

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

CrI. Misc. No: 1888-M/2015

Hassan

Petitioner

versus

The State etc.

Respondents

JUDGMENT

Date of Hearing:	16.02.2016
Petitioner by:	Mr. Shahid Nazir Jarra, Advocate.
State by:	Dr. Muhammad Anwar Khan Gondal, Additional Prosecutor General.
Respondent No. 2 by:	Mr. Javed Imran Ranjha, Advocate.

Muhammad Tariq Abbasi, J – By way of this petition, the judgment dated 22.4.2015, passed by the learned Additional Sessions Judge, Phalia, District Mandi Bahauddin, has been called in question, whereby not only an appeal filed by Hassan (*hereinafter referred to as the petitioner*), against his conviction, recorded through the judgment dated 6.4.2015, by the learned Magistrate Section-30, Phalia, District Mandi Bahauddin has been dismissed, but revision petition preferred by Mansabdar (*hereinafter referred to as the respondent*), for enhancement of sentence has been allowed.

2. The petitioner was challaned in FIR No. 286 dated 14.8.2013, registered under Section 377 PPC, at Police Station

Phalia, with the allegations that he committed unnatural offence with Abdul Rehman, son of the complainant; he was tried in the court of learned Magistrate Section-30, Phalia, during which formal charge against him was framed, which was denied, hence the prosecution evidence was summoned and recorded; as many as 11 witnesses had got recorded their evidence, before the learned Trial Court, during statements of whom the documents fully detailed in their respective statements were also brought on the record; on conclusion of the prosecution evidence and closure of the case, the petitioner was examined under Section 342 Cr.PC, during which the questions arising out of the prosecution evidence were put to him, but he denied almost all such questions, while pleading his innocence and false involvement in the case with malafide; he did not opt to lead any evidence in his defence or make statement under Section 340(2) Cr.PC; finally through the judgment dated 6.4.2015, on the basis of tender age, he was convicted, for charge under Section 377 PPC and sentenced to simple imprisonment for 03 years and fine of Rs.5,000/-, in default whereof to further undergo 15 days simple imprisonment; he had challenged his conviction and sentence, through an appeal before the learned concerned Sessions Court, whereas the respondent, by filing a revision petition, had sought enhancement in the sentence of the petitioner; both the matters were decided by the learned Additional Sessions Judge, through the impugned

judgment dated 22.4.2015, whereby the appeal preferred by the petitioner was dismissed, whereas the revision petition filed by the respondent was accepted and while maintaining conviction of the petition, his sentence was enhanced from 03 years S.I. to 10 years R.I. The amount of fine was also enhanced from Rs.5,000/- to Rs.50,000/-, with a direction that Rs.30,000/- would be payable to the victim as compensation under Section 544-A Cr.PC, otherwise the petitioner would further suffer simple imprisonment for 06 months. Consequently, the petition in hand.

3. The main stance of the learned counsel for the petitioner is that as the learned Trial Court was competent to award sentence upto 07 years, hence the learned revisional court while enhancing the sentence to 10 years R.I. has exceeded its jurisdiction, therefore, the impugned judgment is not sustainable in the eye of law.

4. Conversely, the learned Additional Prosecutor General, assisted by the learned counsel for the respondent has supported the impugned judgment, with the contentions that when from the attending facts & circumstances, the learned revisional court had reached at the conclusion that sentence awarded by the learned Trial Court was unjustified, it had accordingly enhanced the same, hence committed no illegality.

5. Arguments of all the sides have been heard and the record has been perused.

6. The main question is whether, under revisional jurisdiction, the sentence exceeding to the competency of learned Trial Court can be awarded or not. Section 439 of the Code of Criminal Procedure, 1898 (*hereinafter referred to as the Code*), which deals with revisional powers of High Court, reads as under:-

“High Court’s powers of revision. (1) In the case of any proceeding the record of which has been called for by itself, [...] or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428 or on a court by section 338, and may enhance the sentence; and, when the Judges composing the court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by Magistrate [...], the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed, than might have been inflicted for such offence by Magistrate of the first class.

[(4) Nothing in this section shall be deemed to authorize a High Court:

(a) to convert a finding of acquittal into one of conviction; or

(b) to entertain any proceedings in revision with respect to an order made by the Sessions Judge under section 439-A.]

(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.

(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section(2) of showing cause why his sentence should not be enhanced, shall, in showing cause, be entitled also to show cause against his conviction.”

7. Section 439-A of the Code, empowers a Sessions Judge to exercise revisional jurisdiction, in the following manner:-

“Sessions Judge’s powers of revision. (1) In the case of any proceeding before a Magistrate the record of which has been called for by the Sessions Judge or which otherwise comes to this knowledge, the Sessions Judge may exercise any of the powers conferred on the High Court by section 439.

(2) An Additional Sessions Judge shall have and may exercise all the powers of a Sessions Judge under this Chapter in respect of any case which may be transferred to him under any general or special order of the Sessions Judge.”

8. A plain reading of the above cited provision shows that while exercising revisional jurisdiction, a Sessions Judge would have the same powers and jurisdiction as provided under Section 439 of the Code. Although section 439 of the Code, gives powers of revision, but subject to certain restrictions, one is described in sub section(3) that under revisional jurisdiction, a sentence greater than the competency of trial court could not be awarded.

9. Under Section 31 of the Code, power of High Courts, Sessions Judges and Assistant Sessions Judges to pass sentences has been detailed as under:-

“Sentences which High Courts and Session Judges may pass. (1) A High Court may pass any sentence authorized by law.

(2) A Sessions Judge or Additional Sessions Judge may pass any sentence authorized by law; but any sentence of death passed by any such Judge shall be subject to confirmation by the High Court.

(3) An Assistant Sessions Judge may pass any sentence authorized by law, except a sentence of death or of [imprisonment for a term exceeding seven years].”

10. Undoubtedly, an Assistant Sessions Judge is a judicial officer, who for all purpose, exercises powers which vest in Magistrate Section-30 of the Code. Meaning thereby that a Magistrate Section-30 can rightly be termed as an Assistant Sessions Judge. In this way, a Magistrate Section-30 is not competent to impose sentence to an accused beyond 07 years imprisonment.

11. From the above mentioned discussion, it is evident that competency of the learned Trial Court, being Magistrate Section-30 was to award maximum sentence of 07 years R.I. In this way, as provided under Section 439(3) of the code, the learned revisional court was not competent to enhance the sentence, beyond jurisdiction of the learned Trial Court. Therefore, the findings of the learned revisional court, recorded in the impugned judgment, towards the above mentioned enhancement in sentence of the petitioner are ab-initio illegal and abuse of the process of court, which surely can be looked into, under inherent power of Section 561-A of the code, which is meant for the following purposes:-

- i) *To give effect to any order under the Code.*
- ii) *To prevent abuse of process of any court.*
- iii) *To secure the ends of justice.*

If to fortify the above mentioned view, any case law is needed, reference can be made to the case “*Mst. Sarwar Jan versus Ayub and another*” reported as *1995 SCMR 1679*.

12. For what has been discussed above, the petition in hand is *partially accepted* and the impugned judgment, towards enhancement in sentence of imprisonment of the petitioner is set aside. However, the amount of fine and compensation prescribed by the learned revisional court is maintained.

(Muhammad Tariq Abbasi)
Judge

Approved for reporting

*Abid**