

ORDER SHEET

THE HIGH COURT OF SINDH BENCH AT SUKKUR

Present:

*Mr. Justice Ahmed Ali M. Sheikh &
Mr. Justice Salahuddin Panhwar*

Criminal Misc. Application No. D- 200 of 2012.

For Katcha Peshi.

Abdul Rehman.....Applicant

VERSUS

The State.....Respondent

Applicant produced under custody.

Mr. Zulfiqar Ali Jatoi, Deputy Prosecutor General for the State.

Date of hearing: 18th September, 2012.

ORDER

Ahmed Ali M. Sheikh J., This is an application filed by applicant/convictee Abdul Rehman praying that his sentences recorded under sections 302 and 397/34 PPC, passed in one trial, be made to run concurrently.

2. Facts giving rise to this application are that the applicant along with others was sent up to face charge under sections 302, 324, 397/34 PPC and on completion of trial, learned trial court found the applicant and co-accused guilty and vide judgment dated 31.03.1998, convicted and sentenced them as under:-

- i. Co-accused Abdul Aziz, Rafique and Boota were convicted under section 302/34 PPC and sentenced to death while Imamuddin and Abdul Rehman (present applicant) were sentenced to imprisonment for life. They were further sentenced to fine of Rs. 300,000/- each to be paid to legal heirs of deceased Abdul Hakeem and Mst. Ghulam Fatima and in case of default to suffer further RI for two years each.
- ii. Co-accused Boota was convicted under section 324/34 PPC and sentenced to suffer RI for 10 years while applicant and remaining co-accused were sentenced to suffer RI for 7 years each. They were further sentenced to pay fine of Rs. 20,000/- each or in default to suffer RI for three months more.

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iii. Applicant and others were also convicted under section 397/34 PPC and sentenced to suffer RI for 7 years and fine of Rs. 20,000/- and in case of default to suffer further RI for three months.

3. Against the above judgment, the applicant and others filed appeal before this court being Special Anti-Terrorism Appeal No. 13 of 1998, which was dismissed vide judgment dated 03.06.1999 with modification that sentence awarded to the applicant and others by the trial court under section 324/34 PPC was set aside, as they had been convicted under section 397/34 PPC. Against that judgment, the applicant and others preferred Jail Petition No. 133 of 1999 before Hon'ble Supreme Court of Pakistan, but the same was dismissed and leave was refused vide order dated 21.04.2000.

4. It is inter alia contended by the applicant that he was convicted on different counts in one trial, therefore, his application be considered in view of section 35 Cr.P.C.

5. Conversely, learned DPG for the State, submitted that since this court has passed the final judgment in Special Anti-Terrorism Appeal No. 13 of 1998 and same was impugned before Hon'ble Supreme Court of Pakistan in Criminal Petition No. 133 of 1999, which was also decided and as the matter has attained finality, therefore at this stage, contention raised by the applicant merits no consideration.

6. We have heard the applicant in person and learned DPG for the State and gone through the material available on record. Upon a perusal of order dated 21.04.2000, passed by Hon'ble Supreme Court of Pakistan, it appears that this aspect of the case i.e. sentences on different counts was considered by their Lordships in para-5 of the order. For the sake of convenience, same is reproduced as under:-

"Petitioners preferred appeal before High Court of Sindh at Karachi being Special Anti-Terrorism Appeal No.13 of 1998 which has been dismissed vide impugned judgment dated 3rd June 1999 with modification that sentences awarded to the petitioners by the trial court under section 324/34 PPC was set aside in view of the fact that they had been convicted under section 397 PPC".

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7. Since this court has already disposed of the appeal of applicant and others vide judgment dated 03.06.1999 and the matter went upto the Hon'ble Supreme Court of Pakistan and sentences awarded to the applicant and others under sections 302 and 397 PPC were considered by Apex Court, therefore, this court cannot exercise such powers at this stage. Consequently, instant criminal miscellaneous application is dismissed. However, the applicant may approach the appropriate forum for redressal of his grievance, if so advised.

8. Copy of this order be sent to the applicant through Superintendent, Central Prison-I, Sukkur.


JUDGE


JUDGE

Ahmad