

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

**Criminal Appeal No. 11/2017
In
Cr. PLA No. 35/2016**

Sheikh Iqbal & another

Petitioners.

Versus

The State

Respondent.

PRESENT:-

1. Mr. Munir Ahmed Advocate alongwith Mr. Ali Nazar Khan Advocate-on-Record for the petitioners.
2. The Advocate General Gilgit-Baltistan alongwith the Deputy Advocate General on behalf of the respondent.

DATE OF HEARING: - 01.08.2017.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ..... This Criminal Petition for leave to appeal has arisen out of the impugned judgment dated 08.11.2016 in Criminal Appeal No. 40/2016 passed by the learned Chief Court whereby the said Criminal Appeal filed by the State was allowed by setting aside the order dated 06.09.2016 passed by the learned Judicial Magistrate Gilgit. Consequently, the case was remanded back to the learned court of Anti-Terrorism Gilgit for proceedings/disposal alongwith the main case. The petitioner being aggrieved by and dissatisfied with, filed this petition for leave to appeal. This court vide order dated 06.04.2017 issued notice to the respondent and the case was heard today.

2. Briefly the facts of the case are that the petitioner/accused was arrested in case registered under Sections 302, 324, 109/34 PPC read with Section 6/7 of the Anti-Terrorism Act, 1997 vide FIR No. 303/2008 lodged at Police Station City Gilgit. During the investigation a recovery of 30-bore pistol was effected on 21.01.2009 similarly, an FIR No. 17/2009 was also registered against the petitioner under Section 13 of the Arm Ordinance on 22.01.2009. After completion of investigation the above case was sent to the learned Anti-Terrorism Court Gilgit alongwith the case registered under Section 13 Arm Ordinance. The learned Trial Court took cognizance of the case under Section 12 of the Anti-Terrorism Act, 1997. On 18.12.2011 the learned Trial Court sent the case of Arm Ordinance to the Court of learned Judicial Magistrate Gilgit under the assumption that the case registered under Section 13 Arm Ordinance are exclusively triable by the Court of Judicial Magistrate. The learned Judicial Magistrate issued notice to the accused for his appearance on 11.12.2012. Consequently, the accused appeared before the learned Judicial Magistrate on 28.08.2013. Copies of the case were provided to him under Section 242-A Cr. P.C. Upon hearing the learned Judicial Magistrate acquitted the petitioner/accused vide order dated 06.09.2016 on the ground that the charge was framed on 29.07.2009 and the prosecution failed to produce the prosecution witnesses despite lapse of considerable time.

3. The respondent/State being aggrieved by and dissatisfied with filed Criminal Appeal No. 40/2016 before the learned Chief Court which upon hearing was allowed vide impugned judgment dated 08.11.2016. The petitioner challenged the said judgment before this court by filing petition for leave to appeal.

4. The learned counsel for the petitioner submits that the case was sent to the learned Judicial Magistrate Gilgit by the learned Anti-Terrorism Court No. II Gilgit vide order dated 10.12.2012 as the case was triable by the learned Judicial Magistrate as per law. He also submits that the respondent/State did not file any appeal before the learned Chief Court calling in question the said order. He further submits that the said order has got finality as the same has not been challenged by the respondent before any competent forum. Per learned counsel the respondent has failed to produce any prosecution witnesses and other corroborative evidence during the trial of the said case before the learned Judicial Magistrate. According to the learned counsel the said case remained pending before the learned Judicial Magistrate for more than 04 years. Consequently, the learned Judicial Magistrate Gilgit has rightly acquitted the petitioner/accused from the charges so leveled against him vide its order dated 06.09.2016. He submits that the respondent filed Criminal Appeal No. 40/2016 in the learned Chief Court which upon hearing was allowed vide impugned judgment dated 08.11.2016 by setting aside the order of the learned Judicial Magistrate Gilgit. Per learned counsel the

findings of the learned Chief Court regarding the alleged recovery of weapon of offence amounts to judgment without evidence and would adversely effect in trial of the case in the learned Anti-Terrorism Court. He submits that the case was not delayed on the part of the petitioner rather delay was caused by the prosecution which has not been considered by the learned Chief Court while passing the impugned judgment. He submits that the learned Chief Court fell in error while passing the impugned judgment which according to the learned counsel for the petitioner is not sustainable. He prays that the impugned judgment dated 08.11.2016 in Criminal Appeal No. 40/2016 passed by the learned Chief Court may graciously be set aside.

5. On the other hand, the learned Advocate General supports the impugned judgment dated 08.11.2016 in Criminal Appeal No. 40/2016 passed by the learned Chief Court. He contends that the FIR No. 17/2009 is the part and parcel of the main case which is pending before the learned Anti-Terrorism Court and it can not be separated from the main offence. He also contends that there are ample evidence with regard to the recovery of weapon of crime as the same has been recovered from the accused on his pointation and such recovery is admissible under the "Qanoon-e-Shahadat". Per learned Advocate General the impugned judgment dated 08.11.2016 in Criminal Appeal No. 40/2016 passed by the learned Chief Court is well reasoned and well founded and no interference is warranted into it.

6. We have heard the learned counsels for the respective parties at length, perused the record of the case file and gone through the impugned judgment dated 08.11.2016 in Criminal Appeal No. 40/2016 passed by the learned Chief Court and other materials on record. In our considered view, the FIR No. 17/2009 is part of the main case which is admittedly pending adjudication in the learned Trial Court i.e. Anti-Terrorism Court Gilgit. The transfer of the said case under Arm Ordinance to the learned Judicial Magistrate is not sustainable as it was a corroborative piece of evidence in the main case which has rightly been reversed by the learned Chief Court vide impugned judgment dated 08.11.2016 in Criminal Appeal No. 40/2016. The learned Chief Court has inherent powers under Section 561-A Cr. P.C. to pass any order(s) as may be necessary to give effect to any order under this Code or to prevent abuse of the process of any court or otherwise to score the ends of justice. The learned Chief Court has rightly observed that the learned Judicial Magistrate Gilgit has not followed the procedure provided from Section 68 Cr. P.C to Section 93-C of the Cr. P.C for procuring attendance of the witnesses and transfer of case under Section 13 Arm Ordinance by the learned Anti-Terrorism Court Gilgit to the Court of learned Judicial Magistrate was not only illegal but was also unwarranted. The learned counsel for the petitioners otherwise could not point out any infirmity in the impugned judgment.

7. In view of the above discussions, we convert this petition into an appeal and the same is dismissed. The impugned judgment dated 08.11.2016 in Criminal Appeal No. 40/2016 passed by the learned Chief Court is affirmed. The learned trial Court i.e. Anti-Terrorism Court Gilgit is, however, directed to examine material witnesses expeditiously within a period of three (03) months in accordance with law.

8. The Appeal is dismissed in above terms.

Chief Judge.

Judge.