

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Appeal No. S- 74 of 2009

For Regular Hearing.

None present for the appellant.
Mr. Zulfiqar Ali Jatoi, Deputy Prosecutor General.

Date of hearing: 10-07-2017

Date of Judgment: 14-07-2017

J U D G M E N T

NAIMATULLAH PHULPOTO J., Appellant Bakhshal alias Bakhshoo Kurio was tried by learned 1st Additional Sessions Judge, Sukkur for an offence under section 13(d) A.O of P.S.Abad and by judgment dated 24.06.2009, appellant was convicted under section 13(d) A.O and sentenced to three years R.I and fine of Rs. 1000/- and in case of default, appellant was ordered to further undergo one month S.I, however appellant was extended benefit of section 382-B CrPC.

2. Against his conviction and sentence appellant preferred instant appeal. Sentence of appellant was suspended by this court vide order dated 09.07.2009. After suspension of sentence, appellant never appeared before this court. BWs were issued against appellant and notice to his surety. NBWs were also issued against accused/appellant and notice to his surety in terms of section 514 CrPC. ASI Shakeel Ahmed Awan of P.S. Abad returned NBWs unexecuted with endorsement dated 3.12.2014 that appellant has shifted to some unknown place. In support of such endorsement, process server recorded statements of Nekmards of locality, namely Ali Gul son of Khair Muhammad and Syed Nawab Shah son of Syed Sonal Shah. Thereafter, process was repeated against appellant and his surety but always returned unexecuted.

3. Deputy Prosecutor General argued that appellant after suspension of sentence has become a fugitive from law and prayed for dismissal of appeal on account of abovementioned conduct of appellant. In support of his submissions

relied upon case of Ikramullah and others v. The State (2015 SCMR 1002), in which Hon'ble Supreme Court has held as follows:

“Criminal Appeal No. 354 of 2012

9. A report dated 11-12-2014 has been received from the Superintendent, Central Prison, Bannu informing that Adil Nawab appellant had escaped from the said jail during the night between 14/15-4-2012 and he has become a fugitive from law ever since. The law is settled by now that a fugitive from law loses his right of audience before a court. This appeal is, therefore, dismissed on account of the above mentioned conduct of the appellant with a clarification that if the appellant is recaptured by the authorities or he surrenders to custody then he may apply before this court seeking resurrection of this appeal”.

4. A report dated 05.1.2015 of ASI Shakeel Ahmed Awan of P.S.Abad available on record, reflected that appellant has shifted to some unknown place and his whereabouts are not known. In spite of that, repeatedly process was issued against appellant and his surety but always returned un-served. I agree with learned DPG that appellant has become a fugitive from law after suspension of sentence and has shifted to some unknown place. The law is settled by now that a fugitive from law loses his right of audience from the court as held in case of Ikramullah (supra). This appeal is, therefore, dismissed on account of abovementioned conduct of the appellant with a clarification that if the appellant is recaptured by the authorities or he surrenders to custody then he may apply before this court seeking resurrection of this appeal.

5. Before parting with this order, it is ordered that action against surety shall be continued. Office is directed to repeat notice against surety in terms of section 514 CrPC as already ordered by this court. Adjourned to a date in office for repeating notice to surety under section 514 CrPC.

JUDGE