

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Maqbool Baqar
Mr. Justice Mazhar Alam Khan Miankhel

Criminal Appeal No. 429 of 2017

(Against the judgment dated 15.03.2016 passed by the High Court of Sindh at Karachi in Criminal Acquittal Appeal No. 30 of 2014)

***State through the Director, Directorate-General of
Intelligence & Investigation, (Customs & Excise), Karachi***

...Appellant

versus

Haji Nabi Bux, etc.

...Respondents

For the appellant:

Dr. Farhat Zafar, ASC
Raja Abdul Ghafoor, AOR

For respondent No. 1:

Mr. Farhat Nawaz Lodhi, ASC

On Court's Notice:

Syed Nayyab Hussain Gardezi,
Deputy Attorney-General for
Pakistan

Date of hearing:

26.09.2018

JUDGMENT

Asif Saeed Khan Khosa, J.:

Criminal Miscellaneous Application No. 1559 of 2018

This miscellaneous application is allowed and the documents appended therewith are permitted to be brought on the record of the main appeal. Disposed of.

Criminal Appeal No. 429 of 2017

2. Haji Nabi Bux and Abdullah respondents were booked in case FIR No. C.No.M1564/DCI/Seiz/2011 registered at the Directorate-General of Intelligence & Investigation, FBR, Regional Office, Karachi on 15.09.2011 and after a regular trial conducted by the learned Judge, Special Court-II (CNS), Karachi they were acquitted of the charge *vide* judgment dated 28.08.2013. The acquittal of the respondents was challenged before the High Court of Sindh at Karachi by the State through the Director, Directorate-General of Intelligence & Investigation (Customs & Excise), Karachi through Criminal Acquittal Appeal No. 30 of 2014 but the said appeal was dismissed by a learned Division Bench of the said Court through the impugned judgment passed by it on 15.03.2016. Hence, the present appeal by leave of this Court granted on 02.10.2017.

3. We have heard the learned counsel for the parties at some length and have gone through the relevant record of the case with their assistance.

4. The appeal filed by the appellant before the High Court had been dismissed on the ground that the same was not maintainable and for holding so the High Court had referred to the provisions of the Control of Narcotic Substances Act, 1997, the Customs Act, 1969 and the Code of Criminal Procedure, 1898. We have found that all the references in the impugned judgment to the provisions of the Customs Act and the Code of Criminal Procedure *vis-à-vis* the right of appeal and the process of filing an appeal were not strictly relevant to the controversy pertaining to maintainability of the appeal in the present case and all the precedent cases arising out of the said two enactments were also hardly relevant because a right of appeal in a case of recovery of narcotic substance is squarely governed by the provisions of section 48 of the Control of Narcotic Substances Act, 1997. Section 48 of the said Act caters for all kinds of challenges made to a judgment or order of a trial

court through an appeal and unlike its counterparts in the Customs Act and the Code of Criminal Procedure no restriction has been placed therein as to which person or authority can file an appeal and this had been so clarified by this Court in the case of The State through Mehmood Ahmad Butt, Deputy Director, Regional Directorate, Anti-Narcotics Force, Lahore v. Mst. Fazeelat Bibi (PLD 2013 SC 361). It is not denied that the criminal case in hand was a State case, the State had prosecuted the respondents before the trial court and it was none other than the State itself which had filed an appeal before the High Court against acquittal of the respondents recorded by the trial court. Apart from that the FIR had been lodged in this case by the office of the Directorate-General of Intelligence & Investigation, FBR, Karachi which was the complainant in the case and the appeal filed by the State before the High Court was through such complainant. We find that the provisions of section 48 of the Control of Narcotic Substances Act, 1997 place no restriction on the State or the complainant *vis-à-vis* filing of an appeal before the High Court and this aspect of the matter had been clarified by this Court in the case of State through Director General, Anti-Narcotics Force v. Abdul Jabar alias Jubbara (2017 SCMR 1213). After going through the impugned judgment passed by the High Court we have found that it was totally unnecessary for the High Court to consider the provisions of the Customs Act or the Code of Criminal Procedure when the provisions of section 48 of the Control of Narcotic Substances Act, 1997 were very clear and were the only provisions governing the subject of appeal in such a case. The High Court would have done better by seeking guidance in that regard from the above mentioned judgments passed by this Court on the subject.

5. For what has been discussed above this appeal is allowed, the impugned judgment passed by the High Court of Sindh at Karachi on 15.03.2016 is set aside and the matter is remanded to the High Court with a direction to entertain the appellant's appeal filed before it as having been competently filed which appeal shall now be decided by the High Court on its merits. The bail

bonds and sureties of the respondents, if any, shall stand discharged as far as this Court is concerned.

Judge

Judge

Judge

Islamabad

26.09.2018

Approved for reporting.

Arif