

HCJDA 38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT
Crl. Appeal No.51928/2024

Muhammad Iqbal Nasir **versus** **The State & another**
JUDGMENT

Date of hearing:	08.10.2024
Appellant by:	Mr. Imran Mahmood Khan Baloch, Advocate.
State by:	Ms. Nuzhat Bashir, Deputy Prosecutor General along with Saif, Inspector, Shahid, SHO and Rab Nawaz, S.I. with record.

Farooq Haider, J.:- This appeal has been filed against impugned order dated: 11.06.2024 passed by learned Additional Sessions Judge/trial court whereby application filed by the appellant for supply of copy of U.S.B. has been declined.

2. Brief however necessary facts for decision of instant appeal are that appellant is accused and facing trial in the case arising out of FIR No.503/2024 dated: 01.03.2024 registered under Section: 9 (1)3(d) of the Control of Narcotics Substances Act, 1997 at Police Station: A-Division, Okara.

Appellant filed application for supply of copy of U.S.B. which is statedly containing video regarding raid conducted for arrest of the appellant which has been dismissed *vide* order dated: 11.06.2024, impugned through this appeal.

3. Learned counsel for the appellant submits that it is right of the accused to have copy of U.S.B. of alleged raid; adds that impugned order is against the law and facts; finally prays for setting aside the impugned order while accepting the appeal and issuing order for supply of U.S.B. to the appellant.

4. Learned Deputy Prosecutor General after going through the record submits that when raid was conducted by the police at the place of occurrence then entire proceedings of the raid at the spot were captured in the video film through mobile phone by Muhammad Shahid, S.I./S.H.O. (complainant), who informed the Investigating Officer regarding said fact when he reached at the spot

for investigation and spot inspection; also adds that video film of the raid was preserved in the U.S.B. and handed over to the Investigating Officer of the case who secured the same *vide* recovery memo (which is available on the record); further adds that statements of Ali Imran, 1040/C and Abdul Jabbar, 1087/HC were recorded under Section: 161 Cr.P.C. in this regard which are also available on the record. Learned Deputy Prosecutor General submits that said U.S.B. is important document for proving raid of the proceedings conducted at the spot including recovery of narcotics, therefore, same is relevant fact also which can be used/produced as evidence in the court under Article: 164 of Qanun-e-Shahadat Order, 1984. Learned Deputy Prosecutor General also adds that prosecution will produce aforementioned U.S.B. as evidence during trial against the appellant who is accused in the case. She finally submits that copies of statements of witnesses have been provided to the accused (now appellant) however copy of U.S.B. cannot be provided to him and has prayed for dismissal of the appeal.

5. **Arguments heard and available record perused.**

6. It has been noticed that appellant is facing trial of the case as accused before the trial court; as per case of prosecution, at the time of raid, complainant made video film through camera of his mobile phone regarding proceedings of the raid including arrest of the appellant and other details at that time, at the place of occurrence which was preserved in the U.S.B. (Universal Serial Bus) and secured during investigation of the case through recovery memo, copies of statements of the witnesses in this regard have been supplied to accused as apprised by learned Deputy Prosecutor General, however, copy of U.S.B. has not been provided to him rather his application in this regard has been declined.

U.S.B. (Universal Serial Bus) flash device is oftenly used for recording of digital information, audio as well as visual data, storage, data back-up and transfer of computer files. It is immune to electromagnetic interference. Section: 29 of Pakistan Penal Code defines “document” and same is hereby produced:-

"Document". The word "document" denotes any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter.

Explanation 1. It is immaterial by what means or upon what substance the letters, figures or marks are formed, or whether the evidence is intended for, or may be used in, a Court of Justice, or not.

Illustrations

A writing expressing the terms of a contract, which may be used as evidence of the contract, is a document.

A cheque upon a banker is a document.

A Power-of-Attorney is a document.

A map or plan which is intended to be used or which may be used as evidence, is a document.

A writing containing direction or instruction is a document.

Explanation 2. *Whatever is expressed by means of letters, figures or marks as explained by mercantile or other usage, shall be deemed to be expressed by such letters, figures or marks within the meaning of this section, although the same may not be actually expressed.*

Illustration

A writes his name on back of a bill of exchange payable to his order. The meaning of the endorsement, as explain mercantile usage, is that the bill is to be paid to the holder. The endorsement is a document, and must be construed in the same manner as if the words "pay to the holder" or words to that effect had been written over the signature."

Similarly, Article: 2(1)(b) of Qanun-e-Shahadat Order, 1984 also defines "document", which is hereby reproduced:-

"Document" *means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter;"*

Section: 3 (16) of the General Clauses Act, 1897 has also defined the "document", which is reproduced:-

"Document". *"document" shall include any matter written, expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means which is intended to be used, or which may be used, for the purpose of recording that matter:"*

Perusal of Section: 29 of Pakistan Penal Code, 1860, Article 2(1)(b) of Qanun-e-Shahadat Order, 1984 and Section: 3 (16) of the General Clauses Act, 1897 reveals that U.S.B. can be safely termed as "document".

