

## IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha

Mr. Justice Khadim Hussain Tunio

### SPL. CRIMINAL A.T. APPEAL NO.100 OF 2020

Appellant: Zain Shahid son of Shahid Kamal through Mr. Raja Rashid Ali, Advocate.

For State: Mr. Abrar Ali Khichi, Addl. Prosecutor General Sindh.

Date of hearing: 14.01.2022

Date of announcement: 19.01.2022

### JUDGMENT

**Mohammad Karim Khan Agha, J.-** Appellant Zain Shahid son of Shahid Kamal has preferred this Special Criminal Anti-Terrorism Appeal against the impugned judgment dated 20.07.2020 passed by the learned Judge, Anti-Terrorism Court No.XII, Karachi in Special Case No.169 of 2020, F.I.R. No.35 of 2020 u/s. 11-H/11-N/11-F(i)(ii) of ATA 1997 of PS CTD, Karachi whereby the appellant Zain Shahid has been convicted under Section 265-H(ii) Cr.P.C. for an offence under Section 11-F(i) with R.I. for six months along with fine of Rs.10,000/-, in case of failure to pay fine, he shall suffer S.I. of 04 months more. He was also sentenced for offence u/s.11-H (i)(ii) with R.I. for ten years along with fine of Rs.50000/-in case of failure to pay fine, he shall suffer S.I. of 06 months more.

2. The brief facts of the prosecution case as per FIR No.35/2020, under Section 11-H, 11-N, 11-F (i) (ii) of ATA 1997 registered at PS CTD, Karachi are that on 26.03.2020 ASI Muhammad Hashim of PS CTD/TTIG Karachi received an order No.DIGP/CTD/R/2796 dated 26.03.2020 from I.R, in which ASI received order from High-ups for legal proceedings against accused Zain Shahid, who is resident of Nazimabad No.3 Karachi who also belongs to one proscribed organization namely Daish, who is not only the member of such

organization, but also collecting the donation or funding amount for such organization, which is used for terrorism activities all over the country due to which financial assistance is provided to terrorists and such act falls within the ambit of ATA, hence this FIR.

3. After usual investigations charge was framed against the accused to which he denied all the allegations leveled against him. He claimed to be innocent and prayed for trial.

4. The prosecution to prove its case examined 03 PW's who exhibited various documents in support of the prosecution case where after the prosecution closed its side. The appellant recorded his statement under section 342 Cr.PC wherein he denied all the allegations leveled against him. He did not give evidence on oath or call any DW in support of his defence case.

5. Learned Judge Anti-Terrorism Court No.XII, Karachi after hearing the learned counsel for the appellant and assessment of evidence available on record, vide judgment dated 20.07.2020, convicted and sentenced the appellant as stated above, hence this appeal has been filed by the appellant against his conviction.

6. The facts of the case as well as evidence produced before the trial Court find an elaborate mention in the impugned judgment, therefore, the same are not reproduced here so as to avoid duplication and unnecessary repetition.

7. Learned counsel for the appellant has contended that the appellant is completely innocent and that he has been falsely implicated in this case by the police; that he is not a member of any proscribed organization; that he was not collecting any funds for any proscribed organization; that the so called collection book was foisted on him by the police and that for any of the above reasons the appellant should be acquitted of the charge by being extended the benefit of the doubt

8. On the other hand learned APG has fully supported the impugned judgment and has in particular relied on the fact that the appellant was caught red handed on the spot with a collection book for a proscribed organization and that he was already on the IV Schedule of the ATA due to his

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suspected terrorist activities. He has contended that the appeal is without merit and should be dismissed.

9. We have heard the arguments of the learned counsel for the parties, gone through the entire evidence which has been read out by learned counsel for the appellant, and the impugned judgment with their able assistance and have considered the relevant law.

10. After our reassessment of the evidence we find that the prosecution has proved its case beyond a reasonable doubt against the appellant for the following reasons:-

(a) Firstly, it is an admitted position that the appellant was already on the IV schedule of the ATA for his suspected involvement in terrorist activities. An FIR in respect of such activities had been disposed of in "C" class based on technicalities.

(b) That the FIR was lodged with promptitude on the basis of the appellant being a member of a proscribed organization who was active in collecting funds for a terrorist organization. The appellant has not denied that he was a member of a proscribed organization.

(c) That the appellant was arrested on the spot by the police on the basis of spy information and on his arrest a fund raising book with the title of "Daish Pakistan Funding For Jihad and Help Mujahideen" containing 54 leaves with 08 receipts having been issued to different people with difference amounts as mentioned on the counter foil of the receipt was recovered from him along with RS 1500 in 3 notes of 500 each and one ball point pen and the last three counter foils of the fund raising book all mentioned RS 500 each.

(d) That the appellant's signature was on the fund raising book which was sealed on the spot and kept in safe custody. Likewise the 3 RS 500 notes which tallied with the amounts on the last 3 counter foils of the fund raising book recovered from the appellant.

(e) That the arrest and recovery was made on the spot by the police whose evidence fully corroborates each other in all material respects as well as the prosecution case. It is well settled by now that the evidence of a police witness is as reliable as any other witness provided that no enmity exists between them and the accused and in this case no enmity has been suggested against any police officer. Thus we believe the police evidence which is corroborative in all material respects. Reliance in this respect is placed on the case of **Mustaq Ahmed V The State** (2020 SCMR 474)

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(f) That there are no major contradictions in the evidence of the PW's and it is well settled by now that minor contradictions which do not effect the materiality of the evidence can be ignored. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793).

(g) That although no independent mashir was associated with the arrest and recovery of the appellant and the Fund raising book it has come in evidence that no independent person was available at the place of arrest and recovery.

(h) No doubt it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defense case which is one of false implication simpliciter. The accused did not give evidence on oath and did not call any DW in support of his defence case and in light of the over whelming prosecution evidence as mentioned above we disbelieve the defence case as an after thought in the face of reliable, trust worthy and confidence inspiring prosecution evidence.

11. Thus, for the reasons mentioned above, we find that the prosecution has proved its case beyond a reasonable doubt against the appellant and as such the impugned judgment is upheld and the appeal is dismissed.