

**JUDGMENT SHEET**  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**

(Judicial Department)

**W.P No.2030-P/2020.**

State Vs Saeed Khan & others

**JUDGMENT**

Date of hearing: 03.09.2020.

Mr. Muhammad Nisar Khan, AAG for State.

Mr. Abdul Lateef Afridi, Advocate, for respondents No.1, 3 and 4.

Mr. Farmanullah Sailab, Advocate, for respondent No.2.

Mr. Muhammad Saeed Khan, Advocate, for respondent No.5.

Barrister Amir Khan Chamkani, amicus curiae.

**LAL JAN KHATTAK, J.-** This petition is directed against the order dated 06.02.2020 of the learned Judge, Anti-Terrorism Court-II, Peshawar, whereby the application moved by the State under Section 227 of the Criminal Procedure Code, 1898 for alteration of the consolidated charge framed on 04.11.2019 in two separate criminal cases, has been dismissed.

2. Brief facts of the case are that on 28.02.2019, a case was registered vide FIR No.12 at Police Station C.T.D, Peshawar under Sections 324/ 353/427/148/149 PPC read with Sections 7 and 11 of the Anti-Terrorism Act, 1997 against some unknown persons (the first case). Thereafter on 16.04.2019, in the same Police Station another case was registered vide FIR No.25 u/ss 302/ 324/353/427/120-B PPC read with Section 3, 4 and 5 of the Explosive Substances Act, 1908, Section 15 of the Khyber Pakhtunkhwa Arms Act, 2013 and Section 7, 11-N and 21(i) of the Anti-Terrorism Act, 1997 (the second case).

3. After completion of investigation, the first case was put in Court wherein charge was framed on 10.10.2019 against the respondents No.1 to 3. When the second case was put in Court, the learned trial Court ordered joint trial of both the cases vide order dated 31.10.2019 and consequently a consolidated charge was

framed on 04.11.2019 against all the respondents herein to which neither the State nor the accused raised any objection. On commencement of the joint trial, the learned trial Court, pursuant to the consolidated charge, started recording evidence in the cases. During the joint trial, the learned Prosecutor moved an application before the learned trial Court for alteration of the consolidated charge, which application was dismissed by the learned trial Court vide order dated 06.02.2020 whereagainst the State has preferred the instant petition.

4. Arguments heard and record gone through.

5. Perusal of the record would show that the first case reported in FIR No.12 took place on 28.02.2019 wherein an Hon'ble judge of this Court was fired at when he was on his way to Court from his residence for performing his duties whereas the second case reported in

FIR No.25 occurred on 15.04.2019, according to which some miscreants had occupied a house at Hayatabad for their indulging in anti-State activities. As per contents of the FIR of the second case, the law enforcers, in order to foil the designs of the miscreants, raided the house to effect their arrest, on which, firing and cross-firing ensued as a result of which one ASI embraced *shahadat* and an alleged miscreant too lost his life.

6. It seems from the record that both the incidents are separate in nature and there is no similarity or sameness in between the two, hence, it cannot be said that both are of the same kind or are very much alike. No doubt, according to Section 234 Cr.P.C., when a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, he may be charged with and tried at one trial and according to Section 239 (d) of

the Code of Criminal Procedure, persons accused of different offences committed in the course of same transaction could be charged and tried together but, as stated earlier, both the incidents reported in the two different FIRs are neither of the same kind nor have been committed during the course of same transaction, therefore, same cannot be tried jointly. It transpires from the record that the first case pertains to an incident wherein firing was made at an Hon'ble Judge of this Court, whereas in the second case, one person from each side lost his life as a result of firing and cross-firing and hurling of hand grenades allegedly by the accused mentioned in the FIR of the case. So both the incidents are altogether of different kind (wisdom is derived from a judgment of Hon'ble Supreme Court of Pakistan reported in **PLD 2003 SC 891**).

7. In order to attract the provisions of Sections 234 and 239 of the Criminal

Procedure Code, 1898, for conducting joint trial of two cases, both the offences committed must be of the same kind which is not the case in hand. The learned trial Court, while passing the order of joint trial of both the cases and framing a consolidated/joint charge, in the considered opinion of this court, has committed an illegality which cannot be countenanced. It is also worth to mention that as per Section 233 Cr.P.C., for every distinct offence of which any person is accused, there shall be a separate charge and every such charge shall be tried separately except in the cases mentioned in Sections 234, 235 and 239 Cr.P.C.

8. As not only both the cases are distinct in kind as to facts thereof but their victims too are different and similarly complainants and witnesses of both the cases too are separate, therefore, on no count same could be jointly tried through a consolidated charge. Besides,

some of the accused of the second case have not been charged as perpetrators in the first case.

9. Though the State has not challenged the very order of joint trial of both the cases passed on 31.10.2019 by the learned trial court and 59 PWs, 9 DWs and 16 CWs have been examined by the learned trial Court besides recording statements of 6 of the accused as envisaged under section 342 Cr.P.C. but as conducting both the cases jointly through a consolidated charge is a gross violation of law on the subject, therefore, mere recording of evidence to the ibid effect through the consolidated charge cannot be made a ground to validate the joint trial and the impugned order.

10. For what has been discussed above, this petition is allowed, the impugned order is set aside and it is directed that both the cases be tried separately on separate charges,

however, as the respondents-accused are behind the bars since long, therefore, the learned trial Court is directed to proceed with their cases on day-to-day basis and in order to achieve the ibid goal, all the necessary means available under the law be employed.

**JUDGE**

**JUDGE**

**Announced**  
**03.09.2020.**

(D.B) (Hon'ble Mr. Justice Lal Jan Khattak & Hon'ble Mr. Justice Muhammad Naeem Anwar)

A.Ali