

HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeal No. 06 of 2020

Present: Mr. Justice Mohammad Karim Khan Agha
Mr. Justice Irshad Ali Shah

Date of Hearing	:	13.08.2021
Date of judgment	:	13.08.2021
Appellant	:	Abdul Hakeem through Mr. Liaquat Ali Hamid advocate
Respondent	:	The State through Mr. Zafar Ahmed Khan Additional Prosecutor General Sindh

JUDGMENT

MOHAMMAD KARIM KHAN AGHA I- Appellant Abdul Hakeem has challenged the impugned judgment dated 30.12.2019 passed by learned Anti-Terrorism Court No.XVI, Karachi in Special Case No. 649 of 2019 (The State Vs. Abdul Hakeem) arising out of FIR No.189/2019 for offences under Sections 11-H, 11-N read with Section 7 of Anti-Terrorism Act, 1997, registered at P.S CTD Karachi. After full-dressed trial, the appellant was acquitted in the offences for which he was charged i.e. Sections 11-H and 11-I & 11-J of Anti-Terrorism Act, 1997, read with Section 11-N of Anti-Terrorism Act, 1997 however, the appellant was convicted under Section 11-F of Anti-Terrorism Act, 1997 and sentenced to suffer 03 months S.I and to pay fine of Rs.10,000/-. In case of default in payment of fine, he was ordered to undergo SI for 20 days more.

2. The brief facts of the prosecution case as narrated in the FIR are that the appellant was standing outside of *Madarsa* and being member of a proscribed organization, he was allegedly collecting funds for that organization, which was involved in acts of terrorism. The appellant was arrested on the basis of spy information and from his possession money,

which he had allegedly collected along with receipt book for terrorist activities were recovered by the police from him.

3. After usual investigation, the appellant was sent up for trial before concerned trial Court.

4. Trial Court framed Charge against appellant under the above referred Sections to which he pleaded not guilty and claimed to be tried.

5. In order to prove its case, the prosecution has examined three witnesses and exhibited various documents and other items.

6. Statement of accused was recorded under Section 342 Cr.P.C, wherein he claimed his false implication in this case at the hands of the police, who had arrested him from his house and foisted receipt book on him. Accused declined to examine himself on oath in disproof of the prosecution allegations and did not lead evidence in his defence.

7. Trial Court, after hearing learned counsel for the parties and considering the evidence available on record, vide judgment dated 30.12.2019 convicted and sentenced the appellant as stated above, hence appellant has filed instant appeal against his conviction.

8. Learned counsel for the appellant has submitted that the appellant is completely innocent of any wrong doing and that he has been falsely implicated in this case by the police in order to show their efficiency to high-ups; that no recovery of money or receipt book had been effected from the possession of the appellant and the same were foisted upon him by the police; that the appellant was not put on notice in the charge as to the offence under Section 11-F of Anti-Terrorism Act 1997, in order to defend himself and ultimately he was convicted under Section 11-F of Anti-Terrorism Act 1997, being member of a proscribed organization, even in his statement recorded under Section 342 Cr.P.C, no question was put to him whether or not he was a member of a proscribed organization, therefore, the learned counsel for the

appellant prayed that appellant should be acquitted by extending him benefit of doubt.

9. Learned Additional Prosecutor General Sindh has fully supported the impugned judgment and in particular he has contended that although charge did not contain Section 11-F of Anti-Terrorism Act, 1997, but the appellant was on sufficient notice of the offence for which he was ultimately convicted i.e. under Section 11-F of ATA and that the trial Court had full authority to convict him for such an offence by virtue of Section 236 Cr.P.C, as such he prayed that the appeal should be dismissed.

10. We have heard the arguments of learned counsel for the appellant as well as learned Additional Prosecutor General Sindh and have considered the evidence, which has been read out by learned counsel for the appellant, in its entirety. At the very outset it should be mentioned here that appellant was sentenced to three months' imprisonment and he was released on bail under Section 426 Cr.P.C, by orders of this Court, after serving one month's imprisonment.

11. We find that although the appellant might have been in a position to determine that he was facing a charge under Section 11-F of Anti-Terrorism Act 1997 and might have been in a position to defend himself against such charge, however, the appellant was not put on proper notice of the charge under Section 11-F of ATA, which could have easily been done by learned trial Court while framing the charge which thus caused prejudice to the appellant. Even otherwise, most importantly, it was essential for the prosecution to put to the appellant in his statement recorded under Section 342 Cr.P.C whether or not he was member of a particular proscribed organization, since he was convicted under Section 11-F of ATA for being a member of a proscribed organization. It is well settled by now that piece of evidence not put to an accused during examination under Section 342 Cr.P.C could not be used against him for maintaining conviction and sentence. Reliance is placed upon the case reported as **Muhammad Nawaz and others vs. The State and others** (2016 SCMR 267). Since in this case no such question

was put to appellant regarding his membership of any proscribed organization, no such evidence to this effect can be used against him to form the basis of his conviction.

12. Under these circumstances, we find that the prosecution has not proved its case beyond a reasonable doubt against appellant being a member of a proscribed organization and by extending him benefit of doubt, we hereby set aside the impugned judgment, allow appeal and acquit him of the charge. Appellant is present on bail his bail bond stands cancelled and surety discharged.

13. This appeal is disposed of in the above terms.