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IN THE COURT OF ABDUL BASIT
ADDITIONAL SESSIONS JUDGE-II, ORAKZAI

Case No. 05/10 of 2024

Date of institution: 30.05.2024

Date of decision: 08.06.2024

Date of consignment:

Mehdi Hasan son of Khayal Mehdi resident of Bar Muhammad Khel,
Orakzai (appellant/accused)

Versus

State through Shal Muhammad SHO, Kalaya Police Station, Orakzai and
one other (respondents/complainants)

APPEAL AGAINST JUDGMENT AND ORDER

DATED 25.05.2024 PASSED IN CASE FIR NO. 75, DATED 11.08.2022
U/S 295-A & 298-A PPC OF KALAYA POLICE STATION,

ORAKZAI

JUDGMENT

1. Appellant/accused is facing trial before the court of learned Judicial Magistrate-I, Kalaya, Orakzai in subject case whereby the learned trial court has started de-novo trial of the appellant in the subject case after the sanction from the government has been granted despite fact that the case was previously fixed for order.
2. Concise facts of the case as per available record are that respondent has registered a criminal case against appellant for act of uploading and sharing derogatory material against the sacred name of Ummul Mumineen, the righteous caliphs & companions of the holy Prophet (peace be upon him), with deliberate and malicious intention of outraging the religious feelings of Ahl-e-Sunnat from his Facebook account through cellular phone. The appellant was released on bail by the august Peshawar High Court.
3. On completion of the investigation; the complete challan was put in court against the appellant before the learned trial court.

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4. The learned trial court furnished copies to appellant in compliance to the provision of section 241-A CrPC, where after, the appellant was charge sheeted under sections 295-A and 298-A PPC, to which the appellant did not plead his guilt and claimed the trial.
5. The trial commenced and prosecution produced its entire evidence and closed the evidence. Thereupon, the statement of appellant was recorded u/s 342 CrPC, the learned trial court heard the arguments and fixed the case for order, however, before the order could have been pronounced, the respondents submitted an application under section 344 r/w/s 196 CrPC alleging that for trial of an offence under section 295-A CrPC, a sanction from the competent authority was mandatory, however, they have failed to obtain the same; therefore, prayed to cure the mistake.
6. The notice of application was given to the appellant. The learned trial court heard both the parties and returned the case to prosecution with direction that the Government may if it so desires, try the appellant/accused after strictly complying with the conditions laid down in section 196 CrPC in following words;

"Where a mandatory condition for the exercise of jurisdiction was not fulfilled, then the entire proceedings that followed would become coram-non-judice, illegal and without jurisdiction. No sanction for prosecution of accused was obtained as envisaged by Ss. 196 & 196-A CrPC, resultantly, case is returned back to prosecution with directions that the Government may if it so desires, try the accused after strictly complying with the conditions laid down in this section. Application disposed of accordingly. Accused is on bail. He will remain on bail. Prosecution shall resubmit the case file within 15 days of receipt of record."

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7. That the prosecution again submitted the case file along with Ex-Post Facto Sanction No. 822/DC/ORK/Litigation Cell dated 13.05.2024 before the learned trial court, who vide order dated 25.05.2024 has passed the direction for de-novo trial of the appellant in the subject case.
8. Feeling aggrieved from the order of learned trial court, appellant has impugned herein the judgment and order of the learned trial court dated 25.05.2024 with assertion that when the case was fixed for order, the learned trial court had no power to return the case to the prosecution to obtain any sanction from Deputy Commissioner, thus, the impugned order for de-novo trial is not maintainable as well as in violation of the Article 10-A of The Constitution of Islamic Republic Of Pakistan, 1973, which speaks about fair trial; therefore, prayed that on acceptance of the instant appeal, the impugned order of the learned trial court may be set-aside and case be returned/remanded to the learned trial court with direction for pronouncement of order on the basis of evidence already recorded and closed in earlier trial.
9. Preliminary arguments heard and record perused.
10. Viewing the valuable arguments of learned counsel for appellant and record on file, it is held that before filing this appeal, the appellant had filed a similar nature criminal appeal no. 04/10 of 2024 on 16.05.2024, wherein, he has challenged the order dated 09.03.2024, whereby, the learned trial court had returned the case to prosecution for want of obtaining the sanction of the Government with direction that the Government may if it so desires, try the appellant/accused after strictly complying with the conditions laid down in section 196 CrPC and resubmit the case file within fifteen days from the receipt of record, however, the said appeal has been dismissed *in-limine* by this court today being time barred through a detailed order; thus,

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appellant cannot raise same question in a different way by through this appeal by impugning the order dated 25.05.2024 on pretext of submission of challan against the appellant for de-novo trial having intended the same result, the earlier order dated 09.03.2024 was impugned.

11. In view of my above findings, it is held that since the similar nature question had already been impugned and decided by this court through a separate appeal referred above; therefore, appellant cannot agitate it again on submission of fresh challan; therefore, the appeal cannot be admitted for regular hearing, hence, it is dismissed *in limine*.
12. Copy of this order be transmitted to the learned trial court with direction to place the same on original record after making proper entries in the relevant register, whereas, file of this court consigned to record room after completion and compilation.



Announced
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CERTIFICATE

Certified that my judgment consist of four (04) pages. Each page is signed by me after necessary corrections, where needed.



Announced
08.06.2024

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