408 of the Code of Criminal Procedure, 1898 **(Cr.P.C)** against the order dated 24.08.2017 of the Additional District Magistrate/Assistant Political Agent, Central Kurram Sadda, District Kurram was dismissed.

2. The brief facts of the case are that the petitioner was arrested on 14.07.2017 by Thall Scouts Security Forces in case No.68/PNT-CK dated 14.07.2017 on suspicion of having direct or indirect ties with *Tehreek-e-Taliban Pakistan (TTP)*, a defunct organization involved in the killing of security forces and civilians and carrying out acts of terrorism. After his arrest, he was

interrogated by a Joint Investigation Team (**JIT**) and found to be involved in the alleged anti-state activities. He was categorized as “**GREY**” and recommendations were made to punish him under Section 121-A of the Pakistan Penal Code, 1860 (**PPC**) read with Regulation 11/40 of the Frontier Crimes Regulations, 1901 (**the FCR**).

3. The petitioner along with the interrogation report and other relevant record/document were then referred to the concerned political administration in Kurram Sub-Division for further proceedings under the law. He was subsequently presented before the Court of Additional District Magistrate/Assistant Political Agent (**APA**), Central Kurram Sadda, who under Regulation-11 of the FCR appointed a council of elders on 26.07.2017 and referred the following questions to it for determining the guilt or innocence of the petitioner: -

- (i) The petitioner has been categorized as “**GREY**” during interrogation. What is your opinion on this classification.
- (ii) What is your opinion regarding the petitioner’s involvement in terrorist activities.
- (iii) Do you have any recommendations concerning the petitioner.

3. The council of elders unanimously submitted its award/opinion endorsing the report of the JIT against the petitioner. Relying on the aforesaid award/opinion, the APA framed charges against the petitioner under Section 121-A of the PPC read with Regulation 11/40 of the FCR. Later he was convicted and sentenced to 14 years imprisonment under the said charges *vide*

order dated 24.08.2017. The petitioner being aggrieved filed a Writ Petition No.1357-P of 2019 before the High Court, which was disposed of by the High Court *vide* order dated 21.03.2019 granting him permission to file an appeal in the light of an earlier judgment of the same High Court rendered in Reference No.01/2019. Relying on this, the petitioner filed a Criminal Appeal No.283-P of 2019 under Section 408 of Cr.P.C. before the High Court, however, this appeal along with two other appeals filed by other convicts was dismissed by the High Court through a consolidated judgment dated 31.05.2019. Hence this petition for leave to appeal.

4. We have heard the learned counsel for the petitioner as well as the learned Additional Advocate General, Khyber Pakhtunkhwa and have also gone through the available record.

5. The present case pertains to an incident that allegedly occurred within the Federally Administered Tribal Areas (**FATA**) and was adjudicated under the judicial framework provided by the FCR. The petitioner was convicted under Regulation 11/40 of the FCR by the Court of APA *vide* its order dated 24.08.2017. The record of the case further reveals that the petitioner did not avail any of the remedies available to him under the FCR i.e. appeals to the Commissioner and a revision to the Tribunal. However, when he failed to do so, he filed a constitutional petition under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973 (**the Constitution**) before the High Court on 25.03.2019, after a considerable delay of more than one and a half years from the date of his conviction.

It is by now well settled that where a particular statute/law provides a self-contained mechanism and well defined forum of redressal for the determination of questions of law or facts by way of an appeal or revision to another authority or Tribunal as the case may be, the same has to be followed being the remedy provided under the law. The petitioner without exhausting such remedies cannot be allowed to invoke the constitutional jurisdiction of the High Court. Furthermore, the writ jurisdiction of the High Court cannot be exploited as the sole solution when there are equally effective and adequate alternate remedies provided under the law. These cannot be bypassed to invoke the writ jurisdiction.

