

SHARIAT APPELLATE BENCH OF HIGH COURT

Crim. Reference No. 194-B/2021.

Date of Institution: 02.08.2021.

Date of decision 01.09.2021.

Naqash Rasheed S/o Muhammad Rasheed Khan, caste Sudhan R/o
Chota Gala, Tehsil Rawalakot.

.....Accused-Petitioner

VERSUS

The State.

.....Non-petitioner

CRIMINAL REFERENCE

Before:- **Justice Sadaqat Hussain Raja, C.J.**

PRESENT:

Raja Aftab Ahmed, Advocate for the petitioner/accused.

A.A.G for State.

ORDER:-

The above titled reference has been sent by District Court of Criminal Jurisdiction Poonch/Rawalakot for guidance/ opinion regarding disposal of the after arrest bail application, filed on behalf of accused/petitioner, before the concerned court.

Brief facts of the case are that a case under FIR No.165/2019 under sections 147/148/149, 109, 337A, 302, 324, APC and 15-2A/AA against accused/petitioner and others at Police Station Rawalakot. The accused/petitioner was apprehended by the police. Accused/petitioner alongwith others have been challaned under the aforementioned offences before the District Court of Criminal Jurisdiction Rawalakot. During trial, accused/petitioner, instituted post arrest bail application, before District Court of Criminal Jurisdiction, Poonch Rawalakot (court

below) on statutory ground. The learned court below after hearing arguments, sent the present reference to this Court for guidance.

Without going into the detail facts and merit of the case suffice it to say that the accused/petitioner filed post arrest bail application on the statutory ground before trial Court. Raja Aftab Ahmed, Advocate for the petitioner/accused and learned AAG for the respondents have been heard at length. After hearing the learned counsel for the parties and going through the law on the subject, I am of the view that the point which needs resolution by this Court is whether the reference sent by District Criminal Court Rawalakot is competent or not?

A Subordinate Court was empowered to send reference to this Court for soliciting instructions as to what he should do if a new situation is arisen. Under Section 432 and 433 of the Criminal Procedure Code, a Division Bench Karachi High Court in a Criminal Reference No. 08 of 1990 decided on 05.08.1991 decided the case on the basis of case titled **“Emperor Vs Madho Singh AIR 1925 All. 318”** and **“AIR 1949 Mad.”** that any Judge/Court subordinate to this Court cannot make any reference to this Court for any instruction as to what he should do and the Judge/Court should decide the matter by himself. Subsequently, a single Bench of Karachi High Court in a case titled **“Abdul Ghafoor Magsi,”** District and Sessions Judge Gotki 1998 P. Cr. L J 1377 followed the dictum supra and observed that Sections 432 and 433 of Criminal Procedure Code which empowered subordinate Judge/Court to send a reference to this Court for soliciting instructions have been omitted.

Thus, Subordinate Court cannot sent any clarification/ instruction under Sections 432, 433 Cr.P.C, consequently the subordinate Judge/Court should decide the matter by himself keeping in view the relevant provision of law as well as newly created situation.

In view of above, I would not like to give any opinion on the reference sent by District Criminal Court Rawalakot on the question whether the period consumed due to Covid-19 pandemic shall be considered as consumed by the prosecution or the accused. In view of above discussion law, the Court below shall decide the same question by itself. Thus, the reference stands answered in the manner discussed above.

Muzaffarabad,
01.09.2021.

(Sd-)
Chief Justice/Vacation Judge

Recommended for reporting.

(Sd-)
Chief Justice/Vacation Judge