

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Cr. R.A. No.176 of 2016

Date	Order with Signature(s) of Judge(s)
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FOR HEARING OF CASE

03.01.2017

Mr. Ghulam Sarwar Chandio, advocate a/w applicants (1) Fatima Chandio d/o Allah Bux and (2) Saima Chandio d/o Allah Bux
Ms. Seema Zaidi, APG

Abdul Maalik Gaddi, J. Through this Criminal Revision Application, the applicants have assailed the legality and propriety of the Order dated 25.10.2016 passed by the learned Special Judge, Anti Corruption (Provincial) Karachi in Special Case No.30/2011 registered under FIR No.10/2011 at PS ACE Karachi, whereby the learned trial Court recalled the bail order already in favour of the applicants, sureties were cancelled and office was directed to issue NBWs against applicants and their sureties.

It is, inter alia, contended by the learned counsel for applicants that on 25.10.2016, he himself submitted condonation application before the learned trial Court regarding the absence of the applicants on the ground of some unavoidable circumstances. Learned counsel next contended that the trial Court dismissed that application as well as recalled the bail order and also cancelled the sureties and NBWs have been issued against the applicants, who are ladies and comes from District Dadu. He has further contended that the applicants were on bail and they never misused the bail, but on the relevant date i.e. 25.10.2016, they could not appear before the trial Court from Dadu to Karachi due to non-availability of any male member and without male member neither both ladies can travel nor stay in Karachi. It is also contended that order passed by the trial Court is harsh in nature and bail of the applicants has been recalled and sureties were cancelled without any notice to the

sureties and the applicants. Hence under the circumstances, he was of the view that the impugned order has been passed without any notice to the sureties and NBWs have also been issued to the sureties, which order according to him is against the law. Hence the same may be set aside and prayed to restore the position and stage of the case as before passing the impugned order.

Learned APG has supported the impugned order by arguing that the impugned order is perfect in law, but she did not substantiate her arguments through any valid reason.

Record shows that the applicants/ accused, who were facing trial before the trial Court, were on bail and they did not appear in trial Court on 25.10.2016, however, learned counsel for applicants appeared before the trial Court and filed an application for condonation of the absence of the applicants, but the trial Court did not agree with the reason for condonation of absence mentioned in the application and passed the following order:

“25.10.2016.

Advocate for accused Fatime Chandio and Saima Chandio has filed application for condonation and submitted that due to unavailability of male member, they would not appeared before this Court as they are living in District Dadu. Record indicates that case is fixed for framing of charge and related to year 2011 but charge could not be framed due to absence of accused persons on each and every date. No genuine reason has been shown in application in hand therefore bail order granted to both of accused persons is hereby recalled and surety cancelled. Office is directed to issue NBW's for accused persons and their sureties.

*Sd/-
25/X/16*

(MS. GULSHAN ARA CHANDIO)
Special Judge Anti-Corruption (Provincial)
Karachi”

It is stated by the learned counsel that applicants are ladies and they were attending the court regularly except one or two dates of hearing, does not

mean that they were not attending the court on each and every dates of hearing, as mentioned in the impugned order.

Learned counsel for applicants draws the attention of this Court towards the application dated 25.10.2016 filed by him before the trial Court for condonation of absence of the accused and was of the view that order passed on his application is not speaking and against the law, as the learned trial Court before taking action against sureties, no notice was issued to them.

Explanation of the applicants of their non-attending the Court was not accepted by trial Court, as observed above, although, the condonation of the absence of the accused was sought only for one day, but the impugned order indicates that in this case not only the bail of the applicants was recalled, but NBWs have been issued against sureties without any notice to them. This aspect of the case itself indicates that the impugned order passed by the trial Court is harsh in nature and has been passed without notice or hearing to the sureties. It is settled law that any order adverse to interest of a person cannot be passed without providing them an opportunity of hearing. Departure from such rule may render such order illegal. In this case, no notice was given to sureties of the applicants, therefore, they have also been condemned unheard. This aspect shows that the learned trial Court while passing the impugned order has committed material illegality, which requires interference by this Court in revisional jurisdiction.

Learned APG has not been able to controvert the above factual as well as legal position of the case, therefore, under the circumstances, the impugned order passed by the learned trial Court appears to be harsh, as such, under the peculiar facts and circumstances, it appears to be fit case calling interference of this Court under revisional jurisdiction under Section 435 read with Sections 439 and 561-A CrPC. The scope of revisional jurisdiction of this Court is very wide and it is to be exercised whenever facts calling for its

exercise are brought to the notice of the Court and where the order of the trial Court is found absolutely harsh, based on misconception of law and facts and quite contrary to the principle laid down for dispensation of criminal justice. Such jurisdiction is to be exercised to correct or to prevent gross miscarriage of justice.

The grounds as submitted by the applicants for non-attending the Court on the relevant dates was sufficient for trial Court to condone the absence of the applicants for one day, but learned trial Court did not exercise its judicial discretion in favour of the applicants.

Accordingly, under the aforementioned facts and circumstances of the case and while relying upon the case of Hubdar Ali vs. The State reported in 2014 PCrLJ 498, this revision application is allowed, impugned order dated 25.10.2016 is set aside and absence of the applicants/ accused is condoned. The applicants/ accused were on bail before passing impugned order and they shall remain on bail on same sureties and PR bonds. Applicants are directed to appear before trial Court to face trial. However, it is clarified that in future if the applicants remain absent without any reason or explanation from trial Court, the learned trial Court would be at liberty to take action against the applicants, as per law.

This Criminal Revision Application is allowed and Impugned Order is set aside in the above terms.

JUDGE

asim/pa