

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
PESHAWAR
JUDICIAL DEPARTMENT

Criminal Revision No. 19-P of 2017.

Arbab Tehsinullah .Vs. Riaz and others

JUDGMENT

Date of hearing...28/07/2017.

Petitioner by Saif Ullah Khalil (Senior), Advocate

State by Mian Arshad Jan, AAG

Respondents by Mr. Saadatullah Khan, advocate.

ISHTIAQ IBRAHIM, J:- Arbab Tehsinullah through this criminal revision petition under section 439 read with section 435 Criminal Procedure Code calls in question the order dated **12.1.2017** of the learned Additional Sessions Judge-V, Peshawar, through which application of respondent No.1 to 3 for return of goods/items taken into custody by respondent No.4, was allowed and the petitioner was directed to return or to pay its market value to respondents No.1 to 3.

2. Precise facts of the case are that on **07.12.1991**, the present respondent No.1 to 3 after their arrest were charged under section **302/34 PPC**. During investigation of the said case, the I.O took into custody the household articles/items of the respondent No.1 to 3 and prepared the Superdagi Nama available on record **Ex.PC/5** on **08.12.1991** according to which the list of said articles were prepared and handed over to the present petitioner. The respondent No.1 to 3 were tried by the then learned Additional Sessions Judge/ JSC-V, Peshawar and convicted them in the year **2000**. An appeal was filed against the said conviction before this court and they were acquitted of the charge in the year **2002** by this court. In the year **2014**, the present respondent No.1 to 3 filed an application under section 517 Cr.P.C before the Sessions Judge, Peshawar for return of the items/articles as per **Ex.PC/5**. After recording certain statements, the application was accepted by the learned Additional Sessions Judge-V, Peshawar and the present petitioner was directed to return all the articles/items as per **Ex.PC/5** to the present respondent No.1 to 3. Feeling aggrieved with the said

order, petitioner has invoked the revisional jurisdiction of this court under the Code of Criminal Procedure.

3. Arguments of learned counsel for the parties and A.A.G have been heard and record gone through.

4. Before advertng to the merits of the case, first this court will take into consideration Section 517 Cr.P.C which provides the scheme for the return of the case property after the conclusion of trial. For convenience the text of section 517 Cr.P.C is replicated as under:-

“517. Order for disposal of property regarding which offence committed. (1) When an inquiry or a trial in any Criminal Court is concluded, the Court may make such orders as it thinks fit for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have committed, or which has been used for the commission of the offence.

(2). *When a High Court or a Court of Sessions makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the District Magistrate.*

(3) *When an order is made under this section such order shall not, except where the property is livestock or subject to speedy and natural decay, and save as provided sub section (4) be carried out for one month or when an appeal is presented , until such appeal has been disposed of.*

(4) *Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provision of sub-section (1) to any person claim to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court, engaging to restore such property to the Court if the order made under this section is modified or set aside on appeal.*

Explanation. *In this section the term "property" includes the case of property regarding which an offence appears to have been committed, not only such property as has been originally in the*

possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise."

5. In view of the Sub-section 1 of section 517 Cr.P.C this court is of the opinion that it *deals with the disposal at the conclusion of the inquiry or trial of such property as well as property produced before the Court or in its custody. The essential conditions for the application of this section are as follows:-*

1. *The property in respect of which the order is to be made must be one*
 - (a) *which has been produced before the Court, or*
 - (b) *which is in its custody, or*
2. *regarding which any offence appears to have been committed or,*
3. *which has been used for the commission of any offence.*

It will thus be seen that the result of inquiry or trial is immaterial for the purpose of attracting the provisions of section 517. On the conclusion of the inquiry or trial, the Court is empowered to pass necessary orders as it thinks fit in

respect of the disposal of the property provided that one of the sub-condition of condition No.3 stated above is fulfilled.

Reference:

- i. ***A.I.R 1944 Nagpur, "Bhimji Ramji Gujrathi Vs Emperor"***
- ii. ***P.L.D 1959 Lahore 151 "Syed Bahadur Ali Shah vs Muhammad Anwar and another"***

6. From the above mentioned discussion and reading of section 517 Cr.P.C, it is obvious that the court after delivering the final judgment is competent to pass an order for the return or otherwise of the case property. Now it is to be seen whether the articles mentioned in **EX.PC/5** qualify its return under section 517 Cr.P.C or not. The articles in question were taken into possession on **8.12.1991** by the investigating officer and were allegedly handed over to the petitioner which he had denied throughout. The said articles were neither produced before the court during trial nor exhibited. Similarly, the same were neither used in the commission of the offence nor any offence appears to have been committed regarding the same or that the same has been

used for the commission of the offence for the reason that the same were not having a remote connection with the alleged crime. Besides, the memo was exhibited during the trial of the accused in their immediate presence but even then at that point of time they did not raise any claim for the return of the property.

7. The articles allegedly taken into possession were on the second day of the occurrence i.e. **8.12.1991**. The police authorities were not competent without initiating proceedings under section **87/88 Cr.P.C** wherein a special mechanism has been provided. Proceedings under section **204 Cr.P.C** were carried out on **20.12.1991** while proclamation proceedings under section **87 Cr.P.C** were carried out on **13.1.1992**. The goods in question were taken into possession prior to initiation of the proceedings but this relates to the police officials and the petitioner has got nothing to do with the abovementioned proceedings.

8. The learned Additional Sessions Judge has dealt with the matter when the application was submitted to him on **23.5.2014** whereas the respondents were acquitted by this court on **26.11.2002** i.e almost after

about 12 years. No plausible reason has been advanced by the respondents neither in their petition before the trial court even they were unable to satisfy this court for such a long delay for the return of the above mentioned articles. No doubt that under the law, there is no statutory period of limitation for filing an application under section 517 Cr.P.C, but at the same time it must be within reasonable time or if not within reasonable time there must be some reasonable explanation for it which is not available in the present case.

9. For what has been discussed above, the instant revision petition is allowed and the the order of learned Additional Sessions Judge-V dated 12.1.2017 is set aside. The present respondents are, however, at liberty to agitate the matter before the Civil Court, if so advised.

Announced.
Dt.28.07.2017.

Amir Khan

JUDGE

ofbe
02/07/17