

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Criminal Jail Appeal No.S-07 of 2023
CrI. Appeal No.S-118 of 2022

Appellant Gulsher and Zulfiquar, **through** M/s Rukhsar Ahmed Junejo and. Daman Ali Laghari, advocates.

The State **Through** Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

Date of hearing 07-12-2023

Date of decision 07-12-2023.

J U D G M E N T

IRSHAD ALI SHAH, J- The facts in brief necessary for disposal of instant appeals are that while hearing a revision application No. 26/2014, this Court vide order dated 20-10-2017 directed for filing of Complaint against the appellants for having committed the offence of forgery, perjury and depriving the woman from inheritance. It was filed by the Additional Registrar of this Court. The appellants joined the trial and on conclusion whereof they were convicted and sentenced to various terms of imprisonment spreading over ten years by learned IVth Additional Sessions Judge (Hudood) Sukkur, vide judgment dated 23-12-2022, which they have impugned before this Court by preferring two separate appeals.

2. At the very outset, it is pointed by learned counsel for the appellants that the appellants were never charged for offence punishable u/s 193 PPC; neither they were confronted with such circumstance during course of their examination u/s 342 Cr.P.C nor any point for determination to such aspect was framed by learned trial Judge in impugned judgment, yet they have been convicted u/s 193 PPC and by such omission, they have not only been misled but have been prejudiced in their defence seriously, such omission being incurable in terms of

section 537 Cr.P.C has occasioned in failure of justice. By pointing so, they suggested for remand of the case to learned trial Court for rewriting of the judgment, which is not opposed by learned DPG for the State.

3. Heard arguments and perused the record.

4. The omission pointed out by learned counsel for the appellants obviously have prejudiced the appellants in their defence seriously, which is contrary to the mandate contained by Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, which prescribes the right of fair trial to anyone. Consequently, the conviction and sentence awarded to the appellants by way of impugned judgment are set aside with direction to learned trial Court to rewrite the judgment after curing the defects, if any, if need be by providing chance of hearing to all the concerned.

5. The appellants were enjoying the concession of bail at trial, they to enjoy the same concession subject to their furnishing fresh surety in sum of Rs.50,000/- each and PR bond in the like amount to the satisfaction of the learned trial Court.

6. The instant Criminal Appeals are disposed of accordingly.

J U D G E