

Acquitted

679

IN THE HIGH COURT OF SINDH, KARACHI

Present:

Mr. Justice Mohammad Karim Khan Agha
Justice Mrs. Kausar Sultana Hussain

Spl. Cr. A.T.A No. 60 of 2023

Appellant	P.I Sibtain Khan through M/s. Amir Mansoor Qureshi and Mamoon A.K Shirwany, Advocates.
Respondents	The State through Dr. Fiaz Shah, Prosecutor General, Sindh along with M/s. Muhammad Iqbal Awan and Ali Haider Saleem, Addl. Prosecutors General Sindh.
Date of hearing	31.05.2023.
Date of Judgment	31.05.2023.

JUDGMENT

Mohammad Karim Khan Agha, J:- The appellant P.I Sibtain Khan was tried in the Court of Special Judge, Anti-Terrorism Court No.XII, Karachi and vide order dated 31.03.2023 appellant was convicted under Section 27 of the Anti-Terrorism Act, 1997 and sentenced to undergo 6 months R.I and a fine of Rs.50,000/- and in case of default in payment of fine to undergo 2 months S.I more.

2. Brief facts of the case are that Muhammad Shah Jahan was tried in the Court of Anti-Terrorism Court No.XII, Karachi pursuing to FIR No.37 of 2022 under section 11-H, 11-N of ATA, 1997 registered at P.S CTD/Civil Lines, Karachi and vide Judgment dated 31.03.2023 the accused was acquitted of the charge. However, learned trial Court was of the view that the I.O Sibtain Khan had not properly carried out the investigation and as such he was issued a show cause notice as to why he should not be proceeded with under Section 27 of the ATA. Appellant Sibtain Khan made his reply to show cause notice; however, the same was not accepted by the concerned trial Court and as such was convicted and sentenced as set out in the order mentioned above. Hence the appellant has filed this appeal against his conviction.

3. At the very outset, learned counsel for the appellant stated that the proper procedure had not been adopted under Section 27 of the ATA as under that section a charge had to be framed. He also submitted on merit that investigation was not defective and in any event the appellant was entitled to the benefit of doubt. In support of his contention, he placed reliance upon the case of Rasool Bux, A.S.I, (Retd.) Versus the State (2022 YLR 402).

4. Learned Prosecutor General, Sindh supported the position of the learned counsel for the appellant as a matter of law.

5. We have heard the arguments of the parties and considered the record. At the very outset, it is quite apparent that the appellant could not have been convicted under section 27 of the ATA without a charge being framed against him. In this regard, reliance is placed on the case of Rasool Bux, A.S.I, (Retd.) Versus the State (2022 YLR 402). Even otherwise based on the merits of the case, it appears that the appellant had arrested the accused on the spot whilst he was collecting funds being activist belonging to a proscribed organization on benami (unnamed) receipt books, which were recovered on the pointation of the accused in the case at a place which the appellant could not have known about. In such like cases, it is unusual for independent persons to act as witnesses as they have a fear of proscribed organizations.

6. Under these circumstances, we find that not only the procedure in which the appellant was convicted, was not in accordance with law but even otherwise there was no merit in the order which led to his conviction as it had not been proved beyond a reasonable doubt that the investigation carried out by the appellant was defective. As such the appeal is allowed. Appellant is acquitted and he shall be released forthwith unless he is wanted in any other custody case.