

Order Sheet

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Criminal Revision Application No. S-41 of 2012

For Katcha Peshi :

Mr. Abdul Qadir Shaikh, advocate for the applicant.

Mr. Zulifqar Ali Jatoi, D.P.G.

Date of hearing : 16.10.2012.

ORDER

Nadeem Akhtar, J. : This criminal revision application has been filed by the applicant under Sections 435 and 439 read with Section 561-A Cr.P.C., challenging the order dated 12.06.2012 passed in criminal miscellaneous application in S. C. No. 62 of 2012 by the Additional Sessions Judge (Hudood), Sukkur. By the impugned order, the application filed by the applicant under Section 265-K Cr.P.C. was dismissed.

2. This case pertains to the incident relating to a building known as Sajjad Apartment Building, Hussaini Road, Sukkur, which collapsed on 24.12.2008 causing death of several people and also injuries to a number of people. Mr. Abdul Qadir Shaikh, the learned counsel for the applicant submitted that the applicant has been implicated in this case on the false allegation that he had issued a license to the architect who had constructed the said building. He further submitted that the license was issued / approved by the Taluka Municipal Administration (T.M.A.), Sukkur, through its senior officers as per the rules and procedure of T.M.A., and not by the applicant in his personal capacity. He also submitted that the applicant was serving only as the Taluka Officer (T.O.) of the T.M.A., and that he had no authority to approve, grant or issue the license to the architect. The applicant only conveyed the decision of the competent authority to the architect. The learned counsel particularly emphasized on the fact that the applicant was posted as the Taluka Officer at the T.M.A. from 01.07.2000 till 03.06.2004, whereas, the original proposed plan of the building for basement and ground plus two upper floors was approved in the year 2004, and the revised plan of the building for basement and ground plus five upper floors was approved in the year 2006 by adding three upper floors. The applicant was neither posted at the T.M.A. at the time of approval of the original building plan or the

revised building plan, nor was he involved in any manner whatsoever in the said approvals. The learned counsel argued that the application filed by the applicant under Section 265-K Cr.P.C. was wrongly dismissed by the learned Additional Sessions Judge, as the applicant was entitled to be acquitted in view of the grounds urged in the said application as well as in the present application.

3. Before dealing with the merits of the case, I would like to refer here to two Articles ; namely, 203-DD and 203-G from Chapter 3-A of the Constitution of the Islamic Republic of Pakistan, 1973, which relates to the powers, functions and jurisdiction of the Federal Shariat Court. Article 203-DD of the Constitution reads as follows :

“ 203-DD. Revisional and other jurisdiction of the Court. —

(1) The Court may call for 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 recorded or passed by, and as to the regularity of any proceedings of, such court and may, when calling for such record, direct that the execution of any sentence be suspended and, if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record.

(2) In any case the record of which has been called for by the Court, the Court may pass such order as it may deem fit and may enhance the sentence :

Provided that nothing in this Article shall be deemed to authorise the Court to convert a finding of acquittal into one of conviction and no order under this Article shall be made to the prejudice of the accused unless he has had an opportunity of being heard in his own defence.

(3) The Court shall have such other jurisdiction as may be conferred on it by or under any law. ”

Article 203-G of the Constitution reads as follows :

“ 203-G. Bar of jurisdiction. —

Save as provided in Article 203F, no court or tribunal, including the Supreme Court and a High Court, shall entertain any proceedings or exercise any power of jurisdiction in respect of any matter within the power of jurisdiction of the Court. ”

4. Clause (1) of Article 203-DD indicates that the Federal Shariat Court may call for 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 recorded or passed by, and as to the regularity of any proceeding of, the Federal Shariat Court may, when calling for such record, direct that the execution of any sentence be suspended, and if the accused is in confinement, he may be released on bail, or on his own bond pending examination of the record. Moreover, Article 203-G of the Constitution clearly provides that subject to Article 203-F, no court or tribunal, including the Hon'ble Supreme Court and the High Court, shall entertain any proceedings or exercise any power or jurisdiction in respect of any matter which falls within the power or jurisdiction of the Federal Shariat Court. Under Article 203-F, an appeal can be filed before the Hon'ble Supreme Court against the final order of the Federal Shariat Court.

5. Article 203-G of the Constitution makes it abundantly clear that the High Court and even the Hon'ble Supreme Court will not have jurisdiction in respect of any matter which falls within the power or jurisdiction of the Federal Shariat Court, except that the right of appeal is provided to the Hon'ble Supreme Court under Article 203-F. As the Federal Shariat Court has the exclusive revisional jurisdiction under Article 203-DD, therefore, this Court does not have the revisional jurisdiction in respect of the present matter which has arisen out of proceedings initiated by and pending before the Additional Sessions Judge (Hudood) Sukkur under the law relating to enforcement of *Hudood*.

6. The above view expressed by me is supported by the cases of *Haji Allah Ditto V/S Ishtiaque Ahmed Soomro and 10 others, 1999 P.Cr.L.J. 1996*, and *Malook Hussain alias Maluka and two others V/S Muhammad Nawaz and two others, 1993 P.Cr.L.J. 1955*, wherein the criminal revision applications were dismissed by this Court and the Lahore High Court on the ground that the same were not maintainable before the High Court as the Federal Shariat Court had the exclusive revisional jurisdiction under Article 203-DD of the Constitution.

7. In the case of *Sardarullah V/S The State, 1998 P.Cr.L.J. 2001*, a learned Division Bench of this Court was pleased to return the criminal revision application for presentation before the Court having jurisdiction. It

was held inter alia that all decisions and orders made by a criminal court under any law relating to enforcement of *Hudood* in respect of matters in controversy affecting rights of parties are revisable by the Federal Shariat Court under Article 203-DD of the Constitution, and not by the High Court under Sections 435 and 439 Cr.P.C. It was further held by the learned Division Bench that Article 203-G is also a barring provision whereunder no court or tribunal, including the Hon'ble Supreme Court and the High Court, shall entertain any proceedings or exercise any power or jurisdiction in respect of any matter within the power of jurisdiction vested with the Federal Shariat Court. Similarly, the criminal revision application was returned for presentation to the Federal Shariat Court by a learned Division Bench of the Balochistan High Court in the case of *Jaffar Khan and another V/S The State 1985 P.Cr.L.J. 2611.*

8. As this criminal revision application has been filed against the order passed by the Additional Sessions Judge (Hudood) Sukkur under the law relating to enforcement of *Hudood*, the same is not maintainable before this Court. Accordingly, this criminal revision application is returned to the applicant for presentation before the Federal Shariat Court.

J U D G E