

ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Misc. Appln No. S-07 of 2024

Date of hearing	Order with signature of Judge
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1. For orders on office objection "A".
2. For orders on MA No.37/2024 (E/A).
3. For hearing of main case.

03.03.2025.

Mr. Gul Muhammad Pathan, Advocate for the Applicant.

Mr. Nazir Ahmed Bhangwar, D.P.G for the State

ORDER

Khalid Hussain Shahani-J:- The appellants, Yaroo @ Yar Muhammad, Muhammad Siddique @ Irfan, and Aijaz Ali, being aggrieved by and dissatisfied with the judgment dated 04.09.2009, passed by the learned Sessions Judge, Jacobabad, in Sessions Case No.71 of 2009 (The State V. Yaroo @ Yar Muhammad and others), arising out of Crime No.11/2009, registered under Section 17(3) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979, at Police Station Airport, Jacobabad, have preferred the present appeal. By the impugned judgment, the learned trial judge convicted the appellants for an offence under Section 392 of the Pakistan Penal Code (PPC) and sentenced them to rigorous imprisonment for a period of seven years, along with a fine of Rs.10,000/- each. In the event of default in payment of the fine, they were ordered to undergo simple imprisonment for an additional period of three months. The benefit of Section 382-B of the Code of Criminal Procedure (Cr.P.C) was extended to them. However, the co-accused, Asif Ali and Imran, were acquitted by granting them the benefit of doubt.

02. At the very outset, learned Counsel for the appellant Aijaz Ali contended that the case was initially registered under Section 17(3) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979, and a formal charge was duly framed in accordance with the legal provisions. However, in rendering the impugned judgment, the learned trial judge did not provide any specific observations or reasoning for the subsequent conviction under

Section 392 of the Pakistan Penal Code (PPC), thereby raising a legal anomaly that warrants judicial scrutiny.

03. The case record indicates that following the suspension of their sentence by this Court, the appellants, Yaroo alias Yar Muhammad and Muhammad Siddique alias Irfan, willfully absconded. Consequently, legal proceedings, in accordance with the relevant provisions of the Code of Criminal Procedure, were initiated against them to ensure compliance with the court's directives and to prevent obstruction of justice.

04. The learned Deputy Prosecutor General for the State, upon due consideration of the submissions advanced by the learned counsel for the appellants, expresses no objection to the remand of the case to the learned trial court. This remand is necessary for the trial court to ascertain and provide a reasoned justification for the conviction of the accused under Section 392 of the Pakistan Penal Code (PPC), notwithstanding the formal charge and procedural framework initiated under Section 17(3) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979.

05. Considering the arguments advanced by the learned counsel for the appellants and the lack of objection from the learned Deputy Prosecutor General, the case is hereby remanded to the learned Sessions Judge, Jacobabad, for a thorough examination of the record. The learned Sessions Judge shall determine whether the evidence necessary for prosecuting the accused under Section 17(3) of the Offences Against Property (Enforcement of Hudood) Ordinance, 1979, was available. If such evidence was present, the court must identify the compelling legal rationale for convicting the appellants under Section 392 of the Pakistan Penal Code (PPC) rather than under the prescribed ordinance. Conversely, if the requisite evidence was lacking, the learned Sessions Judge is directed to take appropriate measures, including transferring the case to the competent Judicial Magistrate for a de novo trial, in accordance with the principles of due process and fair trial.

06. The appeal stands disposed of accordingly.

J U D G E