

HIGH COURT OF SINDH AT KARACHI

SPECIAL CR. A.T. JAIL APPEAL NO.37 OF 2021

Date

Order with signature of Judges

FOR HEARING OF MAIN CASE.

14.01.2022.

M/s. Muzaffar Hussain Solangi and Saghir Ahmed Abbasi, Advocates for the Appellant.

Mr. Abrar Ali Khichi, Additional Prosecutor General, Sindh.

Mohammad Karim Khan Agha, J. Appellant Muhammad Arif Qasmani has challenged the impugned judgment dated 03.02.2021 whereby he was convicted by the Judge, Anti-Terrorism Court No.XII, Karachi re: The State v. Muhammad Arif Qasmani and awarded sentenced for offence under Section 11-F(2) of ATA 1997 with six months R.I. and fine of Rs.10000/-, in case of failure to pay fine, he shall suffer S.I. 04 months more. He was also sentenced u/s.11-H (1) to (3) of ATA 1997 with five years R.I. and fine of Rs.1,00,000/-, in case of failure to pay fine, he shall suffer 04 months more. Learned counsel for the appellant has appealed the conviction.

2. We have heard the learned counsel for the appellant and learned Additional Prosecutor General, Sindh.

3. We find that in this case the appellant was not provided with legal counsel before entering into a plea of guilt. We also find that no charge was framed and read out to him in order for him to enter a plea of guilty or not guilty which is a violation of Section 265(e) Cr.PC. This position has been admitted too by learned Additional Prosecutor General, Sindh and the case of both the learned counsel for the appellant and Additional Prosecutor General Sindh is that in the light of such defects this matter should be remanded to the learned trial Court for a fresh trial.

4. We agree with the contentions made by the learned counsel for the appellant as well as Additional Prosecutor General Sindh and find that the appellant should have been assigned a defense counsel either at his own cost or by the court if the accused was a pauper in compliance of Article 10-A of the Constitution and that a proper charge ought to have been framed for which the appellant had to enter his plea.

5. Under these circumstances, we hereby set-aside the impugned judgment dated 03.02.2021 and remand this case back to the Judge, Anti-Terrorism Court No.XII, Karachi which shall hold a de-novo trial of the appellant. The trial Court shall ensure that the appellant has a defense counsel at the time of trial either engaged by himself or appointed by the Court and that a proper charge is framed and the trial is proceeded with in accordance with law. We direct that this above process shall be completed within 06 months of the date of this order. A copy of this order shall be sent through facsimile to the Judge, Anti-Terrorism Court No.XII, Karachi along with R&Ps for compliance. The accused shall remain in custody pending proceedings unless he is granted bail by the trial Court.

The above appeal is disposed of in the above terms.

JUDGE

JUDGE