

**Judgment Sheet**

**PESHAWAR HIGH COURT, MINGORA BENCH/  
DAR UL QAZA, SWAT**

JUDICIAL DEPARTMENT

**J U D G M E N T**

Cr.A. No. 218-M/2019

Date of hearing .....18.12.2019

**Appellant: (Abdul Wakeel) by Mr. Akhtar Munir  
Khan, Advocate.**

**Respondents (The State & another) by Mr. Sohail  
Sultan, Asstt: A.G.**

**WIQAR AHMAD, J.-** Impugned herein is judgment

dated 17.04.2019 passed by learned Additional Sessions Judge Khwaza Khela Swat in case FIR No. 874 dated 25.11.2017 registered under section 15 A.A at Police Station Khursheed Khan Shaheed (Khwaza Khela) Swat, whereby the learned trial Court had though acquitted the accused but have not ordered return of case property i.e. SMG rifle bearing No. 84930, to the appellant.

2. It has been narrated in the FIR that Aman Khan SHO (PW-4) on 25.11.2017 at 11:30 hours, during investigation of case bearing FIR No. 861 dated 26.08.2017 registered under sections 302, 109 PPC at police station Matta had conducted a raid at the house of accused/appellant and recovered SMG rifle bearing No. 84930 along with 2 magazines and 30 live rounds of 7.62

bore from residential room of house of the accused. At the relevant time, the local police could not find any license or permit in respect of the recovered rifle, therefore '*Murasila*' Ex. PA/1 was drafted against the accused which culminated into FIR No. 874, Ex. PA dated 25.11.2017 registered under section 15 of the Khyber Pakhtunkhwa Arms Act at police station Khursheed Khan Shaheed (Khwaza Khela) Swat.

3. Upon completion of investigation, complete *challan* was submitted before the learned trial Court. Charge was framed against the accused, to which he pleaded "*not guilty*" and claimed trial. The prosecution examined as many as four (4) witnesses, whereafter statement of the accused/ appellant was recorded under section 342 Cr.P.C. The learned trial Court thereafter acquitted the accused/appellant vide impugned judgment dated 17.04.2019. The appellant is mainly aggrieved of the impugned judgment to the extent that no direction was given by the learned trial Court in respect of return of the case property i.e. SMG rifle bearing No. 84930.

4. Learned counsel for the appellant contended during the course of his arguments that

custody of the appellant regarding the weapon of offence was held lawful and justified by the learned trial Court, and thereby acquitted the accused/appellant, but the case property was not ordered to be returned to him, despite such findings. He further added that when the accused had been authorized by the officers of the law enforcement agencies to possess the rifle, he was then entitled to its return.

5. The learned Astt: A.G. submitted that the order of dismissal of the rifle is according to law, which would mean that same has been ordered to be confiscated to the State.

6. I have heard arguments of learned counsel for the appellant, learned Astt: A.G appearing on behalf of the State and perused the record.

7. Perusal of record reveals that the appellant is only aggrieved of the judgment of learned trial Court where it had ordered that the case property i.e. SMG rifle recovered from the house of accused/appellant, should be disposed of according to law. Since a short point was involved and record of the case was also available, so the appeal was taken for decision and

accordingly learned counsel for the appellant was heard at full length. The judgment of learned trial Court is relevant in this respect as most of the contentions of the appellant have been recorded therein along with the findings of the Court. In this regard, Para 10, 11 and 13 of the judgment are relevant, which are reproduced hereunder for ready reference;

