

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

SPL. CR. ATA NO.82/2023

Date Order with signature of Judge

BEFORE: MR. JUSTICE SALAHUDDIN PANHWAR, &
MR. JUSTICE ADNAN-UL-KARIM MEMON

For hearing of main case.

04.11.2024

Sardar Salman Ishaq advocate for appellant.

Mr. Siraj Hussain Chandio, DPG.

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Salahuddin Panhwar, J: Appellant Muhammad Noman son of Liaquat Ali has challenged impugned judgment dated 28.04.2023 passed in SC No.413/2021 arising out of FIR No.468/2021, under section 4/5 Explosive Substance Act read with Section 7 of ATA 1997, Police Station Ferozabad, Karachi, whereby the appellant was convicted and sentenced to suffer R.I. for 14 years, with benefit of section 382-B Cr.P.C.

2. Precisely, relevant facts are that from possession of appellant one hand grenade was recovered. After full dressed trial, trial court found him guilty as aforesaid.

3. At the outset learned counsel for the appellant contends that there is violation of section 103 CrPC as no independent person was cited by police as witness of recovery, that hand grenade was without its detonating assembly as deposed by PW-1 SIP Sajjad Hussain and a hand grenade without its detonating assembly cannot be exploded; prosecution witnesses have deposed contradictory to each others; in fact appellant was picked up by Pakistan Rangers officials and later on he was fixed in this false case.

4. In contra, learned DPG contends that appellant was arrested on the spot; witnesses were examined and offence was proved hence judgment passed is in accordance with law.

5. At this juncture, learned counsel for the appellant contends that appellant is sole bread earner for his family. Learned counsel for the appellant agreed for reduction of sentence to the one already undergone in view of case reported in 2018 P.Cr.L.J. 959

(Suneil vs. the State). Learned DPG extended his no objection regarding reduction of sentence.

6. **Quantum of punishment** is an independent aspect of Criminal Administration of Justice which, *too*, requires to be done keeping in view the concept of **punishment**. At this juncture, it would be conducive to refer paragraphs 6 and 7 of aforesaid judgment, which are that:-

“6. As per prosecution case, the Appellant was arrested in the night time with the allegation that he was possessing pistol and riffle grenade but it was never proved by prosecution that such allegedly recovered *articles* were either used prior to alleged date of offence nor it is established that Appellant was intending to use the same at subsequent date. In short, the prosecution *though* established recovery but never established that such recovery was *in fact* an act of ‘terrorism’ for which the object design or purpose behind the said act (offence) is also to be established so as to justify a conviction under Section 7 of the Act. Reliance can safely be placed on the case of Kashif Ali v. Judge, ATA Court No.II PLD 2016 SC 951 wherein it is held as:-

“12. ... In order to determine whether an offence falls within the ambit of section 6 of the Act, it would be essential to have a glance over the allegations leveled in the FIR the material collected by the investigating agency and the surrounding circumstances, depicting the commission of offence. Whether a particular act is an act of terrorism or not, the motivation, object, design of purpose behind the said act has to be seen. The term “design”, which has given a wider scope to the jurisdiction of the Anti-terrorism Courts excludes the intent or motives of the accused. In other words, the motive and intent have lost their relevance in a case under Section 6(2) of the Act. What is essential to attract the mischief of this section is the object for which the act is designed.”

Let us, be *specific* a little further. The Appellant has been convicted under Section 5 of Explosive Substances Act so also under 7 subsection (1)(ff) of Anti-Terrorism

Act, 1997 i.e. second part of section 6(2)(ee) which reads as:

“6(2)(ee) involves use of explosives by any device including bomb blast (...)”

If one is convicted for one offence i.e. ‘merely possessing explosive’ twice i.e. one under Explosive Substances Act and under the Arms Act, it shall seriously prejudice the guarantee, provided by Article 13 of the Constitution, therefore, it would always be obligatory upon prosecution by *first* establish ‘object’ thereby bringing an act of ‘possessing explosive’ to be one within meaning of second part of section 6(2)(ee) of the Act as held in the case of Kashif Ali supra in absence whereof the punishment under Section 7(1)(ff) would not be legally justified particularly when accused is convicted independently for such act (offence) under Explosive Substance Act. In such circumstances, the conviction awarded against the Appellant under Section 7(i)(f) is hereby set aside.

7. The Appellant has been convicted for fourteen (14) years for offences, punishable under Section 5 of Explosive Substances Act, 1908 which itself provides as **‘be punishable with imprisonment for a term which may extend to (fourteen years)**, therefore, it was *obligatory* upon the trial Court to have appreciated the attending circumstances too while awarding maximum sentence which *prima facie* is not done. The Appellant has pleaded himself to be first offender which the *prosecution* did not dispute; and also claimed to be the *only* bread earner of family, which includes five sisters. The *detention* of only bread earner shall compel the *females* to step-out for survival least bread which it result in bringing a *slightest* spot towards such *helpless* ladies shall ruin their lives.”

7. Since, the offences wherein the appellant has been convicted fall within category of offences **‘may extend upto’** ; the appellant claims himself to be sole bread earner; these are circumstances which justify reduction in sentence.

8. In view of above, it would be in the interest of justice to reduce the sentence awarded to appellant to already undergone. Accordingly, conviction is maintained but sentence is reduced to one already undergone by the appellant. Appellant shall be released forthwith if not required in any other custody case.

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