

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

Mr. Justice Iftikhar Muhammad Chaudhry, CJ.
Mr. Justice M Javed Buttar
Mr. Justice Hamid Ali Mirza

Crl. Petition No.55 of 2005

(On appeal from the judgment dated
3.1.2005 passed by Balochistan High
Court in CNS appeal No.238/04)

Ghulam Qadir

...Petitioner

Versus

The State

...Respondents

For the petitioner: Mr. Tariq Mehmood, ASC
Ch. Muhammad Akram, AOR

Respondent: N.R.

Date of hearing: 12.10.2005.

JUDGMENT

Iftikhar Muhammad Chaudhry, CJ.— Leave to appeal is
sought against the judgment of Lahore High Court dated January 3, 2005.

2. Precisely stating facts of the case are that on February 29,
2004 FIR NO. 02/2004 was registered with Pakistan Coast Guard alleging
therein recovery of "Poppy Flowers" weighing 320 Kg. packed in 8 sacks
concealed in secret cavities of Coach No.PRQ 8569 being driven by
Petitioner Ghulam Qadir son of Ghazi Khan, when it was intercepted near
the Coast Guard Check Post, Uthal while enroute to Karachi from Quetta. As
per "Masheer Nama" 10 grams from each sac were recovered on the spot
for obtaining expert's opinion of chemical analyzer. Subsequently on
having found it to be narcotics, a case u/s 9 (c) of Control of Narcotics
Substance Act 1997 was registered. On completion of usual investigation
petitioner was sent up to face trial before Special Judge, under Control of
Narcotics Substance Act, (herein after referred as Act 1997) Lasbela at
Hub. Petitioner did not plead guilty to the charge read over to him and

claimed trial. Prosecution, to substantiate acquisition, led evidence of PWs Major Manzoor Ahmad Khan, Muhammad Hanif Spy Pakistan Cost Guard and Major Muhammad Ilyas, Investigating officer. Thereafter petitioner was examined u/s 342 Cr.P.C. wherein he denied the prosecution's case and contended that he has been involved in commission of offence falsely. To substantiate his plea he led evidence of Haji Dildar Khan in support of his plea. The learned Trial Court vide judgment dated 30th August 2004 convicted/sentenced to petitioner for a period of 25 years R.I. with fine of Rs.1,00,000/- and in case of default to further suffer for a period of one year S.I. However benefit of section 382-B Cr.P.C was also extended to him. Appeal filed by him before the High Court failed, as such instant petition for leave has been filed.

3. Learned counsel contended that petitioner being a driver of a passenger bus cannot be held responsible for commission of offence as "Poppy Flowers" were not owned by him, as number of passengers were traveling along with their luggage in the bus from Quetta to Karachi therefore, possibility cannot be over ruled that the recovered articles were owned by any one of them. He further contended that there is a contradiction in version of prosecution as according to FIR, alleged "Poppy Flowers" were recovered from the roof of the passenger bus whereas challan and charge sheet indicate that it was concealed in cavities.

4. We have heard learned counsel at length and have also gone through the impugned judgment passed by the High Court as well as the judgment of the Trial Court and evidence produced by the prosecution carefully. The defence had not denied recovery of contraband items from the bus on 20.2.2004 when it was intercepted by Cost Guard Authorities and according to its version cloth, dinner set, etc. were recovered from the bus whereas the recovery of 320 kg of "Poppy Flowers" has been denied. Learned counsel emphasizes that a driver cannot be held responsible for

transporting contraband articles if they were lying openly on the roof of a bus and at the best his responsibility would start only when the contraband items i.e. narcotics etc. had been recovered from designed cavities of the bus.