*10. It is evident from the prosecution evidence that the accused was not present at home at the time of recovery of SMG with magazine and cartridges. It is too admitted by the PWs that the accused was holding the same rifle with permission of the authorities. The accused was authorized by the army official as well as by the concerned authorities of Police Station Khurshid Khan Shaheed, Khwaza Khela to keep the recovered SMG with Magazines & Cartridges. During investigation, the documents whereby he was authorized by Major Attaullah of Pak Army and concerned of the Police Station Khurshid Khan Shaheed were produced and were taken into possession. It need not be reiterated that during the days of insurgency/militancy in this area the army official as well as the police official authorized the local people to keep arms for their protection against aggression. The data of the authorized persons with data of the arms were duly entered and maintained by the concerned Police Station. The accused too, was authorized by the competent authorities and he had produced the relevant documents before the investigation officer which fact is admitted by the prosecution witnesses. Perusal of the documents would reveal that entries were duly made in Police Station record and number of recovered SMG does tally with the entries in the record of Police Station. Similarly, the burden was on prosecution to have established that either the sanction authorizing the accused to keep arm was illegal or the same order had subsequently been withdrawn rendering the possession of authorize arms illegal. Nothing in this respect had been produced.*

*11. When the accused was holding the recovered SMG with Magazine and Cartridges with permission and sanction of the local authorities, which fact is admitted by the PWs, then its keeping cannot be deemed to be violative of the provisions of section 15 A.A. Provision of Section 15 AA are not attracted to the peculiar facts of the case, hence accused facing trial namely Abdul Wakil Khan s/o Abdul Majid Khan r/o Tehsil Khwaza Khela, is acquitted of the charges leveled in case FIR No. 874, Dated 25.11.2018, under section 15 AA, Police Station Khurshid Khan Shaheed, Khwaza Khela, District Swat.*


*13. Case property, SMG with 02 magazines and 30 live cartridges of 7.62 bore be kept intact till the expiry of period of limitation/Revision and thereafter be disposed-off in accordance with law.*

The question before this Court is that whether the authorization given to the appellant by members of the law enforcement agency or the local police can be deemed to be a lawful authorization of the rifle, entitling the appellant to its return or not? The law in respect of possession, manufacture, transportation etc, of weapons of various categories have been consolidated through the Khyber Pakhtunkhwa Arms Act, 2013, hereinafter referred as "*the Arms Act*" (Act. No. XXIII of 2013). Preamble of the Act explains that whereas it is expedient to regulate, the manufacture, conversion, repair, sale, transportation, bearing or possession of arms or ammunition in the province of the Khyber Pakhtunkhwa, in the manner as provided in the Act. Section 8 of the Arms Act provides for the

prohibition of going armed without license and lays down that no person shall go armed with any arms except under a license and to the extent and in the manner permitted thereby. Section 9 provides for unlicensed possession of arms. The said section being relevant is reproduced hereunder for ready reference;

**"Section 9:**

***No person shall have in his possession or under his control any arms or ammunition, except under a license and in a manner and to the extent permitted thereby."***



Chapter-IV deals with licenses wherein section 11 provides for the power of government to make rules for determining, the officers by whom and the form in which as well as the terms and conditions subject to which, any license shall be granted, or renewed including the period of licenses and fee payable etc. Section 12 of the Arms Act reserved the right of the government to issue the description of the prohibited and non-prohibited bores and the powers to issue license for non-prohibited bores has been exclusively given to the government under sub-section 2 of the *ibid* section. The officers of law enforcement agencies, on whose authorization the appellant have been banking on, have never been so notified by the

government in the official gazette, under section 11 of the Arms Act, to be the competent authority for issuance of arms licenses. The matter of arms licenses has been regulated by the Arms Act, no authorization can therefore be thought to be a lawful authorization unless backed by the Arms Act or any other law. The appellant could neither point out that the said officers had either been authorized under the Arms Act or under any other law, to issue arms licenses. The permission to the appellant to possess weapons by such officers, even if granted would be of no help to the appellant.

