

PRESENTED ON  
30-01-2024

Deputy Registrar

574

IN THE HON'BLE HIGH COURT OF SINDH  
AT KARACHI

CRIMINAL APPEAL NO. 93 /2024

MUREED ALI S/O DAWOOD  
BY CASTE BURIRO  
MUSLIM, ADULT, PRESENTLY CONFINED  
IN ~~Sanghar~~ JAIL  
Hyderabad / ..... APPELLANT

V E R S U S

THE STATE ..... RESPONDENT

FIR NO. 49/2023

U/S: 23(i)-A &amp; 25 SAA 2013

P.S. DHABIJI

APPEAL UNDER SECTION 410 CR.P.C.

# THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.93 of 2024

Present: Mr. Justice Jan Ali Junejo

For Appellant: Mr. Nisar Ahmed Narejo, Advocate

For State: Mr. Mumtaz Ali Shah, APG

Date of hearing: 18-03-2025

Date of Judgment: 18-03-2025

## JUDGMENT

**Jan Ali Junejo, J.**— Through this Criminal Appeal, the appellant, Mureed Ali S/o. Dawood Buriro, has impugned the judgment dated 18.01.2024 (hereinafter referred to as the "Impugned Judgment"), passed by the learned IIInd Additional Sessions Judge, Thatta (hereinafter referred to as the "Trial Court"), in Sessions Case No.43/2023, arising out of FIR No.49/2023 registered at P.S. Dhabeji, whereby he was convicted under Section 23(1)(a), of the Sindh Arms Act, 2013 and sentenced him to suffer R.I. for ten years with benefit of Section 382-B, Cr.P.C.

2. The appellant was charged with the possession of an unlicensed 30-bore pistol along with a magazine containing three live bullets, which was allegedly recovered from his possession on





02.05.2023. Challan was submitted and the trial commenced on framing of charge against the Appellant. The prosecution produced two witnesses and several documents to support its case against the Appellant, Mureed Ali. Buriro is a details of the witnesses along with the documents produced during the trial:

**1. PW-1: ASI Talib Hussain (Complainant)**

- ASI Talib Hussain was the complainant and the investigating officer in this case. He testified about the arrest of the accused and the recovery of the unlicensed weapon.
- **Documents Produced:**
  - **Exh.05/A:** Memo of Arrest and Recovery
  - **Exh.05/B:** FIR (First Information Report)
  - **Exh.05/C:** Departure and Arrival Entries
  - **Exh.05/D:** Letter for FSL (Forensic Science Laboratory)
    - This letter was sent to the FSL for the examination of the recovered weapon.
  - **Exh.05/E:** FSL Examination Report
    - The FSL report confirmed that the recovered weapon was in working condition at the time of recovery.
  - **Exh.05/F:** Departure and Arrival Entries for Sending Case Property to FSL
    - These entries recorded the movement of the case property (the weapon) to and from the FSL.



**2. PW-2: HC Muhammad Ismail (Mashir/Witness)**

- HC Muhammad Ismail was a police official who acted as a mashir (witness) during the arrest and recovery process. Testimony of HC Muhammad Ismail was recorded as Exh.6.



3. after the closure of prosecution evidence, the statement of the accused Mureed Ali was recorded under Section 342 Cr.P.C., wherein he denied all allegations and claimed false implication by the police. However, he chose not to examine himself on oath under Section 340(2) Cr.P.C. and did not present any defence witnesses or evidence in his support. The court, after evaluating the evidence on record, found the prosecution's case to be proven beyond a reasonable doubt. Consequently, the accused was convicted under Section 23(1)-A of the Sindh Arms Act, 2013, and sentenced to ten years of rigorous imprisonment.

4. The learned counsel for the appellant contended that the appellant is innocent and has been falsely implicated by the police with malafide intentions. It was argued that the trial court misread the facts and circumstances of the case and passed the impugned judgment without judicial application of mind. The alleged recovery of the weapon, which is the sole basis for conviction, was claimed to be foisted upon the appellant, and the procedure under Section 103 Cr.P.C. was not followed as no independent witnesses were associated. The defence also pointed out contradictions in the statements of prosecution witnesses, asserting that no direct or indirect evidence linked the appellant to the alleged crime. Furthermore, the counsel alleged that the appellant was booked in a false case due to non-fulfillment of illegal demands by the police,





and the trial court failed to consider the weaknesses in the prosecution's case. Therefore, it was prayed that the impugned judgment dated 18-01-2024 be set aside.

5. Per contra, the learned APG opposed the appeal, arguing that the prosecution had successfully proved its case beyond a reasonable doubt through reliable and corroborated evidence. It was emphasized that the appellant was apprehended red-handed with an unlicensed weapon, and the forensic report confirmed the weapon's working condition. The prosecution witnesses, despite being police officials, consistently supported the case, and no material contradictions were found that could weaken the prosecution's stance. The claim of false implication was dismissed as baseless, considering the appellant's previous criminal record and involvement in similar offences. Furthermore, the APG contended that procedural lapses, if any, were not substantial enough to vitiate the trial, and the trial court rightly convicted the appellant based on the strength of the evidence. Therefore, it was submitted that the appeal be dismissed and the conviction upheld.



