

Right of Appeal Against Acquittal to Private Complainant under the Anti Terrorism Act 1997

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Right of Appeal Against Acquittal to Private Complainant under the Anti Terrorism Act 1997

The Commission received a reference from Messrs Kifayatullah and Bukhari Shah, residents of District Charsadda, NWFP, for providing right of appeal to the private complainant or a person aggrieved against the judgement/order of acquittal, passed by Special Court established under Section 7 of the Suppression of Terrorist Activities (Special Courts) Act (XV) 1975. While the proposal was under consideration of the Commission another law namely, the Anti-Terrorism Act 1997 was enacted providing for establishment of Anti-terrorism Courts. Later by Anti-terrorism (Amendment) Ordinance 2001 a new Section 39-B was added to the Anti-Terrorism Act 1997 which repealed the Suppression of Terrorist Activities (Special Courts) Act 1975.

Section 25 of the Anti-Terrorism Act 1997 provides for the right of appeal against the final judgement of an Anti-Terrorism Court, as follows: -

- 1) An appeal against final judgement of Anti-terrorism Court, shall lie to a High Court.
- 2) Copies of the Judgement of Anti-terrorism Court shall be supplied to the accused and the Public Prosecutor free of cost on the day the Judgement is pronounced and the record of the trial shall be transmitted to the High Court within three days of the decision.
- 3) An appeal under Sub-section (1) may be preferred by a person sentenced by

Anti-terrorism Court to a High Court within Seven days of the passing of the sentence.

- 4) The Attorney General, Deputy Attorney General, Standing Counsel or an Advocate General or an Advocate of the High Court or the Supreme Court of Pakistan appointed as Public Prosecutor, Additional Public Prosecutor or Special Public Prosecutor may, on being directed by the Federal or Provincial Government, file an appeal against an order of acquittal or a sentence passed by an Anti-terrorism Court with in fifteen days of such order.
- 5) An appeal under this Section shall be heard and decided by a High Court within seven working days.

In an ordinary criminal offence tried by a court of general criminal jurisdiction, a right of appeal is provided to a private complainant against an order of acquittal passed by such court under Sub-section (2) of Section 417 of the Code of Criminal Procedure 1898. Further any person aggrieved by such order of acquittal is made entitled to appeal through amendment in Sub-section (2A) of Section 417 of the said Code by Act XX of 1994 reading as follows -

Section. 417 –

- (1) Subject to the provisions of Sub-section (4) the Provincial Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or an appellate order of acquittal passed by any Court other than a High Court.
- (2) if such an order of acquittal is passed in any case instituted upon complainant and the High Court, on an application made to it, by the complainant in this behalf, grant special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.
- (2A) A person aggrieved by the order of acquittal passed by any court, other than a High Court, may, within thirty days, file an appeal against such order.
- (3) No application under Sub-section (2) for the grant of special leave to appeal from the order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order.
- (4) -----

This right of appeal against an order of acquittal by a court having general criminal jurisdiction provided by Sub-sections (2) and (2A) of the Code of Criminal Procedure 1898 was not provided to the complainant or an aggrieved person against an order of acquittal passed by the Special Court under the repealed Suppression of Terrorist Activities (Special Courts) Act XV 1975 and under Section 7 ibid only a person sentenced by a Special Court can file an appeal which reads as under:

Section 7(1). Appeals from sentences imposed by Special Courts etc:

A person sentenced by a Special Court shall have a right of appeal to the High Court within whose jurisdiction the sentence has been passed, but save as aforesaid notwithstanding the provisions of the Code or any other law for the time being in force or of any thing having the force of law by whatsoever authority made or done, no Court shall have authority to revise such sentence, or to transfer any case from a special Court or to make any order under Section 426, or Section 491 or Section 498 of the Code or have any jurisdiction of any kind in respect of any proceeding of a Special Court.

The Peshawar High Court in a judgment (Faiz Muhammad v/s Mehrab Shah, PLD 1997 Peshawar-166) recommended to the Federal Government for making amendment in law for the provision of appeal to private complainant against an acquittal order of the Special Court. The relevant extract reads:

Para 7. It is altogether a different argument that in line with the provisions Section 417(2-A) of Cr. P.C such right should have been granted to the complainant under Suppression of Terrorist Activities Act 1975 as well. Certainly the aforesaid right under the Code was extended to the complainant in order to bring the laws in conformity with principles of Islam... The same right ought to have been extended to a private complainant under the Act 1975, but so long as it is not granted by the legislature, the court cannot read the same into an enactment and cannot grant the same accordingly. We would propose that the same right be extended under Section 7 of the Suppression of Terrorist Activities Act 1975 to private complainant as well by positive legislation. This would avoid discrimination and would further be in line with the spirit of the Act.

