

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**
(Judicial Department)

Cr.R No. 35-P/2018

Niazuddin Vs The State etc.

JUDGMENT

Date of hearing. **27.03.2019**
Petitioner(s) by: **Mr. Zahir Shah Marwat**
 Advocate.
State by: **Mr. Moeenuddin Humayun**
 AAG.

IKRAMULLAH KHAN, J:- Through the instant criminal revision petition under Section 435 Cr.PC read with 439 Cr.PC, petitioner/convict Niazuddin has assailed the impugned order dated 05.12.2017, rendered by learned Additional Sessions Judge-II, Charsadda, whereby application of petitioner/convict for remission of death penalty on nine(9) counts on the basis of compromise was turned down.

2. In essence, petitioner/convict alongwith co-accused Subhanuddin etc were charged in case FIR No.373 dated 14.8.1996 registered under Sections

302/171/449/148/149 PPC, at Police Station Sardheri, Charsadda. At conclusion of trial, both the accused were found guilty and they were convicted under Section 302 PPC for the murder of nine deceased and sentenced them to death under each count by learned trial Court vide judgment dated 21.12.2002.

3. Lateron, petitioner/convict Niazuddin effected compromise with legal heirs of deceased and filed application before the learned trial Court for his acquittal on the basis of compromise. The learned Court below recorded statements of some of legal heirs of deceased but some of them well mentioned in the impugned order/judgment dated 22.12.2014 did not record their statements, as such provisions contained in Section 345 Cr.PC was not fulfilled therefore, the application of petitioner/convict under Section 338-E PPC was turned down by learned trial Court vide above order. Lateron, petitioner/ convict submitted another application before the learned trial Court for remission of death sentence on the basis of compromise, which was also turned down vide impugned order dated 5.12.2017, hence the instant criminal revision has been preferred by petitioner/convict for

remission of his death penalty (9 counts) as well as his release from jail on the basis of partial compromise.

4. The instant case was fixed for 5.3.2019 before this Court, on which date the left over legal heirs of deceased appeared in Court and conceded that they have also effected compromise with the petitioner/convict however, for satisfaction, this Court sent the case to the learned trial Court to record statements of those legal heirs who were not examined during course of pendency of application under Section 338-E PPC. The learned trial Court after recording statements of legal heirs submitted its report before this Court, according to which all the legal heirs of nine deceased have effected compromise with the petitioner/ convict.

5. Now adverting to the relief asked by the present petitioner for his release and remission on the basis of partial compromise, which in view of Section 345 Cr.PC was not possible however during pendency of instant criminal revision petition, as per report of learned trial Court below, all the legal heirs of nine deceased have effected compromise with the petitioner/convict so the relief was amended verbally by learned counsel for

petitioner/convict with the prayer to acquit the petitioner on the basis of compromise.

6. No doubt, the offences falling under Chapter XXIV of the Criminal Procedure Code 1898, is compoundable however, it is admitted that the appeal filed by petitioner/convict against his conviction has already been dismissed by this Court and this Court ceased of the matter while on the other hand sub-section 2 of Section 338-E PPC, empowers, confers jurisdiction only upon the trial Court for determination.

7. As this is a criminal revision petition, which is also against an order rendered under Section 338-E PPC, by learned trial Court below so this Court while exercising its jurisdiction under Section 435/ 439 Cr.PC, have no jurisdiction at all to acquit the accused on the basis of compromise keeping in view sub section 2 of Section 338-E PPC. However, the application under Section 338-E PPC filed by petitioner was dismissed by learned trial Court in view of Section 345 Cr.PC, where compromise was not effected by all the legal heirs of nine deceased. So now when all the legal heirs of deceased have effected compromise with the petitioner/convict therefore, this criminal revision

petition is allowed and the case is remanded to the learned trial Court in view of sub section 2 of Section 338-E PPC for further proceedings.

8. Before parting with the judgment, it would be expedient to give reference to the amendment introduced through Act XLIII of 2016 dated 22.10.2016, which reads as:-

***“Provided further that where an offence under this Chapter has been committed and the principle of fasad-fil-arz is attracted, the Court having regard to the facts and circumstances of the case shall punish an offender with imprisonment or fine as provided for that offence.*”**

9. The learned trial Court after its satisfaction and hearing both the parties may pass an appropriate, just and fair order in respect of compromise effected between the parties keeping in view the recent amendment introduced in Section 338-E PPC accordingly.

***Announced:
27.03.2019.***

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