

Judgment Sheet

PESHAWAR HIGH COURT, ABBOTTABAD BENCH

JUDICIAL DEPARTMENT

Criminal Revision No.60-A/2022

Muhammad Nasir Yasin... (Petitioner)

Versus

State... (Respondent)

Present: Mr.Javed Khan Tanoli, for petitioner.

Sardar Waqar-ul-Mulk, Assistant Advocate
General for State.

Nemo for respondent No.2.

Date of hearing: **16.06.2023.**

JUDGMENT

MUHAMMAD IJAZ KHAN, J.- Through the instant
petition, the petitioner seeks as under:

“On acceptance of instant criminal revision petition, the orders of learned ASJ-IV dated 27.10.2022 and judgment dated 15.02.2020 to the extent of confiscation of 9MM pistol alongwith magazine containing five live rounds may graciously be set aside and the local police i.e. respondent No.3 be directed to hand over the pistol in question alongwith magazine and five live rounds to the petitioner with immediate effect. Any other relief which this Honourable Court deems fit and proper in the circumstances of the case may also be granted in favour of the petitioner.”

(Jamil)

(SB)

Hon'ble Mr.Justice Muhammad Ijaz Khan.

2. Precisely, the facts of the case are that respondent No.2 namely Mushtaq lodged a report in shape of Murasila which was lateron incorporated into registration of case FIR No.328 dated 11.09.2016 under sections 302/324 PPC, police station KTS Haripur. Lateron, challan was put in the court and the trial commenced, however, during the trial, parties patched up the matter and thus the petitioner being an accused was acquitted of the charges levelled against him on the ground of compromise vide order and judgment dated 15.02.2020, however, through the same order, a 9 MM pistol alongwith a magazine loaded with 5 live rounds were confiscated in favour of the State.

3. The petitioner thereafter approached to the learned trial court for the return of the aforesaid case property, however, the same was declined to him vide order dated 27.10.2022 on the ground that since the aforesaid case property has already been confiscated vide order dated 15.02.2020, therefore, the same cannot be returned by the trial court being *functus officio*. Now the petitioner has challenged both the aforesaid orders dated 15.02.2020 vide which the aforesaid case property was confiscated and order

dated 27.10.2022 vide which the petition of the petitioner was dismissed.

4. Arguments of the learned counsel for the petitioner as well as learned Assistant Advocate General heard and record perused with their valuable assistance.

5. At the very outset, learned counsel for the petitioner states that the instant criminal revision petition be treated as a petition under section 520 of the Code of Criminal Procedure, which request of the petitioner seems appropriate as section 520 Cr.PC empowers the court to interfere in any order passed under section 517, 518 or 519 Cr.PC. It also empowers the court to pass any appropriate order even if an appeal is not pending before the superior court as it is a special kind of jurisdiction and is not dependent upon the appellate or revisional powers of the court and the requirement of this statutory provision could be fully invoked by a person who merely submits an application to the court concerned complaining against the order passed under section 517, 518 or 519 Cr.PC by any court subordinate to such court as it is supervisory nature of jurisdiction whereby superior

2-03

courts have been empowered to control order of subordinate courts passed under section 517, 518 or 519 Cr.PC. The aforesaid wisdom is derived from judgements delivered in cases titled "Sardara v. Boota" reported as PLD 1950 [Lahore] 97, "Ghulam Akbar v. (1)The State and (2)Ghulam Nabi" reported as PLD 1958 (W.P.) Lahore 212, "Jalal Khan alias Jalley Khan v. The State and another" reported as PLD 1975 [Lahore] 45, "Ahmad Bakhsh v. The State and another" reported as PLD 1966 (W.P.) Lahore 918 and "Ghulam Ali v. The State" reported as 2021 PCr.LJ 438 [Balochistan]. In view of above, the request of the petitioner is accordingly acceded and hence, this petition be treated as a criminal revision petition read with a petition under section 520 Cr.PC.