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Again, a full bench of the Peshawar High Court in a recent judgement dated 27-07-2001 (Fazlur-Rehman v the State on page 25, para 26) placed reliance on the following Quranic verse (Sura

Bani Israel Ayat 32) for upholding the right of appeal to private complainant.

The Quranic verse is as follows

Nor take life which Allah has made sacred except for just cause. And if any one is slain wrongfully, We have given his heir authority to demand Qisas, or to forgive. (17-32)

The Court observed:

When God Almighty has given powers to the aggrieved person, then how such a power under the man-made law can be taken away from him. It is a recognized principle that while interpreting a particular provision of law, the court is competent to apply well recognized principles of Islamic common law and such interpretation which is in conformity with the injunctions of Islam be pressed into service. Keeping in view the above quoted Ayat 32 and while applying the principles of Islamic Common Law, we hold that the private complainant can invoke the revisional jurisdiction under Section 7(1) of STA 1975.

The above verse as interpreted by Maulana Maudoodi in Tafheem Ul Quran (Volume 2 p p 414-415) clearly states that Wali i.e. the legal heir of the deceased has the first right to claim Qisas or Diyat. The State is only required to help the Wali. It cannot substitute itself to be the Wali of the deceased in the presence of the real Wali.

The Holy Prophet have also declared the right of legal heirs as follows.

The relative of the killed person has the right to choose one of two compensations (i.e. to have the killer killed, or to accept blood money.

(Sahih Al-Bukhari (English translation) vol. 9 pp 11-12)

Similarly, in the case, Makhboor Hussain v/s Tazarab Hussain (2001 P.Cr. L.J. 1046 Shariat Court AJ&K P-1046), the Shariat Court of Azad Jammu & Kashmir held:

Para 17. ...that under Islamic law, the complainant or the injured person and their counsel are quite competent to file an application or lodge an appeal against the order of conviction or acquittal without the prior permission of the public prosecutor....

It is obvious that providing no right of appeal as available to a private complainant against the order of acquittal by a court of general criminal jurisdiction to a private complainant or a person aggrieved by an order of acquittal of Anti-Terrorism Court under Section 25 of the Anti-terrorism Act 1997 tantamounts to discrimination to a private complainant or the person aggrieved by an act of terrorism and also seems contrary to tenet of the Islam as referred by the Peshawar High Court in its Judgments. Therefore, there existed sufficient reasons to justify a right of appeal to be provided to a private complainant against an acquittal order of the Anti-Terrorism Court,

established under Anti-terrorism Act 1997 and thus the Secretariat of the Commission proposed for addition of a new Sub-section (4 A) in Section 25 of the Anti-terrorism Act 1997, providing for right of appeal against an order of acquittal by such court for consideration of the Commission as follows: -

Section 25

(4 A): A person aggrieved by the order of acquittal passed by a Anti-Terrorism Court, may within fifteen days file an appeal against such order.

The Commission considered the proposal in its meeting held on 18 May 2002 at Islamabad and approved that a right of appeal may be made available against an order of acquittal to a private complainant or an aggrieved person under the Anti terrorism Act 1997 as available in Section 417 of the Code of Criminal Procedure. The Commission further desired that the person aggrieved, however, be qualified to include the victim and/or close relation i.e. legal heir of victim to avoid the abuse of the process. The Commission approved the addition of the following Sub-sections of Section 25 of the Anti-terrorism Act 1997 namely :-

“ **(4A)** Any person who is a victim or legal heir of a victim and is aggrieved by the order of acquittal passed by an Anti-terrorism Court, may within fifteen days, file an appeal in a High Court against such order.

(4B) If an order of acquittal is passed by an Anti-terrorism Court in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may within fifteen days present such an appeal to the High Court.”.

The Draft Ordinance is at Appendix-I.

Appendix-I

AN

ORDINANCE

further to amend the Anti-terrorism Act 1997

WHEREAS it is expedient further to amend the Anti-terrorism Act 1997 (XXVII of 1997), for the purposes hereinafter appearing;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999, read with the Provisional

Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance: -

1.Short title and commencement. --(1) This Ordinance may be called the Anti-terrorism (Amendment) Ordinance 2002.

(2) It shall come into force at once.

2.Amendment of Section 25, Act XXVII of 1997.- In the Anti-terrorism Act 1997, in Section 25, after Sub-section (4), the following new Sub-sections shall be inserted,

namely:-

“ **(4A)** Any person who is a victim or legal heir of a victim and is aggrieved by the order of acquittal passed by an Anti-terrorism Court, may within fifteen days, file an appeal in a High Court against such order.

(4B) If an order of acquittal is passed by an Anti-terrorism Court in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may within fifteen days present such an appeal to the High Court.”

President of Pakistan