

THE HIGH COURT OF SINDH AT KARACHI

Special Criminal Anti-Terrorism Appeal No.113 of 2020

Present: *Mr. Justice Nazar Akbar*
Mr. Justice Zulfiqar Ahmad Khan

Appellant: Saleem Ahmed S/o Feroz Ahmed, through
Mr. Muhammad Nizar Tanoli, Advocate.

Respondent: The State, through Ms. Rahat Ahsan,
Additional Prosecutor General Sindh.

Date of Hearing: **24.12.2020**

J U D G M E N T

NAZAR AKBAR, J.- Appellant Saleem Ahmed was tried by learned Judge, Anti-Terrorism Court-XII, Karachi, in Special Case No.134 of 2020, arising out of FIR No.36 of 2020, registered at P.S. CTD, Karachi for offences under Sections 11-H, 11-N, 11-F(i), (ii) of the Anti-Terrorism Act, 1997. On conclusion of trial, by judgment dated **11.08.2020** appellant/accused was convicted under Section 265-H(ii) and sentenced for offence under **Section 11-F(i)** to suffer R.I for **six months** and fine of Rs.10,000/-, in default thereof, to suffer S.I for 04 months more. The appellant was also sentenced for offence under **Section 11-F(5)** to suffer R.I for **five years** and fine of Rs.10,000/- and in default thereof, to suffer S.I for 04 months more.

2. Precisely the facts of the prosecution case as per the FIR are that on 26.03.2020, SIP Muhammad Saleem of P.S CTD/TKWG, Karachi received a letter No.DIGP/CTD/R/2809 dated 26.3.2020 in which SIP Muhammad Saleem was directed from his high-ups for legal proceedings against accused Muhammad Saleem (the present appellant), who belongs to one prescribed organization namely Daish, who is not member of such organization but collects donation or funding amount for the said organization, which is used for terrorism

activities in all over the country. He was, therefore, providing financial assistance to terrorists, such act falls within the ambit of ATA, 1997, therefore, FIR under Sections 11-H, 11-N, 11-F(i), (ii) of ATA, 1997 was registered against the accused/appellant. After completion of investigation, challan was submitted against the accused under the above referred sections.

3. On **09.07.2019** the trial Court framed charge against the accused at Ex.3. Accused pleaded not guilty and claimed to be tried.

4. In order to substantiate its case prosecution examined 04 witnesses viz, **PW-01** complainant SIP Muhammad Saleem was examined at Ex:04; **PW-02** HC Majid Khan at Ex:06; **PW-03** Rickshaw Driver Abdul Raheem at Ex:07 and **PW-04** Inspector Ali Hyder at Ex:08. On **11.08.2020** learned APG filed statement to give up one prosecution witness, namely, PC Ali Faisal at Ex:09, thereafter, learned APG closed the side of prosecution vide statement dated **11.8.2020** at Ex.10.

5. Statement of accused was recorded under **Section 342** Cr.PC at Ex.11, in which he denied the prosecution allegations, claimed his innocence and false implication in this case. He stated that nothing was recovered from his possession, as neither he belong to any organization nor he collected funds and the same are foisted upon him. He further stated that he lodged FIR against SSP Capt. (R) Muhammad Asad Ali and Capt. (R) Shahzad Sohail and in revenge of said FIR, he has been dragged in this false case. However, he neither examined himself on oath nor led any evidence in his defence.

6. The learned trial court after hearing the learned counsel for the parties and on assessment of entire evidence convicted and sentenced the appellant/accused by judgment dated **11.08.2020** as stated above.

7. The facts of the case as well as evidence produced before the trial court find an elaborate mention in the impugned judgment dated **11.08.2020** passed by the trial Court, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

8. Mr. Muhammad Nizar Tanoli, learned counsel for the appellant has argued that there is no other allegation against the appellant except the instant FIR. He pointed out that no date and time of offence is mentioned in FIR nor any cognizable offence is disclosed therein. He further contended that police has not produced the appellant before SSP or Court of law for recording his confessional statement; the appellant has been implicated in this case due to enmity with the then SSP against whom the appellant has lodged FIR. He lastly prayed for acquittal of the appellant.

9. Learned Additional Prosecutor General Sindh sought for dismissal of instant appeal by contending that it is a matter of terror financing, which itself is a cognizable offence. She further contended that the appellant has confessed his guilt during investigation and on his pointation recoveries were made. She further contended that appellant has been fully implicated in the instant case by all the PWs, therefore, prosecution has proved its case against the appellant beyond any shadow of doubt. She fully supported the impugned judgment.

10. We have carefully heard learned counsel for the parties and examined the prosecution evidence minutely.

11. It is case of the prosecution that the appellant belongs to one prescribed organization namely "Daish", and collects the donation or funding amount for such organization, which is involved in terrorism activities in all over the country. However, the FIR is silent regarding

date and time of offence allegedly committed by the appellant. The FIR, challan and deposition of all PWs are also silent regarding the alleged transaction, donations, links or meetings and the name of alleged persons or institutions to whom alleged support/donation was tendered. The complainant has also admitted in his cross-examination that **“It is correct to suggest that no offence is mentioned in the contents of FIR that at which date, time and place offence for proscribed organization was committed by the present accused. It is correct to suggest that according to 154 Cr.P.C when no cognizable offence is made out, no FIR can be lodged.”** Besides this, even no recovery was effected from possession of the appellant as admitted by PW-2 Majid Khan that **“it is correct to suggest that nothing was recovered on the pointation of present accused”**.

12. There is hardly any iota of evidence to prove that the Appellant had any affiliation with proscribed organization “Daish”. The prosecution has not produced any evidence which may show that he ever contacted any of its known activists or a member of its organizational structure by phone or otherwise. Nothing was recovered from the appellant to connect him with the alleged unidentified offence. All this was necessary because, as already stated, the Appellant has been specifically accused of collecting funds for banned organization. Mere sending a letter to the complainant by his high-ups that the appellant is a member of a banned organization cannot connect the Appellant with the said organization.

13. In view of the above facts and evidence, we have no hesitation to hold that there are several circumstances/infirmities in the prosecution case as highlighted above, which have created reasonable doubt about the guilt of accused. By now it is settled law that for giving benefit of

doubt to an accused, it is not necessary that there should be many circumstances creating doubts. If there is a circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. In the case of Muhammad Mansha vs. The State (**2018 SCMR 772**), the Hon'ble Supreme Court has observed as follows:-

“4. Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Muhammad Akram v. The State (2009 SCMR 230) and Muhammad Zaman v. The State (2014 SCMR 749).”

14. In view of the above discussion when the prosecution has already failed to prove its case against the appellant beyond any reasonable doubt, the conviction of appellant cannot be maintained. Consequently, by short order dated **24.12.2020** this appeal was allowed and conviction and sentence recorded by the trial Court by judgment dated **11.08.2020** was set aside and appellant was acquitted of the charge. These are the reasons for our short order.

J U D G E

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Karachi,
Dated: .04.2021

Ayaz Gul