

**IN THE HIGH COURT OF SINDH,
AT KARACHI**

Present:

Ahmed Ali M. Shaikh, CJ
Yousuf Ali Sayeed, J

C.P No. D-7115 of 2017

Ghulam Mohammad Dars.....Petitioner

Versus

Federation of Pakistan and another.....Respondents

Rafique Ahmed Kalwar, Advocate along with Petitioner and
Muhammad Yasir, Advocate.

Muhammad Hassan Akbar, Advocate General, Sindh alongwith
Jawwad Dero, Additional Advocate General, Sindh, Saifullah,
Assistant Advocate General, Sindh, Saima Imdad Mangi, Assistant
Advocate General, Sindh and Nadeem Ahmed Qureshi, Law Officer,
Law Department, Government of Sindh.

Kazi Abdul Hameed Siddiqui, DAG.

Date of hearing : 30.03.2023

ORDER

YOUSUF ALI SAYEED, J. The Petitioner is a practicing Advocate, who has invoked the jurisdiction of this Court under Article 199 of the Constitution in the public interest, seeking that the seven (07) day period of limitation for filing of an appeal against death sentence prescribed in terms of Article 150 of the First Schedule to the Limitation Act, 1908 be declared to violate Articles, 8, 9, 10 of the Constitution and that appropriate directions be issued for tabling an amendment of that Article so as to enhance/increase the period of limitation to 30 days.

2. Per the Petitioner, the period provided under Article 150 was the shortest for filing of any sort of appeal under the Act, and was so inadequate as to amount to a violation of fundamental rights. It was pointed out that an appropriate amendment had been made by the legislature in India so as to increase the limitation period for filing an Appeal in such matters from seven (7) to thirty (30) days under Article 115 of the Indian Limitation Act, 1963.

3. The comments filed in the matter on behalf of the Federation reflected a somewhat perverse stance inasmuch as it was contended that the seven (7) days period was “just and reasonable” and that its rationale was “to provide quick and speedy justice to an accused who is sentenced to death”. Be that as it may, the learned DAG did not stand by that stance and submitted that the Federal Government would consider appropriate amendment under the law. Indeed, on query posed as to whether any instance could be cited where an appeal against a death sentence had been dismissed merely on the touchstone of limitation, no such reference was forthcoming. Furthermore, it merits consideration that in terms of Section 374 Cr.PC, a death sentence is even otherwise required to be confirmed by the High Court, which may then proceed on the matter in terms of Section 376 Cr.PC, with those two provisions reading as follows:-

374. Sentence of death to be submitted by Court of Session. When the Court of Session passes sentence of death, the proceedings shall be submitted to the High Court and the sentence shall not be executed unless it is confirmed by the High Court.

376. Power to High Court to confirm sentence or annul conviction. In any case submitted under Section 374, the High Court—

- (a) may confirm the sentence, or pass any other sentence warranted by law, or
- (b) may annul the conviction, and convict the accused of any offence of which the Sessions Court might have convicted him, or order a new trial on the same or an amended charge, or
- (c) may acquit the accused person:

Provided that no order of confirmation shall be made under this section until the period allowed for preferring an appeal has expired, or, if an appeal is presented within such period, until such appeal is disposed of.

- 4. Whilst the matter was heard and reserved for Judgment on 30.03.2023, it transpires that in the interregnum the Federal legislature has seen fit to promulgate the Limitation (Amendment) Act, 2023 (Act No. XXXII of 2023), whereby the period of limitation under Article 150 of the First Schedule of the Act has been enhanced from seven (07) to thirty days (30). Indeed, a Statement dated 24.06.2023 has been submitted to that effect under signature of the Petitioner along with copy of aforementioned amending statute.
- 5. As such, under the circumstances, it is apparent that the Petition has served its purpose and that no further order or direction is required. The Petition stands disposed of accordingly.

JUDGE

CHIEF JUSTICE

Karachi
Dated