6. Even otherwise, the extraordinary jurisdiction of the High Court under Article 199 of the Constitution cannot be reduced to an ordinary jurisdiction of the High Court. Reference in this regard may be made to the cases of Mian Muhammad Yousaf and another v. Lahore Development Authority through Director-General, L.D.A. Plaza, Lahore and 5 others (PLD 2001 SC 393); Syed Match Company Ltd. through Managing Director v. Authority Under Payment of Wages Act and others (2003 SCMR 1493); Mian Azam Waheed and 2 others v. the Collector of Customs through Additional Collector of Customs, Karachi (2023 SCMR 1247); Jameel Qadir and another v. Government of Baluchistan, Local Government, Rural Development and Agrovilles Department, Quetta through Secretary and others (2023 SCMR 1919) and Muhammad Safeer and others v. Muhammad AZAM and others (PLD 2024 SC 838). It is, however, true that in certain cases, resort to the Constitutional

jurisdiction of the High Court instead of availing the remedy provided under the statute may be justified, but no such material is available on record of this case for ignoring the remedy provided under the FCR. In light of the above, we have no hesitation to observe that the petitioner failed to avail the legal remedies available to him provided under the FCR in a timely manner and remained in a deep slumber for a long time. Being so, the order dated 24.08.2017 of the APA, Central Kurram, Sadda convicting him attained finality. However, he subsequently approached the High Court under its constitutional jurisdiction, and that too after a considerable delay. It is a settled principle of law that the law aids the vigilant, not the indolent. Therefore, the petitioner's invocation of the constitutional jurisdiction is not permissible under the law and cannot be accorded any credence in the matter before us.

7. The learned counsel for the petitioner, during arguments, frankly acknowledged the above legal position but adopted another stance, asserting that the petitioner, after the disposal of his writ petition, filed an appeal under Section 408 of the Cr.P.C. before the High Court on special permission granted by the High Court in light of an earlier judgment in Reference No.1-P of 2019; but the same was unfortunately dismissed by the High Court through the impugned judgment on the ground of limitation. It was further submitted that the Court of APA, Central Kurram, Sadda, failed to comply with the mandatory provisions of the FCR and did not afford the petitioner a fair trial, thereby causing serious prejudice to him. Despite this, the learned High Court,

while dismissing his appeal, did not consider this significant aspect of the matter and dismissed the appeal in a casual manner.

8. We have carefully considered that there was no plausible explanation by the petitioner for the inordinate delay in filing the appeal, either in the memorandum of appeal or through a separate application for condonation of delay under Section 5 of the Limitation Act, 1908. The petitioner was convicted and sentenced in the year 2017, and he had the opportunity to challenge his conviction before the proper forum, but he failed to do so. In these circumstances, the High Court was fully justified in dismissing the appeal on the ground of limitation. Besides the above, the law on the subject is very much clear. The remedies under the FCR have been provided as discussed above. No Court of its own offer or provide a special permission for filing of an appeal on the basis of some decision of the High Court. The right of appeal has always been held to be a statutory right. The judgment in Reference No.1-P/2019, as argued, is not before us nor, it has been argued and established that the law point involved in the Reference was similar to the one involved in this case. When the law has not provided any right of appeal before the High Court then the High Court itself cannot assume the said jurisdiction. If such a jurisdiction is exercised, then that would be nothing but nullity in the eye of law and *coram non judice*. Hence, no basis for interfering with the impugned judgment of the High Court arises.

9. Coming to the other important plea of the petitioner that this Court as well as the High Court now has the jurisdiction to examine the vires or legality of the order passed by the

authorities under the FCR on the grounds that Article 247, which bars their jurisdiction, had been omitted through the Constitution (Twenty-fifth Amendment) Act, 2018 **(the Constitution Amendment)**. This stance of the petitioner is not legally tenable. This is because the order against the petitioner was passed by the FATA Tribunal on 05.04.2017, whereas the Amendment Act received the assent of the President on 31.05.2018 and was published in the Gazette of Pakistan on 05.06.2018, approximately more than a year after the order dated 24.08.2017 of the Additional District Magistrate/Assistant Political Agent, Central Kurram, Sadda. A retrospective effect cannot be given to this Constitutional Amendment, nor was there any such intention by the legislature. Otherwise, matters decided prior to this Constitutional Amendment would also need to be reviewed by the Constitutional Courts, which would open floodgate to any case, at the time when the order against the petitioner was made. The Article 247 was very much in the field and the jurisdiction of the High Court was barred in matters exclusively dealt with by the FATA hierarchy, which had attained finality and were correctly upheld by the High Court in the impugned judgment.

10. For the above mentioned reasons, this petition being meritless is dismissed and leave is refused.