6. As far as the merit of the case is concerned, the record would reveal that the petitioner has been acquitted of the charges leveled against him, by the learned trial court vide order and judgment dated 15.02.2020 on the ground of compromise and it is settled law since long that all acquittals are honorable acquittals whether it is recorded on the basis of compromise or is based on merits and thus such

acquittal orders are followed by all the benefits, if any, available to the acquitted accused. It is also settled that in case of compromise in compoundable offences, the same has the effect of removal, pardoning and erasing of the offence. Since the present petitioner was charged under section 302/324 PPC which are compoundable offences, therefore, their acquittal on the basis of compromise will have the effect of erasing the effect of the offence. In the case titled "Attaullah Sheikh vs. WAPDA and others" reported as 2001 SCMR 269, the Apex Court has held that it is an admitted fact that the appellant was acquitted by learned Special Judge (Central), Multan from the charges which were levelled against him. This Court, in the case of Dr. Muhammad Islam has laid down a dictum that all acquittals are "honourable" and there could be no acquittal which I could be termed as "dishonourable". Similarly, in the case titled "Dr. Muhammad Islam v. Government of N.W.F.P. through Secretary, Food, Agriculture, Livestock and Cooperative Department, Peshawar and 2 others" reported as 1998 SCMR 1993, the Apex Court has held that all acquittals, even if these are based on benefit of doubt are honourable for the

2. a3

reason that the prosecution has not succeeded to prove their cases against the accused on the strength of evidence of unimpeachable character. It may be noted that there are cases in which the judgments are recorded on the basis of compromise between the parties and the accused are acquitted in consequence thereof. What shall be the nature of such acquittals. All acquittals are certainly honourable. There can be no acquittals, which may be said to be dishonourable. The law has not drawn any distinction between these types of acquittals.

7. It is also relevant to mention here that there is no dispute that the present petitioner is owner of the said 9MM pistol and he is having a valid licence for the same, the photocopy of the same is available on file and original of the same was also produced to the court which shows that the present petitioner is the owner of the same. In view of the above when the petitioner has been acquitted of the charges and when petitioner is holding a valid licence of the case property then under the law he is entitled for its return. In the case titled **“Manzoor Hussain Jatoi vs. The State”** reported as **1997 PCr.LJ 500**, the Honourable Federal Shariat Court has

laid down that section 520 Cr.PC gives jurisdiction to superior Courts to interfere with an order passed by a lower Court under Sections 517, 518 & 519, Cr.PC but it does not restrict a lower Court from passing an order consequent upon and in compliance with the order of a superior Court. It was also laid down in the said judgment that the order of the Honourable Supreme Court that they "acquit him of the charge" logically implies that he is entitled to all the reliefs consequent to his acquittal, including the release of his property seized under that charge. Unless the Appellate Court exempts a particular relief in express terms, the order of acquittal should entail all the consequential effects thereof. A separate order for each and every consequence of the acquittal is not necessary. Therefore, the trial Court, acting on the basis of the order of acquittal recorded by the Honourable Supreme Court could have released the property. Likewise, in the case titled "Mohibullah and another v. The State" reported as 2018 PCr.LJ 954 [Balochistan], it has been held that after winning acquittal, the applicant could not be deprived of logical consequences of his acquittal order. Admittedly, neither the motorcycle in question

2-63

was used in the commission of the alleged offence nor the same was stolen property. Motorcycle was taken into custody by the police from the possession of the applicant. Acquittal of accused of the charge, entitled him to all reliefs including the release of his properties seized at the time. Application was allowed in circumstances.

8. Accordingly, this petition is allowed and consequently, the impugned order of the learned trial court dated 15.02.202 to the extent of confiscation of the case property is set aside. Similarly, impugned order dated 27.10.2022 vide which the petition of the petitioner was dismissed is also set aside and the SHO of police station concerned is directed to return 9 MM pistol alongwith magazine and 5 live rounds to the petitioner, accordingly.

ANNOUNCED
16.06.2023.

(Jamil)



JUDGE