

**HIGH COURT OF AZAD JAMMU AND KASHMIR**

Crim. Appeal No.110/2023;  
Date of Inst. 05.08.2023;  
Date of hearing. 28.02.2024;  
Date of decision. 29.02.2024.

Muhammad Taufeeq Kiani S/o Gohar-ur-Rehman Kiani R/o Chehlla Bandi Tehsil & District Muzaffarabad, presently detained at Central Jail Rarra Muzaffarabad, Azad Kashmir.

...Appellant

**VERSUS**

1. Azad Jammu & Kashmir Ehtesab Bureau through Deputy Chief Prosecutor.  
....Real Respondent

2. Manzoor Hussain Awan S/o Rehmatullah Awan R/o Awan Patti, presently Jalalabad Tehsil & District Muzaffarabad, retired Section Officer Secretariat Local Government and Rural Development, Muzaffarabad;  
3. Aftab Aziz Mir S/o Mir Abdul Aziz, R/o House No.D/143 Officer Colony Upper Chatter, presently retired Deputy Secretary Secretariat Local Government and Rural Development, Muzaffarabad.  
..... Proforma Respondents

.....  
Crim. Appeal No.121/2023;  
Date of Inst. 04.09.2023;

Azad Jammu & Kashmir Ehtesab Bureau through Chairman Ehtesab Bureau, Muzaffarabad.  
...Appellant

**VERSUS**

1. Manzoor Hussain Awan S/o Rehmatullah Awan, R/o Awan Patti, present Jalalabad Tehsil & District Muzaffarabad, retired Section Officer Secretariat Local Government and Rural Development, Muzaffarabad;
2. Aftab Aziz Mir S/o Mir Abdul Aziz, R/o House No. D/143 Officer Colony Upper Chatter Muzaffarabad, Present retired Deputy Secretary Secretariat Local Government and Rural Development Department, Muzaffarabad.

.....Accused/Respondents

### **CRIMINAL APPEALS**

**Before:— Justice Sardar Liaqat Hussain, J.  
Justice Chaudhary Khalid Rasheed, J.**

**PRESENT:**

Raja Sajjad Ahmed Khan, Advocate for convict/appellant.  
Deputy Chief Prosecutor on behalf of Ehtesab Bureau.  
Ch. Shoukat Aziz, Advocate for acquitted respondents.

**JUDGMENT:**

**(Chaudhary Khalid Rasheed, J.)** The supra titled appeals have been directed against the judgment passed by the learned Ehtesab Court No.1, Muzaffarabad dated 22.07.2023, whereby accused Muhammad Taufeeq Kiani has been convicted in offences under sections 420, 468, 467, 471-PC by awarded seven years simple imprisonment in each offence and Rs.1,00,000/- as fine and in case of non-payment of fine, he has to undergo for further one year simple imprisonment. He was also ordered to pay Rs.17,60,579/- received by him as salary from government exchequer, whereas co-accused Aftab Aziz and

Manzoor Awan were acquitted of the charges by extending them benefit of doubt.

The learned counsel for the appellant Raja Sajjad Ahmed Khan mainly pressed into service that Court below has not applied its judicial mind while passing the impugned judgment because the accused has been convicted in the offences under section 420, 467, 468 and 471-APC and has been awarded sentence of seven years in every offence without assigning any details of punishment in each offence which is sine qua non because in offence under section 471 APC seven years of sentence has not been provided. He further argued that core issues agitated before the Court below were not attended, hence the impugned judgment is not sustainable;

The learned DCP supported the impugned judgment to the extent of conviction of Muhammad Taufeeq Kiani, however, submitted that the Court below without assigning justified reasons, acquitted respondents Manzoor Hussain Awan and Aftab Aziz Mir, thus the impugned judgment is not sustainable.

Chaudhary Shoukat Aziz, the learned counsel for acquitted respondents supported the impugned judgment on all counts and contended that accused/respondents have got no concern with the promotion of main accused Muhammad

Taufeeq Kiani and they being members of selection committee approved working papers produced before them, hence the acquittal order is liable to be maintained as no *mens rea* has been proved against them.

We have heard the learned counsel for the parties, gone through the record of the case with utmost care and caution.

A perusal of record reveals that through the impugned judgment, the Court below has convicted accused Muhammad Taufeeq Kiani under section 420, 467, 468 and 471-APC by awarded seven years of imprisonment in each offence without any distinction. Under section 367(2) and (3) Cr.PC it is mandatory requirement for the trial Court to record specific sentence for a distinct offence and non-compliance of section 367 Cr.PC. turns the judgment as anomalous. For ready reference section 367 Cr.PC. is reproduced as under:-

**367. Language of judgment: contents of judgment.**

(1) Every such judgment shall except as otherwise expressly provided by this Code, be written by the presiding officer of the Court from the dictation of such presiding officer in the language of the Court, or in English; and shall contain the point or points for determination, the decision thereon and the reasons for the decision; and shall be dated and signed by the presiding officer in open Court at the time of pronouncing it and where it is not written by the presiding officer with his own hand, every page of such judgment shall be signed by him.

(2) It shall specify the offence (if any) of which, and the section of the Pakistan Penal Code or other law under which the accused is convicted, and the punishment to which he is sentenced.

(3) **Judgment in alternative.** When the conviction is under the Pakistan Penal Code and it is doubtful under which of two sections, or under which of two parts of the same section of that code the offence falls, the Court shall distinctly express the same, and pass judgment in the alternative.

(4) If it be a judgment of acquittal, it shall state the offence of which the accused is acquitted and direct that he be set at liberty.”