5. Under Article 29(d) of the Control of Narcotics Substances Act 1997 unless otherwise proved, presumption would be that an accused has committed an offence under this Act in respect of any material which have undergone any process towards the production or manufacture of narcotics, drug psychotropic substance or controlled substance or any residue left of the materials from which a narcotic drug, psychotropic substance or controlled substance has been produced or manufactured for the possession of which he fails to account satisfactorily. Presence of petitioner being a driver in the vehicle is not denied as it is evident from the material available on record. Inasmuch as recovery of some other incriminating articles is not denied from the bus being driven by him but how it is possible that petitioner, who was driving the vehicle and the recovered articles were lying openly in eight sacks on the roof of the vehicle, would have knowledge about them. The driver of a vehicle invariably raises the plea of having no knowledge when narcotics or other contraband items are recovered from their possession. Not only under the provision of Act 1997 but under various other parallel laws dealing in respect of the transportation/movement of contraband items. But depending upon the facts and circumstance of the case this contention had been rejecting the pleas of the drivers. In this behalf reference may be made to the cases reported as:

(i) Muhammad Shah V. Stat (PLD 1984 SC 278)

In this case driver was found guilty for the commission of keeping in his possession prohibited items under the provision of prohibition (Enforcement) of Hadd) order 1979.

(ii) Said Shah V.State (PLD 1987 SC 288)

In this case as well driver was convicted and sentenced holding that prohibited items were being transported in the vehicle, which was in the control and possession of the convict. In this very judgment it was also held that fixing responsibility upon a driver for transporting narcotics/drugs depends upon each case.

(iii) Similarly in case of Nadir Khan V. State (1988 SCMR 1899) it was held that licensed drivers, having charge of vehicle for long journey supposed to have knowledge with regard to the contents and articles being transported in it.

(iv) In another judgment in the case of Shehrzada v. State (1993 SCMR 149) the liability of driver for transportation of the contraband items was viewed under the provision of section 27, PPC.

(v) In the case of Shah Wali & another V. The State (PLD 1993 SC 32) Charas was recovered lying in front of the passenger seat of a car occupied by two persons, therefore it was held that Heroin was in possession of the accused person including driver therefore, latter was found guilty and convicted.

(vi) Similarly in the case of Rab Nawaz V. The State (PLD 1994 SC 858) a driver was convicted for possessing illicit articles.

(vii) This Court recently in the case of Ikram Hussain V. The State ((2005 SCMR 1487) has confirmed the sentence awarded to a driver of a car in which narcotics was transported. Relevant para therefrom is reproduced herein below:-

“(4) In this behalf it may be noted that learned High Court, while taking into consideration the said report, disbelieved the same, considering it be an afterthought. Relevant paragraph therefrom is reproduced hereinbelow:-

“(9) The accused admitted that Charas was recovered from the possession of two unknown persons by his subordinates and that he had immediately sent a report (Exh.D.B.) to the Superintendent Octroi. It is strange that he retained the Charas with him but allowed the culprits to escape and sent a report for action against Mirza Mehboob Alam and Haji Abdul Sattar Officials. This report bears the report of the Octroi Superintendent dated 17.11.1997 and the report of the Legal Adviser. The recovery of Charas is a serious offence. The Octroi staff should have immediately referred the matter to the police instead of making a case for evasion of octroi duty. It is, therefore, established that the culprits, in fact, were let off by the accused and his subordinates, which supports the prosecution case. The accused should have taken up this plea before the Investigating Officer. He should have disclosed before the police that he had made a written complaint to the Superintendent Octroi and it was not difficult for him to get the report (Exh.D.B) prepared subsequently in connivance with his colleague. It is evident from the suggestions given by the accused to the P.Ws. that the plea of the accused is afterthought and the P.Ws. have deposed falsely in order to save their colleague.”

6. Keeping in view the pronouncement made in the reported judgments of this Court we are of the opinion that the driver cannot be absolved from the responsibility if the contraband items are being transported openly on the roof of the vehicle, being driven by him.

7. Learned counsel emphasized that there is a contradiction in the stance taken by the prosecution at the initial and subsequent stages of the case. He explained that according to F.I.R., the articles were recovered from the roof of the bus but subsequent position alleged that they were concealed in specially designed cavities. Therefore, the benefit whereof is bound to go to the convict/petitioner

8. We are not agreeable with the contention of the learned counsel because fact remains that "*Poppy Flowers*" were found lying on the roof of the vehicle therefore, the technicality, which is being pointed out by the learned counsel, would not be sufficient to acquit him. In addition to it in such like cases Courts are supposed to dispose of the matter with dynamic approach, instead of acquitting the drug paddlers on technicalities, as it has been held in (1993 SCMR 785) and (PLD 1996 SC 305).

9. Thus for the foregoing reasons, petition is dismissed.

Islamabad, the
12th October 2005
Nisar/*

Approved For Reporting.

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24/10