

[Shariat Appellate Jurisdiction]

Ch. Muhammad Ibrahim Zia, C.J.
Ghulam Mustafa Mughal, J.

Muhammad Azam son of Said Muhammad
resident of Kohkhra, Tehsil and District Mirpur.

.....APPELLANT

1. Robkar-e-Adalat through Additional Advocate-General, Circuit Mirpur.
2. State through Advocate-General.

.... RESPONDENTS

[On appeal from the order of the Shariat Appellate Bench of the High Court dated 27.12.2018 in Cr. Misc. No.29 and 30 of 2013]

FOR THE APPELLANT: Mr. Abdul Aziz
Chaudhary, Advocate.

FOR THE STATE: Sardar Karam Dad
Khan, Advocate-General.

Allah Ditta son of Muhammad Shafi resident of Kokhra, Tehsil and District Mirpur.

.....APPELLANT

VERSUS

1. Robkar-e-Adalat through Additional Advocate-General, Circuit Mirpur.
2. State through Advocate-General.

.... RESPONDENTS

[On appeal from the order of the Shariat Appellate Bench of the High Court dated 27.12.2018 in Cr. Misc. No.29 and 30 of 2013]

FOR THE APPELLANT: Mr. Abdul Aziz Chaudhary, Advocate.

FOR THE STATE: Sardar Karam Dad Khan, Advocate-General.

Date of hearing: 23.05.2019

JUDGMENT:

Ch. Muhammad Ibrahim Zia, C.J.-

Humaira Mallik and Muhammad Ayub, were convicted by the Tehsil Criminal Court, Mirpur vide judgment dated 09.01.2012. They filed an appeal before the Shariat Appellate Bench of the High Court and also moved an application for suspension of the sentence. The application was accepted subject to furnishing of bail bonds of 20,00,000/- each consisting of two sureties and personal bonds

in the like amount. The appellants, herein, stood sureties for the convicts. During the pendency of appeal, both the convicts absconded, whereupon, their bail order was cancelled on 28.11.2012 and proceedings were initiated against the sureties. The learned Shariat Appellate Bench of the High Court, after necessary proceedings, vide order dated 17.05.2017 directed the appellants, herein, to deposit the whole amount of sureties bonds. It was further ordered that in case of failure to deposit the amount the same shall be recovered through sale of the property or otherwise they shall be sent to jail for a period of three months. Thereafter, in furtherance and implementation of the aforesaid order, the trial Court was directed through the impugned orders dated 17.05.2017 to recover the amount of surety bonds through sale of the property of the appellants, hence, these appeals.

2. On filing of the titled appeals, an objection was raised by the Additional Registrar that the certified copy of the grounds of appeal before the Shariat Appellate Bench of the High Court has not

been filed. The learned counsel for the appellants filed an application on 28.02.2019 for annexing the relevant copies with the memo of appeal. The learned Additional Registrar vide order dated 19.03.2019 pointed out that the application has been filed after prescribed period of limitation.

3. Mr. Abdul Aziz Chaudhary, Advocate, representing the appellants in both the appeals, while meeting the objection raised by the Additional Registrar relating to non-furnishing of copy of the grounds of appeal before the Shariat Appellate Bench of the High Court submitted that after obtaining the certified copies the same have been furnished without any delay. If at all, there is delay the same may be condoned, thus, while overruling the objection of the Additional Registrar the appeals be heard on merit. On merits, he submitted that the impugned orders are against law and facts and passed without providing opportunity of hearing to the appellants, hence, the same are liable to be set-aside. He almost re-iterated the grounds (a) to (f) taken in memo of appeals and finally submitted that

while accepting these appeals the impugned orders may kindly be set-aside.

4. Conversely, Sardar Karam Dad Khan, Advocate-General submitted that the appellants have not complied with the mandatory statutory requirement by not furnishing the certified copy of grounds of appeal filed before the Shariat Appellate Bench of the High Court. He further submitted that furnishing of certified copy of grounds of appeal after prescribed limitation is not admissible, thus, on this sole ground the appeals are liable to be dismissed. While arguing on merits, he submitted that the arguments of learned counsel for the appellants are misconceived. All the grounds are against law and facts. In fact, through tactics the appellants want to get rid of the main judgment of the Shariat Appellate Bench of the High Court dated 17.05.2017 against which no appeal was filed. The impugned orders neither are independent orders nor appealable rather the same have been passed in furtherance and implementation of the judgment

dated 17.05.2017, therefore, these appeals are liable to be dismissed.

5. We have heard the learned counsel for the parties and gone through the record. Leaving aside the objection of non-furnishing of the certified copies of the mandatory documents, even on merit these appeals have no substance. According to the admitted facts, in the proceedings under section 514, Cr.P.C., after providing opportunity of hearing to the appellants the learned Shariat Appellate Bench of the High Court vide order dated 17.05.2017 confiscated the sureties bonds and directed the appellants/sureties to deposit the whole amount. It was further ordered that in case of failure the amount shall be recovered through sale of the property of the appellants/sureties and if recovery is not possible the appellants shall be sent to civil prison for a period of three months. For convenience the concluding portion of the judgment dated 07.05.2017 is reproduced as under:-

".... I am not inclined to remit any portion of bond and it is ordered that the respondents (sureties) are directed to

deposit whole amount of sureties bonds (2 millions) to deposit the amount, the same shall be recovered through sale of the property of the respondents and in case recovery is not possible, the respondents shall be sent to civil jail imprisonment for a period of three months each.”

This judgment has not been challenged by the appellants, thus, the same has attained finality. The orders challenged in appeal in fact are not independent orders rather the same have been passed in furtherance and implementation of judgment dated 17.05.2017, thus, challenging such orders will not bring any fruit for the appellants because the main judgment which has attained finality is operative.

In this state of affairs, finding no force, these appeals are dismissed.

Mirpur,
23.05.2019

CHIEF JUSTICE

JUDGE