Evidence has been defined by Article: 2(1)(c) of Qanun-e-Shahadat Order, 1984, which is hereby reproduced:-

"evidence" includes--

- (i) *all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence; and*
- (ii) *all documents produced for the inspection of the Court: such documents are called documentary evidence;"*

Article 164 of Qanun-e-Shahadat Order, 1984 allows production of the evidence which has become available through modern devices or techniques.

So, U.S.B is a document which can be produced for inspection of the court and is documentary evidence as defined under Article: 2 (1)(c) of Qanun-e-Shahadat Order, 1984.

After registration of the case, investigation is carried out and at conclusion of the same, report under Section: 173 Cr.P.C. (also called as challan report) is submitted in the court, it contains gist of case of prosecution after investigation; evidence collected during investigation including statements of witnesses as well as documents are also sent with challan report to the court.

Copy of challan report under Section: 173 Cr.P.C. along with statements of witnesses and documents is to be provided to the accused for enabling him to have an all round picture of the case against him for answering the charge, preparing his defence as well as cross-examining the witnesses; intention of legislature behind providing of aforementioned documents to accused is to afford him the opportunity to defend himself and it has become much broadened through Article: 10-A of the Constitution of Islamic Republic of Pakistan, 1973. Providing of copies of the documents/record in the criminal case to be tried by Sessions Court is not only governed by Section: 265-C Cr.P.C. rather Section: 548 of Cr.P.C. and Article 87 of Qanun-e-Shahadat Order, 1984 are also relevant, which all are hereby reproduced as under:-

Section: 265-C Cr.P.C.

“265-C. Supply of statements and documents to the accused.--

(1) In all cases instituted upon police report, copies of the following documents shall be supplied free of cost to the accused not later than seven days before the commencement of the trial, namely:--

- (a) the first information report;*
- (b) the police report;*
- (c) the statements of all witnesses recorded under Sections 161 and 164; and*
- d) the inspection note recorded by an Investigating Officer on his first visit to the place of occurrence and the note recorded by him on recoveries made, if any:*

Provided that, if any part of a statement recorded under Section 161 or Section 164 is such that its disclosure to the accused would be inexpedient in the public interest, such part of the statement shall be excluded from the copy of the statement furnished to the accused.

(2) In all cases instituted upon a complaint in writing,--

- a) the complainant shall:--*
 - (i) state in the petition of complaint the substance of the accusation, the names of his witnesses and the gist of evidence which he is likely to adduce at the trial; and*

(ii) *within three days of the orders of the Court under Section 204 for issue of process to the accused, file in the Court for supply to the accused, as many copies of the complaint and any other document which he has filed with his complaint as the number of the accused; and*

(b) *copies of the complaint and any other documents which the complainant has filed therewith and the statements under Section 200 or Section 202 shall be supplied free of cost to the accused not later than seven days before the commencement of the trial.”*

Section: 548 of Cr.P.C.

“548. Copies of proceeding.-- *If any person affected by a Judgment or order passed by a Criminal Court desires to have a copy of "[....] any order or deposition or other part of the record he shall, on applying for such copy, be furnished therewith:*

Provided that he pays for the same, unless the Court, for some special reason, thinks fit to furnish it free of cost.”

Article 87 of Qanun-e-Shahadat Order, 1984

“87. Certified copies of public documents. *(1) Every public officer having the custody of a public document, which any person has a right to inspect, shall give that person on demand a copy of it on payment of the legal fees therefore, together with a certificate written at the foot of such copy that it is a true copy of such document or part thereof, as the case may be, and such certificate shall be dated and subscribed by such officer with his name and his official title, and shall be sealed. whenever such officer is authorized by law to make use of a seal, and such copies so certified shall be called certified copies.”*

Perusal of Section: 265-C Cr.P.C. reveals that copies of first information report, police report, statements of witnesses recorded under Section: 161 Cr.P.C. and Section: 164 Cr.P.C., inspection note recorded by Investigating Officer on his first visit to the place of occurrence and also the note recorded by him on recovery made will be provided to the accused. It appears that object of Section: 265-C Cr.P.C. is to fill/meet the vacuum created by the abolition of commitment proceedings and to make all prosecution evidence available to the accused. Section: 265-C Cr.P.C. is mandatory and inclusive as well as beneficial provision for accused but not the conclusive because it is not mentioned therein that except documents mentioned in said section, any other document which is also of more or less of same kind/category/nature cannot be supplied/given to the accused, hence it will not be narrowly interpreted rather when question of providing copy of evidence including document to the accused facing trial will arise then liberal, broad, wide and spacious interpretation will be made of Section: 265-C Cr.P.C. in order to enable the accused for having full/complete knowledge of the evidence which the prosecution possesses for the unfolding of its case before the court and