6. I have carefully considered the arguments presented by the learned counsel for the Appellant as well as the learned Additional Prosecutor General (APG) representing the State. Additionally, I have meticulously examined the evidence available on record with



the utmost caution and diligence. A thorough perusal of the record reveals that the Appellant was acquitted in the main case (Crime No.43/2023 under Section 397 of the Pakistan Penal Code) by the same Trial Court. However, in the impugned judgment, the Trial Court failed to take this acquittal into account. This acquittal is a crucial aspect that should have been duly considered, as it directly affects the credibility of the prosecution's case. The alleged recovery of the weapon was linked to the main case, and the Appellant's acquittal therein casts serious doubt on the prosecution's narrative. Furthermore, the memo of arrest and recovery reveals that the Complainant in the main case provided information regarding the present Appellant to the Complainant/Investigating Officer (I.O.) of the current case. However, the signature of the private Complainant was not obtained on the alleged memo of arrest and recovery. Despite the availability of a private witness, the Complainant/I.O. failed to include him in the arrest and recovery proceedings, raising concerns about the credibility and fairness of the investigation. Additionally, the prosecution failed to examine the private Complainant as a witness to establish the arrest and recovery against the Appellant based on this disclosure. The Trial Court also placed significant reliance on the Appellant's previous convictions while convicting him in the present case. However, the charge





framed against the Appellant did not mention these prior convictions. This omission constitutes a clear violation of Section 265-I of the Criminal Procedure Code, 1898, which mandates the following:

*"265-I. Procedure in case of previous conviction: (1) In a case where, by reason of a previous conviction the accused has been charged under Section 221, sub-section (7), the Court, after finding the accused guilty of the offence charged and recording a conviction, shall record the plea of the accused in relation to such part of the charge.*

*(2) If the accused admits that he has been previously convicted as alleged in the charge, the Court may pass a sentence upon him according to law, and if the accused does not admit that he has been previously convicted as alleged in the charge, the Court may take evidence in respect of the alleged previous conviction, and shall record a finding thereon, and then pass sentence upon him according to law".*

In the present case, the charge framed against the Appellant did not mention any previous convictions, and the Trial Court failed to adhere to the procedural requirements set forth in Section 265-I of the Criminal Procedure Code (Cr.P.C.). This constitutes a fundamental flaw in the trial process, as it deprived the Appellant of the opportunity to respond to the allegations of prior convictions, which were subsequently used to enhance his sentence. The reliance on these previous convictions without formally informing the Appellant through the charge sheet resulted in serious prejudice to his defense. The Trial Court's reliance on the





Appellant's past convictions without following the mandatory legal procedure under Section 265-I, Cr.P.C., is a grave error. Previous convictions cannot be used against an accused unless they are properly placed on record and the accused is given a fair opportunity to contest them. The failure to comply with this essential requirement undermines the legality of the conviction and sentence imposed on the Appellant. In view of the foregoing, it is evident that the Trial Court committed a serious error by failing to consider the Appellant's acquittal in the main case and by relying on his previous convictions without adhering to the mandatory provisions of Section 265-I, Cr.P.C. The charge framed against the Appellant made no reference to his past convictions, and he was not afforded an opportunity to defend himself against these allegations. This constitutes a fundamental violation of the Appellant's right to a fair defense, rendering the conviction and sentence imposed by the Trial Court legally unsustainable. In similar circumstances, in the case of *Sanaullah alias Haji Sardar v. The State* (2015 YLR 2711), the learned Lahore High Court acquitted the accused on the ground that the Trial Court had failed to follow the procedure prescribed under Section 265-I of the Criminal Procedure Code (Cr.P.C.).

8. For the reasons stated above, this Criminal Appeal is allowed. The Impugned Judgment dated 18.01.2024 passed by the learned



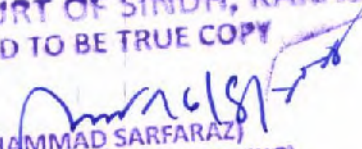


Ind Additional Sessions Judge, Thatta, in Sessions Case No.43/2023 is set aside. The appellant, Mureed Ali S/o. Dawood Buriro, is acquitted of the charges under Section 23(1)(a) of the Sindh Arms Act, 2013, and is ordered to be released forthwith if not required in any other case.

  
JUDGE



THE HIGH COURT OF SINDH, KARACHI  
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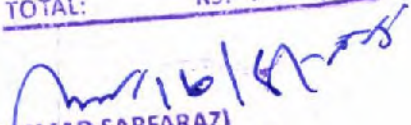
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