

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SPL. CR. A.T. APPEAL NO.05/2017
SPL. CR. A.T. APPEAL NO.06/2017
SPL. CR. A.T. APPEAL NO.38/2017

Date

Order with signature of Judge

BEFORE: MR. JUSTICE SALAHUDDIN PANHWAR, &
MR. JUSTICE KHADIM HUSSAIN M. SHAIKH

09.10.2017

Mr. Ajab Khan Khattak, Advocate for Appellants.
Mr. Abrar Ali Khichi, DPG.

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SALAHUDDIN PANHWAR, J: At the outset, learned counsel for appellants, *inter alia*, contends that offence relating to extortion, lacks ingredients of terrorism; prosecution has failed to brought on record that this is case of terrorism, hence, impugned judgment on the ground of section 7 ATA 1997 is illegal, however, appellants have remained in custody since two years they have no criminal record as per jail role dated 29.04.2017, they have served substantive sentence two years two month and eight days, hence, it would be in the interest of justice, to reduce the sentence of appellants and may be released to them while considering their period of jail detention as already undergone. Learned counsel has relied upon 2016 SCMR 1754 (Sagheer Ahmed vs. the State) and unreported case of this Court.

Whereas learned DPG has raised objection and contends that impugned judgment is in accordance with law.

Heard and perused the record.

At the outset, we would safely add here that a mere allegation of demand of *bhatta (extortion)* in FIR would not *necessarily* bring the Section 6(2)(k) into action but prosecution would be required to place on record a little more than a *mere allegation*. Reference to the case of **Sagheer Ahmed** (2016 SCMR 754) would be sufficient in this regard wherein honourable Apex Court stamped the following observation of the High Court with regard to application of Section 6(2)(k) of ATA on demand of **Bhatta** which (observation) is:

“10. Complainant has also not disclosed the specific dates, times and places of demanding *Bhatta* by accused persons nor any such evidence was produced before the Investigating Officer to prima facie establish such allegations. **In absence of any tangible material, mere allegations of demanding Bhatta do not attract section 6(2)(k) of Anti-Terrorism Act, 1997,** in the present case nor said section was mentioned in the FIR and Challan.”

After scanning of the prosecution evidence, we are of the considered view that this is a fit case in which it would be justified to convert the sentence into one already undergone as section 384 PPC leaves it *entirely* at discretion of Court to award sentence which may extend upto three (03) years which *otherwise would serve object and purpose of other aspect of punishment i.e. reformation*.

Accordingly, in view of what has been discussed above, we are persuaded to reduce the sentence awarded to the Appellants to that as already undergone. Consequently, while dismissing the instant appeals, we maintain the conviction and reduce the sentence to that of already undergone by directing the jail authorities to release the Appellants forthwith, if their custody is no more required in any other criminal custody case.

The appeals in the above terms are disposed of
alongwith listed application(s).

J U D G E

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