

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Date	Order with signature of Judge
------	-------------------------------

Spl.A.T.A. No. 51 of 2013

1. For hearing of case.
2. For orders on M.A No. 8131/2013.

Spl.A.T.A. No. 57 of 2013 &

1. For hearing of case.
2. For orders on M.A No. 8319/2013.

Spl.A.T.A. No. 58 of 2013

1. For orders on M.A No. 8603/2013.
2. For orders on M.A. No8604/13.
3. For hearing of case.

11.04.2017.

None present.

Mr. Muhammad Iqbal Awan, APG.

As per Jail Roll dated 10.04. 2017, appellants have been released from the Central Prison, Karachi after expiry of the sentence awarded by the trial Court. Diary sheets reflect that matter was fixed on 25.03.2014, 15.04.2014, 08.05.2014, 23.10.2014, 16.01.2015, 13.02.2015, 14.04.2015, 28.04.2015 and 23.11.2015 but none has appeared on behalf of the appellants. Pendency of appeals for appearance and hearing of appellants make us to examine such attitude of the appellants. For which, the provision of Section 423 (b), being relevant, is referred hereunder:-

b) in an appeal from a conviction, (1) reverse the finding and sentence, **and acquit or discharge the accused**, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or sent for trial, or (2), alter the finding, **maintaining the sentence**, or , with or without altering the finding reduce the sentence, or, (3) with or without **such reduction** and with or without altering the finding, alter the nature of the sentence but, subject to the provisions of the section 106, sub-section (3) not so as to enhance the same;

From above, it is quite evident that the competence of appellate court could well be parted as :

- a) To acquit or discharge the accused (convict) or retrial of accused;
- b) To maintain the sentence;
- c) To reduce the sentence;

In a situation where the convict serves out, awarded sentence, *prima facie* makes the *parts (b)* and *(c)* as redundant and even *second* part of part (a) which deals with retrial of accused as same shall be against spirit of Section 403 of Code and Article 13 of Constitution. There remains *first* part of part (a) i.e. acquittal or discharge. We are conscious that a *conviction* regardless of its satisfactory execution, may still be a grievance for a convict as a *stigma* only. It is always the *discretion* of the concerned to get *stigma* removed or leave it, if it finds it causing no harm or prejudice to him. If such a convict / appellant *despite* active knowledge and notice of pendency of appeal chooses to remain absent, it may well be taken as a *deliberate* waiver by such person as '*stigma (served conviction)*' not worth questioning/challenging any more. Besides, to file appeal is a *statutory* right of a convict but he may *competently* choose not to appeal thereby accepting conviction and consequence (*stigma*) thereof. The *aggrieved* must show some vigilance *least* appearance, particularly when not only the **safe administration of justice** but also Article 10-A of the Constitution insists an opportunity of hearing before passing an order, effecting the rights of a person. Non appearance of such like appellants *normally* keep matters pending for *indefinite* period or in name of *fresh* service upon appellant which *normally* would serve no purpose of justice. Thus, in such eventuality it is better to dispose off such matters but keeping right of such appellant *intact* to re-open appeal on appearance of appellant / convict if at any *subsequent* stage he feels it necessary to have status of *stigma* determined. Accordingly, instant appeals are disposed off. Needless to mention that in

case, appellants intend to contest these appeals on merits, they would be at liberty to file such application(s) which *alone* shall be sufficient for bringing the *disposed of* appeals to regular hearings. Office shall examine all the appeals wherein appellants have been released on completion of sentence, and fix before this court on 09th May 2017.

JUDGE

JUDGE

SAJID