Requirements of section 367 Cr.PC. are not directory rather mandatory in nature and violation of the said provision of law is not curable. My this view finds support from 1991 P Cr.L J 2272 wherein at page 2273 in para 4 it has been observed as under:-

4. Since after hearing the learned counsel for the parties, I feel persuaded to set aside the conviction and sentence of the petitioners on account of legal infirmities in the judgment, so I need not set out the facts in detail and enter into the merits of the case. I find that although the petitioners were charged and convicted under as many as four sections of Pakistan Penal Code, yet no separate sentence under each section was passed by the trial Court. This being violative of the mandatory provisions of section 367(2)(3), Cr.PC., conviction and sentence of the petitioners cannot sustain.

Similar view has been taken in 2016 SCMR 1190 and in para 6 it has been held as follows:-

“Under the provisions of section 367(2) and (3), Cr.PC. it is mandatory for the Court that after finding the accused guilty of one or more offences, upon recording conviction, separate sentence must be clearly awarded to the accused so convicted otherwise it would be illegal being in violation of the mandatory provisions cited above. In this case, no separate sentence was awarded to the appellants under section 7(a), A.T.A. by the trial Court or the High Court, as explained above. This legal aspect of vital importance, conveniently escaped from the notice of the Trial Court and the

learned High Court in the second round when the appellants were seeking acquittal on the basis of compromise under section 302(b), P.P.C. alone, because it cannot be constructed nor it is permissible under the law to hold that the appellants were impliedly sentenced to imprisonment for life under section 7(a), A.T.A. as well. The provision of section 367, Cr.P.C. provides that the Court determine first the guilt of the accused and then to pass judgment of conviction whereafter the sentence shall follow.

Being inseparable and integral part of conviction, unless specifically awarded, it cannot be assumed to the prejudice of the accused that he/they were also sentenced under section 7(a), A.T.A. by applying the rule of implication because the law provides the passing of specific sentence for a distinct offence and if it is not awarded, it cannot be construed that same was impliedly awarded as the very judgment to that extent becomes illegal and violative of the mandatory provisions of subsections (2) and (3) of section 367, Cr.P.C.”

The sentence under section 420 APC may be extended to seven years and shall also be liable to fine, under section 467 PC culprit may be extended ten years imprisonment and shall also be liable to fine, under section 468 P.C. sentence may be extended to seven years and shall also be liable to fine and if the offence of forgery under section 471 APC is proved the culprit shall be punished with imprisonment which may extend to two years or with fine, thus, it was enjoined upon the Court below to mention reasons for award of sentence in each offence and award of lump sum sentence for seven years in difference offences particularly in the offence for which maximum punishment is provided to two years would amount to non-

applying of judicial mind by the Court on relevant provisions of law, hence, the impugned judgment is not sustainable as being violative of mandatory provision of law.

A perusal of record reveals that learned counsel for the accused raised objection before the Court below that the reference has neither been prepared by the concerned department i.e. Local Government and Rural Department nor has been approved by the government under section 21(10) of Ehtesab Bureau Act, 2001, thus the same could have not been entertained by the Ehtesab Court but the Court below while dictating judgment has not attended this core issue.

It was also argued before the Court below that the reference was time barred in view of the provisions contained in section 21(2-b), (3) and (6) of Ehtesab Act but this question has also not been resolved by the Court below.

Furthermore, the Court below convicted accused Muhammad Taufeeq Kiani who allegedly obtained promotion by producing fake degree of F.A. however, co-accused Aftab Aziz and Manzoor Awan who were allegedly involved in the promotion of main accused Muhammad Taufeeq Kiani on the basis of forged degree of F.A. have been acquitted merely for the reason that prosecution failed to prove the element of *mens rea* on their behalf but did not take into consideration that

if the accused persons could have not been convicted under sections 10 and 11 Ehtesab Act, 2001 but they can be convicted in the offences which were proved through the evidence though were not mentioned in the reference because it is well a settled precept of law that the Court is not bound to convict an accused in the offence which is only mentioned in the challan rather if an offence is proved through cogent evidence, the Court is fully empowered to convict him in the said offence irrespective of the fact that said offence was mentioned in the challan or not. If after appreciation of evidence, it is proved that the acquitted accused Manzoor Hussain Awan and Aftab Aziz misused their authority and by knowing the fact that the degree of Muhammad Taufeeq Kiani is fake, performed their role for his promotion as Senior Scale Stenographer then they were also liable to be convicted under the concerned provisions of law but the trial Court did not ponder this pivotal legal scenario of the instant case and acquitted accused persons Aftab Aziz and Manzoor Hussain Awan merely on the ground that the offences under sections 10/11 Ehtesab Act, 2001 were not substantiated, hence the impugned judgment is liable to be extinguished.

The main requirement of section 367 Cr.PC. is that the judgment must be lucid, should contain discussion of evidence, reasons for the decision and not merely the



conclusion. A judgment without giving any cogent reason is not a proper judgment under section 367 Cr.PC. As stated earlier, the Court below while passing the impugned judgment has not attended all the arguments/objections raised by the learned counsel for the parties, particularly failed to discuss the role of acquitted accused, hence the case is liable to be remanded to the Court below for fresh decision by attending each and every objection. It is a celebrated precept of law that proper course for the Court is to consider all the points raised before it during arguments and then to decide each point after assigning valid reason for the same and in absence thereof, the judgment would be deemed to have suffered from lacuna which resulted to set aside the same. Reliance may be placed on 2012 MLD 633.

The sum and substance of the above discussion is, the captioned appeals stand accepted while setting aside the impugned judgment, the case is remanded to Ehtesab Court No.1 Muzaffarabad for fresh decision after proper appreciation of evidence by attending each and every argument raised by the parties in the light of observations made in this judgment within a span of three months.

**Muzaffarabad;**  
**29.02.2024.**

**JUSTICE**

**JUSTICE**