

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, C.J and Muhammad Nawaz Abbasi, J

Makhdoom JAVED HASHMI----Petitioner

Versus

THE STATE----Respondent

Criminal Petition No.89 of 2005, decided on 9th October, 2006.

(On appeal from the judgment/order, dated 24-3-2005 passed by Lahore High Court, Rawalpindi Bench, Rawalpindi in Criminal Miscellaneous No.1530/B of 2004 in Criminal Appeal No.166 of 2004).

(a) Penal Code (XLV of 1860)---

---S. 124-A---Criminal Procedure Code (V of 1898), S.196---Constitution of Pakistan (1973), Art.185(3)---Jurisdiction of Trial Court---Objection---After conclusion of trial accused was convicted and sentenced by Trial Court under 5.124-A, P.P.C.---Objection raised by accused was that trial for charge under 5.124-A, P.P.C. without adhering to provisions of S.196 Cr.P.C. was not legal---Contention of prosecution was that same objection was raised by accused during trial which was dismissed by Trial Court as well as by High Court and order passed by High Court was not assailed before Supreme Court, thus the same had attained finality---Validity---Objection so raised by accused was not entertainable rather in the light of decision of High Court on the subject, accused should not have urged the same in the petition for leave to appeal before Supreme Court at the stage when sentence was sought to be suspended---Objection was overruled.

(b) Penal Code (XLV of 1860)---

---Ss. 124-A, 131/109, 505(a), 500, 468, 469 & 471---Criminal Procedure Code (V of 1898), 5.426---Constitution of Pakistan (1973), Art. 185 (3)---Suspension of sentence---Deeper appreciation of evidence---Considerable portion of sentence undergone--Trial Court convicted and variously sentenced the accused, the longest term being of 7 years---Plea raised- by accused was that he had undergone a considerable portion of sentence of 7 years awarded to him and almost had completed full term of remaining sentences---Validity---Sentence could not be suspended under S.426 Cr.P.C. unless it was shown that it was based on no evidence and there was no ultimate possibility of conviction of a person to sustain---Order of High Court was not suffering from any infirmity as High Court having taken into consideration all aspects of the matter in the light of material available on record and on the basis of tentative assessment of evidence, had held that no case for suspension of sentence was made out---Supreme Court under Art.185(3) of the Constitution, was not obliged to interfere with such order of High Court declining to suspend the sentence of a person under S.426, Cr.P.C.---Most of the questions raised by parties could not be answered without deep appreciation of evidence and such exercise was unwarranted for the purpose of suspension of sentence and grant of bail after conviction---Plea raised by accused could not be considered to be a ground to suspend the sentence of accused---High Court committed no illegality in declining bail to accused by suspending his sentence and Supreme Court declined to undertake the exercise of deeper appreciation of evidence for suspension of sentence---Order passed by High Court being free from any legal infirmity or perversity, admitted no interference---Leave to appeal was refused.

Muhammad Saleem v. State PLD 2006 SC 483; Fazal Muhammad v. The State 2002 SCMR 1211 and Ghulam Abbas v. State 2003 SCMR 911 rel.

Muhammad Akram Sheikh, Senior Advocate Supreme Court , M.A. Zaidi, Advocate-on-Record and Nasir-ud-Din Khan, Advocate for Petitioner.

Munir Ahmed Bhatti, Advocate Supreme Court (Special Prosecutor) and Syed Zafar Abbas Naqvi, Advocate-on-Record for Respondent.

Nasir Saeed Sheikh, Deputy Attorney-General on Court Notice.