

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD
Cr. Revision Application No.S-113 of 2017

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
1. For orders on MA-6262/2017	
2. For orders on MA-6067/2017	

29.08.2017

Mr. Vasand Thari, Advocate for applicant
Mr. Shahid Ahmed Shaikh, D.P.G

ORDER

ABDUL MALIK GADDI, J:- Through M.A No.6262/2017, the learned Counsel for the applicant/accused by showing urgency in the matter submits that the applicant/accused is behind the bars, therefore, he prays that the matter may be taken up today for hearing of this revision application. At his request, the matter is taken up today in open Court for hearing, hence, the urgent application is disposed of.

2. Through the above criminal revision application, the applicant/accused has assailed the legality and propriety of the judgment dated 06.07.2017 passed by the learned Sessions Judge, Tharparkar at Mithi in Criminal Appeal No.09 of 2017, whereby the learned Sessions Judge has maintained and upheld the conviction awarded to the applicant/accused by the Civil Judge & Judicial Magistrate, Mithi by order dated 23.05.2017 in Criminal Case No.36 of 2017 arising out of Crime No.26 of 2017 registered at Police Station, Mithi, for offence under Section 3 & 4 of Prohibition (Enforcement of Hudood) Ordinance, 1979, whereby the applicant/accused was convicted and sentenced to suffer S.I for two years and to pay fine of Rs.5000/-, in case of default in payment of fine, to undergo S.I for 15 days more.

3. Concisely, the facts of the prosecution case are that complainant SIP Hameerji of Police Station Mithi lodged F.I.R against the accused alleging therein that on 29.03.2017 at about 2130 hours, he alongwith staff apprehended accused Vijay Kumar from Parmar Colony road, emerging from Mithi-Islamkot road, who was found in possession of one

black color polythene bag containing 18 pints of Vatt-1 Pakistan Whisky. It is further alleged in the FIR that accused was carrying the recovered whisky for sell and drinking. The complainant party also recovered one note of Rs.100/- from his paint pocket, thereafter, the police party sealed parcels viz. one pint of whisky out of the recovered 18 pints as sample for sending to the chemical examiner for its analysis and the remaining 17 pints of whisky were separately sealed as case property, hence, the present FIR lodged by the complainant.

4. The instant revision application has been presented on the file of this Court on 12.07.2017 with the office objection that as to how the instant revision application is maintainable before this Court as the matter falls within the jurisdiction of the Federal Shariat Court.

5. As observed above, today the learned Counsel for the applicant/accused has filed urgent application and submits that this Court has no jurisdiction to entertain this revision application as the jurisdiction actually rests with the Federal Shariat Court and in this respect reliance has been placed upon the cases of *GHULAM MUHAMMAD V. THE STATE (2013 P.Cr.L.J 105)*, *JUMAN & ANOTHER V. THE STATE (PLD 2016 SINDH 191)* AND *AIJAZ & ANOTHER V. THE STATE (2016 P.Cr.L.J 130)*.

6. Learned Deputy Prosecutor General, in view of the case laws cited by the learned Counsel for the applicant/accused, is of the view that this Court has no jurisdiction to entertain this revision application under Article 203-DD of the Constitution of Islamic Republic of Pakistan, 1973.

7. Heard learned Counsel for the parties and perused the record with their able assistance. It reveals from the record that the applicant/accused has been convicted by the judgment of Civil Judge & Judicial Magistrate, Mithi, having been maintained and upheld by the learned Sessions Judge, Tharparkar at Mithi. After conviction, the applicant/accused has filed the instant revision application before this Court by impugning the judgments of two Courts below under Hudood Ordinance. In my opinion, the revision application under Sections 435 & 439 Cr.P.C would be competent before the High Court in respect of any

proceedings before any criminal Court. However, the High Court, while exercising such powers, for the purpose of satisfying itself, as to the correctness, legality or propriety of any proceedings of such criminal Court, call for record and examine the same but such revision power did not lie with High Court in respect of laws relating to the enforcement of Hudood, therefore, under provisions of Articles 203-DD and 203-G of the Constitution of Islamic Republic of Pakistan, 1973, it is only the Federal Shariat Court, which can call and examine the record of any case decided by any criminal Court under any law relating to the enforcement of Hudood, for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order passed by such Court and the revision power of High Court in respect of Hudood matters, is excluded. By virtue of overriding provisions of Articles 203-DD & 203-G of the Constitution of Islamic Republic of Pakistan, 1973, no other subordinate legislation can confer any such jurisdiction even to the Supreme Court or to High Court in respect of any matter of which the jurisdiction lay with the Federal Shariat Court. In these circumstances, the present revision application is not maintainable before this Court, as jurisdiction in such matters exclusively lay with Federal Shariat Court. Under these circumstances, the present revision application is not maintainable before this Court being barred by jurisdiction as the jurisdiction exclusively lay with the Honourable Federal Shariat Court.

8. Since the applicant/accused is in jail, therefore, in the light of the above discussion as well as keeping in view the case laws referred to above, I am of the considered opinion that this revision application before this Court is incompetent, therefore, the Additional Registrar of this Court is directed to send this criminal revision application alongwith record, after retaining Photostat copies thereof, to the Honourable Federal Shariat Court.

9. In view of the above stated legal proposition, this criminal revision application stands transferred to the Honourable Federal Shariat Court.

JUDGE

