

**PESHAWAR HIGH COURT ABBOTTABAD**  
**BENCH**

JUDICIAL DEPARTMENT

**JUDGMENT SHEET**

**Cr. A No. 21-A/2019.**

***Date of hearing 24.02.2020.***

***Petitioner/s (Muhammad Jaffar Khan)  
by Nadeem Khan, Advocate.***

***Respondent/s (The State) by Mr.  
Touqeer ur Rehman, Assistant Attorney  
General.***

**AHMAD ALI. J.** This criminal appeal under section 23-A of *Foreign Exchange Regulation Act, 1947* is directed against the judgment dated: 25.10.2018 passed by learned Sessions Judge/Special Judge, Abbottabad, whereby, appellant/accused was acquitted but case property i.e *Foreign currency* was ordered to be confiscated in favor of the State.

2. Learned Assistant Attorney General was present in the Court some other cases, who accepted notice of the instant appeal.

3. Arguments heard and record available gone through.

4. Brief but relevant facts as incorporated in the first information report are that there was secret information, that one *Jaffar* in his shop situated at Chattar Plain, District, Mansehra deals with illegal currency business of foreign exchange, upon such information raid was conducted at the spot, wherein a person namely ***Muhammad Jaffar*** Mahmood was found present. Search of shop was conducted which resulted in recovery of Pakistani Rs. 49,000/-, Foreign currency i.e 2868 Saudi Riyals, which were taken into possession through recovery memo dated: 14.03.2017. The above person failed to produce any valid license or permit, therefore, he was arrested and booked into the above case FIR.

5. Investigation was conducted and thereafter, complete challan was submitted before the Court, wherein the accused was summoned, wherein accused did not plead his guilt and claimed trial. Prosecution in supports of its case,

produced as many as four PWs and then after recording statement of accused under section 342 Cr.P.C acquitted the accused/appellant vide impugned judgment. The learned trial Court vide impugned judgment returned the Pakistani currency to the appellant, while the foreign currency was confiscated in favor of the State, therefore, the instant appeal for return of foreign currency.

6. Heard.

7. This appeal is only to the extent of return of foreign currency, which was recovered from the shop of appellant alongwith Pakistani currency. Here there is only question, whether currency can be confiscated in favor of State when the accused is acquitted from the charges levelled against him after completion of trial. In this respect in an identical case titled: *Asfandiyar Khan Vs. The State etc (Criminal Petition No. 1255)*, the apex Court has discussed the issued thoroughly and ordered for return of foreign currency to the petitioner/appellant from whose

custody it had been recovered, the relevant partition of the same is reproduced, which is as under:-

*We have heard the learned counsel for the petitioner and the learned Deputy Attorney General for Pakistan appearing for the State or Court's call and have straightaway noticed that an identical issue was resolved by this Court through its order dated: 06.11.2018 passed in Criminal petition No. 1245 of 2017 which was converted into an appeal and the order of confiscation of foreign currency was set-aside. It was held by this Court in the said order as follows:-*

***3. According to the learned counsel for the petitioner once the petitioner had been acquitted of the charge under section 4 of the Foreign Exchange Regulation Act, 1947 no order regarding confiscation of the recovered foreign currency could have been passed and the learned Deputy Attorney-General for Pakistan has confirmed that acquittal of the petitioner from the said charge had not been assailed by the State before this Court through any petition or appeal. It has, however, been maintained by the learned Deputy Attorney-General that confiscation of the recovered foreign currency was legally possible under section 23 of the Foreign Exchange Regulation Act, 1947. We have gone through the provisions of section 23 of the Foreign Exchange Regulation Act, 1947 and have noticed in that context that it is only after recording a conviction and sentence of an accused person for***

*contravention of the said Act that an additional order can be passed by a trial Court that the recovered foreign currency may be confiscated. Admittedly the conviction and sentence of the petitioner for the relevant offence had been set aside by the High Court and there was no conviction and sentence of the petitioner left in the field for passage or an order regarding confiscation of the recovered foreign currency as an additional order. In this view of the matter we have not been able to take any legitimate exception to the contention of the learned counsel for the petitioner that the order regarding confiscation of the recovered foreign currency passed by the trial Court and upheld by the High Court were against the law. This petition is, therefore, converted into an appeal and the same is allowed and consequently the order passed by the trial Court regarding confiscation of the recovered foreign currency, which order had subsequently been upheld by the High Court, is set-aside and it is ordered that the recovered foreign currency shall be returned to the persons from whose custody it had been recovered.*

*The issue involved in the present petition is not different from the issue involved in the above mentioned order passed by this Court and, thus the fate of the present petition is not to be different from that of the earlier one.*

3. *This, petition is, therefore, converted into an appeal and the same is allowed and consequently the order passed by the trial Court regarding confiscation of the recovered foreign currency, which order had subsequently been upheld by*

*the High Court, is set-aside and it is ordered that the recovered foreign currency shall be returned to the petitioner/appellant from whose custody it had been recovered. This petition converted into appeal and is disposed of in these terms.*

8. In view of the above, it has been cleared that in this case too, the appellant has been acquitted from all the charges levelled against him and his Pakistani currency has also been ordered to be disposed of. As for as the foreign currency is concerned, though appellant in his statement recorded under section 342 Cr.P.C denied the recovery of same, however, we have to see the record and according to recovery memo the foreign currency has rightly been shown recovered from the shop of the appellant also in presence of marginal witnesses of recovery, which authenticates the version of appellant.

9. Apart from the above, there is nothing on record which could suggest that against the acquittal of the appellant, the State has filed an appeal.

10. So, in view of the above detailed discussion, this appeal is allowed and order/judgment of learned trial Court to the extent of confiscation of foreign currency in favor of State is modified with direction to return the same to the appellant from whose shop/custody, it had been recovered.

***Announced.***

***24.02.2020.***

*Tahir PS*

***J U D G E***