

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Jail Appeal No.S-170 of 2021

Appellant: ASI Sikandar son of Bilawal Gadhi through Mr. Razzaque Rahim Shaikh, Advocate.

Respondent: The State, through Mr. Fayaz Sabki A.P.G for the State.

Date of hearing: 21-03-2022.

Date of decision: 21-03-2022.

JUDGMENT

IRSHAD ALI SHAH, J. The facts in brief necessary for disposal of instant Criminal Jail Appeal are that the appellant being ASI allegedly conducted investigation of F.I.R Crime No.46 of 2020 of P.S. Mullakatiar to some extent and during course of his examination was served with a notice by learned Trial Court to show-cause as to why he should not be convicted and sentenced for giving false evidence. Reply to such show-cause notice was furnished by him which was not found satisfactory and consequently he was convicted and punished for seven days by learned 1st Additional Sessions Judge, Tando Muhammad Khan vide order dated 28.09.2021, which is impugned by the appellant before this Court by preferring the instant appeal from jail.

2. It is contended by learned counsel for the appellant that the appellant has been convicted and punished by the learned Trial Court on the basis of illegal proceedings; therefore, the

impugned order is liable to be set-aside, which is not opposed by learned A.P.G for the State.

3. Heard arguments and perused the record.

4. Section 367(2) Cr.P.C prescribes that every judgment/order shall specify the offence for which the accused is convicted and punished. There is nothing in the impugned order which may suggest as to for what offence / penal section the appellant has been convicted and punished; such omission could not be overlooked. If, learned Trial Court was having a feeling that the appellant has committed an offence for giving a false evidence punishable u/s: 193 P.P.C then he was to have been dealt with under the provisions of section 195 (3) Cr.P.C which prescribes cognizance of such like cases by the Courts could only be taken on filing of direct complaint. No direct complaint was filed. The appellant was convicted and punished then and there simply after service of notice and having his reply thereon, without providing chance of fair trial or hearing to him, which is contrary to the mandate contained by Article-10-A of the Constitution of the Islamic Republic of Pakistan 1973. Consequently the conviction and punishment awarded to the appellant together with the impugned order are set-aside.

5. Instant criminal jail appeal is disposed of accordingly.

JUDGE

Muhammad Danish*