8. In the case of "Saeed Ahmad v/s The State" reported as "1971 SCMR 774", the Hon'ble Apex Court had held that a criminal Court was under no compulsion to order return of the property to the person from whom it was taken. The relevant observation of the august Court is reproduced hereunder for ready reference;

*"It has been strenuously contended on behalf of the appellant that the criminal case having, ended in acquittal, the cattle should have been returned to the person from whom they were taken, viz. the appellant, and in support of this contention the decision in P L D 191U S C 343 has been cited before us. The case under report has clearly laid down that although the ordinary principle is that when the offence is not proved the property is to be returned to the person from whom it has been taken in an exceptional circumstance, however, this principle is not applicable. The*

*case was considered to be of an exceptional circumstance and the property was not returned to the person from whom it had been taken. Section 517 of the Criminal Procedure Code, as is evident from its language places no compulsion on the part of the criminal Court to return the property to the person from whom it is taken. On the contrary it makes it discretionary on the part of the Court to make such order as it thinks fit for the disposal of the property by destruction, confiscation or delivery to any person claiming to be entitled to possession there of or otherwise."*

In the case of "Rai Bashir Ahmad v/s The State" reported as "1971 P Cr. LJ 255", the Hon'ble Lahore High Court had drawn a distinction between the return of other items like vehicles etc on 'Superdari', and handing over of weapons of offence on interim custody pending trial of a case. In the case of "Mukhtar Ahmad v/s The State" reported as "PLD 1963 (W.P.) Lahore 451", the Hon'ble Court was pleased to acquit the accused but had maintained the order of return of stolen property to the complainant. The Hon'ble Supreme Court of Pakistan in the case of "The Director Intelligence and Investigation (Custom) FBR, Islambad and another v/s Fazal Ghani and others" ("Criminal Petition No. 802 of 2015") while dealing with the cases of vehicles brought by the Internally Displaced Persons of Waziristan to Lakki Marwat and D.I. Khan and seized by the local police in the subject case from some of such IDPs, had held that the



temporary registration of such vehicles allowed by the local officers was not sufficient to entitle the respondents to return of the vehicles. The relevant observation of the Hon'ble Court in this respect is reproduced hereunder for ready reference;

*"The question emerging for consideration of this Court is whether the vehicles seized have been lawfully imported and the persons importing them have paid the duties and taxes leviable thereon. The answer to the question is a simple no. When this being the case, the learned Additional Sessions Judge could not have passed an order for their disposal under Section 516-A Cr.P.C, nor could the High Court in the hierarchy affirm such order. In this view of the matter, we convert Criminal Petition No. 802 of 2015 into appeal, allow it, set aside the impugned judgment granting the custody of the vehicle to the respondents, and dismiss Criminal Petition No. 22 of 2016 as being barred by time."*

The said judgment was subsequently followed by this Court in the case of "Bhutto Khan and 4 others v/s Inspector General of Police KPK, Peshawar and 4 others" reported as "2018 PTD 1716", wherein the following observation was recorded;

*11. A bare reading of this section reveals that the notification regarding exemption of any goods imported into Pakistan can only be issued by the Federal Government. There are certain other provisions of Customs Act, 1969 which empower the Central Board of Revenue also to issue certain notifications in matters pertaining to the delegated legislation, and the exemptions and the scope and extent thereof under Section 19 of the Customs Act,*

*1969 are exclusively within the competence of Federal Government.*

*12. Admittedly, the vehicles in questions were neither brought into settled area in accordance with the provisions contained in the Customs Act, 1969 nor the custom duty nor any duties and taxes leviable thereon were paid by its importers, hence, neither the High Court nor Sessions Judges nor Judicial Magistrates have the power to release such vehicles on superdari. These vehicles are subject to departmental adjudication as envisaged under the Customs Act, 1969.*

9. Since authorization granted by the authorities concerned was not a lawful authorization under the law, therefore the rifle cannot be handed back to the appellant. Same has been ordered by the learned trial Court to be dealt with in accordance with law, which would mean confiscation of the rifle to the State.

10. For what has been discussed above, the appeal in hand is dismissed. Office shall send copy of this judgment to the police station concerned for necessary action.

Announced.  
Dt. 18.12.2019

**JUDGE**

Office  
30/01/2020  
WJR