

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

Before:-

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

Civil Appeal No.02/2018

In

Cr.PLA No. 34/2017.

The State through Police Station City Gilgit

Petitioner.

Versus

Muhammad Nadeem

Respondent.

PRESENT:-

The Advocate General for the petitioner.

1. Mr. Jahanzaib Advocate for the respondent.

DATE OF HEARING: - 04.04.2018.

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ.....This petition has arisen out of the impugned judgment dated 21.06.2017 passed in Cr. Appeal No. 15/2017 by the learned Chief Court whereby the said Criminal appeal filed by the respondent was accepted by setting aside the judgment of the learned trial Court (Anti-Terrorism Court) at Gilgit dated 10.08.2015. Consequently, the respondent was acquitted from the charges leveled against him. The petitioner being aggrieved by and dissatisfied with filed Cr.PLA NO. 34/2017 in this Court. This Court vide order dated 17.10.2017 issued bailable warrant of arrest against the respondent and the case is heard today.

2. Briefly, the facts of the case are that the one Syed Nizam-ud-Din Rizvi lodged FIR No. 12/2005 under Sections No. 302, 324, 34, and 109 PPC read with Section 6/7 of The Anti-Terrorism

Act, 1997 on 08.01.2005 at police Station City Gilgit with regard to the murder of his real brother Syed Aga Zia-ud-Din Rizvi. The complainant, however, did not charge any one for commission of offence yet he raised finger of suspicion towards the involvement of Qazi Nisar Khateeb Jamia Masjid Ahle Sunnat wal Jammat, Himayat Ullah Khan, MLA, Maulana Khalil Ahmed Khateeb Moti Masjid Ghari Bazar Gilgit and one Muhammad Abbass Advocate Secretary General Tanzeem ahle Sunnat wal Jammat.

3. After completion of investigation, challan of the case against about fourteen (14) accused was submitted in the learned Trial Court. Out of the 14 accused Afsar Jan, Abdul Sadiq, Muhammad Anwar, Noor Jan, Akhtar Jan, Aurangzeb, Alamzeb, Shah Raees, Muhammad Alam and Azhar Wali faced trial in the Trial Court while 05 accused namely Molvi Nadeem, the respondent , Qari Bilal, Naqeeb Ahmed, Bashir Ahmed and Shakir Ullah were tried in absentia.

4. After completion of trial in absentia, the learned Anti-Terrorism Court Gilgit vide Judgment dated 18.10.2015 awarded 10 years RI to the respondents and some other co-accused. The relevant part of the judgment of the trial Court is reproduced as under:-

“Quote”

166. In view of the discussion made in paras No. 17 to 161 above, my findings against proclaimed offenders/absconders accused Molvi Nadeem, Qari

Bilal, Naqeeb Ahmed and Basheer Ahmed are as under:-

(i). The names of absconders accused Molvi Nadeem and Qari Bilal is appearing in the confessional statements ExPW-62/C of accused Mohammad Anwar Muavia, ExPW-62/D of accused Abdul Sadiq, and ExPW-62/F of accused Akhtar Jan. The above named absconders accused as well as absconders accused Naqeeb Ahmed and Basheer Ahmed have been declared as proclaimed offenders after fulfillment of the legal formalities as provided under Section 19(10) of the Anti-Terrorism Act, 1997. The absconsion of the said accused is corroborative piece of evidence against them.

(ii). In view of the above, I hold that the prosecution has proved the guilt of the absconder accused Molvi Nadeem, absconder Accused Qari Bilal, absconder accused Naqeeb Ahmad and absconder accused Basheer Ahmed up to the extent of their absconsion as provided under section 21-L of the Anti-Terrorism Act, 1997. Hence, I convict the proclaimed offender Molvi Nadeem, proclaimed offender Qari Bilal, proclaimed offender Naqeeb Ahmad and proclaimed offender Basheer Ahmed under section 21-L of the Anti-Terrorism Act, 1997 and sentence them each to undergo 10 years rigorous imprisonment. Perpetual warrant be issued against the above named convicted proclaimed offenders, the above named convicts/proclaimed offenders shall be tried after their arrest”.

“Unquote”

5. The respondent proclaimed offender was arrested from Rawalpindi on 19.09.2016 and was brought to Gilgit. He was produced before the Anti-Terrorism Court Gilgit. The respondent was handed over to the Investigation Wing and after necessary investigation he was sent to the judicial custody to face trial. Whereafter the respondent moved an application under section 19(2) of Anti-Terrorism Act, 1997 in the trial Court for setting aside his conviction which upon hearing was declined and the learned trial court upheld its judgment on 29.03.2017 which was passed in absentia. The respondent being aggrieved by and dissatisfied with filed Criminal Appeal No. 15/2017 in the learned Chief Court which upon hearing was allowed through the impugned judgment, hence, this petition for leave to appeal.

6. The learned Advocate General submits that the respondent remained absconder for a considerable period which is corroborative evidence in commission of the offence. He also submits that the Anti-Terrorism Court announced its judgment in absentia on 10.08.2015 whereas the respondent was arrested on 21.09.2016 and this long absconsion cannot be condoned on any pretext. Per learned Advocate General, the respondent failed to offer any reasonable ground with regard to his a long and lengthy absconsion. He submits that the learned Chief Court has failed to appreciate this aspect of the case and wrongly acquitted the respondent from the charges leveled against the respondent. He prays that the impugned Judgment may pleased be set aside by

maintaining the judgment dated 10.08.2015 passed by the learned Trial Court in the interest of justice.

7. On the other hand, the learned counsel for the respondent contends that the learned Chief Court has rightly set aside the judgment of the learned trial Court which was not sustainable in the eyes of law. He also contends that there is not a iota of evidence available against the respondent and he cannot be punished on the basis of the so called abscondence. Per learned counsel, the prosecution has failed to prove the absconsion of the respondent in accordance with law. The absconsion of the respondent was neither intentional nor deliberate. He contends that the warrant under section 204 Cr.P.C and proceedings under section 87/88 Cr.P.C are defective in nature as the name/address of the respondent has wrongly been mentioned therein. The correct name of the respondent is Muhammad Nadeem son of Abdul Aziz whereas his name has been shown as Nadeem son of Aziz in the Warrants etc which creates doubts in the case of prosecution. Due to this mistake the respondent could not be served the warrants etc, hence, his absconsion is not deliberate. The respondent after his arrest was handed over to the Joint Investigation Team (JIT) for a period of 12 days but nothing has been recovered from him to connect him with the commission of the alleged offence. He contends that impugned judgment is well reasoned and well founded which may graciously be maintained to meet the ends of justice.

8. We have heard the learned counsels for the respective parties at length, perused the materials on record and gone through the impugned judgment as well as the judgment of the learned trial Court. Admittedly, there is no evidence available on record against the respondent except the absconsion which could not be proved by the Prosecution as intentional and deliberate whereas the name and address of the respondent was also wrongly mentioned in the Warrants etc due to which the respondent could not be aware about the trial of the case and consequent sentence for imprisonment awarded by the learned trial Court. Likewise no charge was framed by the learned Trial Court after the arrest of respondent. The judgment of the learned trial Court was passed in absentia which is violative to the fundamental rights of respondent. The learned Chief Court has rightly set aside the judgment of the learned trial Court, hence, no indulgence is warrant into it by this Court.

9. In view of the above discussions, we convert this petition into an appeal and the same is dismissed. Consequently, the Impugned Judgment dated 21.06.2017 passed in Cr. Appeal No. 15/2017 by the learned Chief Court is maintained.

10. The appeal is dismissed in above terms.

Chief Judge.

Judge.