even the copy of the evidence which has become available through modern devices or techniques; furthermore, under Section: 265-C (1)(b), copy of the police report is also supplied to the accused and while adopting liberal, wide and beneficial interpretation of Section: 265-C (1)(b) Cr.P.C., particularly in the light of spirit of Article: 10-A of the Constitution of Islamic Republic of Pakistan, 1973, police report would also include documents mentioned in it as well as annexed with the same. Because if case of prosecution mentioned in police report contains some important fact around which entire charge would revolve, and detail of said fact is mentioned in the document collected during investigation and the document is appended with the police report but its (document's) copy is not provided to the accused then how he would come to know about exact picture of allegation i.e. case of prosecution against him, how he would prepare his defence for replying the charge and negating the same through cross-examination during trial of the case which would ultimately negate the constitutionally guaranteed right of provision of fair trial to the accused. Under Section: 265-C (1)(d), the inspection note recorded by an Investigating Officer on his first visit to the place of occurrence and the note recorded by him on recoveries made shall also be supplied to the accused. Meaning thereby that detail of occurrence at the time and place of occurrence will be noted by the Investigating Officer during first visit at the place of occurrence and copy of said notes will also be supplied to the accused in order to enable him to know about the detail of occurrence alleged against him through police report, for facing the trial. The U.S.B. in this case is statedly containing the video recording of raid i.e. detail of occurrence as well as place of occurrence, therefore, practically speaking, video recording of the occurrence as well as place of occurrence is containing detail of the occurrence as well as spot of occurrence with more exactness and accuracy as compared to inspection notes prepared by Investigating Officer. Hence, liberal/wide and purposeful interpretation of Section: 265-C(1)(d) Cr.P.C. will include supply of copy of U.S.B. containing video recording of the occurrence as well as place of occurrence also with the copy of inspection notes as "a document qua occurrence and place of occurrence" in more accurate form/shape of inspection notes of the place of occurrence.

It is relevant to mention here that in the case of "**ZAHID SARFARAZ GILL versus The STATE**" (2024 SCMR 934), Supreme Court of

Pakistan, observed regarding use of mobile phone by the police and A.N.F. for recording and/or taking photographs of the search, seizure and arrest of accused in narcotic cases as well as regarding Article: 164 of Qanun-e-Shahadat Order, 1984, which permits the use of any evidence that may have become available because of modern devices or techniques and overriding effect of Article: 165 of Qanun-e-Shahadat Order, 1984; relevant portions from said case law are hereby reproduced as under:-

“However, we fail to understand why the police and members of the Anti-Narcotics Force ('ANF') do not record or photograph when search, seizure and/or arrest is made. Article 164 of the Qanun-e-Shahadat, 1984 specifically permits the use of any evidence that may have become available because of modern devices or techniques, and its Article 165 overrides all other laws.”

“In narcotic cases the prosecution witnesses usually are ANF personnel or policemen who surely would have a cell phone with an in-built camera.”

“If the police and ANF were to use their mobile phone cameras to record and/or take photographs of the search, seizure and arrest, it would be useful evidence to establish the presence of the accused at the crime scene, the possession by the accused of the narcotic substances, the search and its seizure. It may also prevent false allegations being levelled against ANF/police that the narcotic substance was foisted upon them for some ulterior motives.”

“The Prosecution services, paid out of the public exchequer, is also not advising the ANF/police to be do this simple act of making a recording and/or taking photographs as stated above.”

Besides, accused affected by the order of trial court qua taking cognizance of the case in hand, can apply under Section: 548 Cr.P.C. (which is mandatory provision) for furnishing copy of any part of the record of the case and same will be furnished to him. Any person who has right to inspect the public document can have copy of the same under Article: 87 of Qanun-e-Shahadat Order, 1984. Accused has every right to inspect the police report and documents annexed with the same except police diaries prepared under Section: 172 Cr.P.C., therefore, accused can obtain copy of the document mentioned in and appended with the police report except police diary. Learned Deputy Prosecutor General clearly stated that video of the occurrence has been preserved in U.S.B., which has been secured during investigation *vide* recovery memo and it will be produced during trial for proving the charge against the accused, therefore, in order to enable the accused to exactly know the contents of said U.S.B. and prepare his defence for rebutting the charge through cross-examination, supply of copy of U.S.B. to accused is

necessary. However, trial court could not appreciate this legal aspect while passing the impugned order, therefore, same is not sustainable in the eyes of law. Resultantly, this appeal is allowed, impugned order is set-aside, application filed by appellant for supply of copy of the U.S.B. is accepted and trial court is directed to provide copy of the U.S.B. to the appellant.

Before parting with the judgment, it goes without saying that case in which U.S.B. qua video recording of the raid conducted at the time of occurrence will be submitted with police report by the prosecution in the court, copies of the U.S.B. according to number of accused to face trial will also be submitted in the court for providing to the accused. Learned Deputy Prosecutor General will intimate in this regard to learned Prosecutor General, Punjab, who will ensure the compliance through Inspector General of Police, Punjab and Director General, Anti-Narcotics Force (A.N.F.), Lahore.

(ALI ZIA BAJWA)
JUDGE

(FAROOQ HAIDER)
JUDGE

APPROVED FOR REPORTING

(ALI ZIA BAJWA)
JUDGE

(FAROOQ HAIDER)
JUDGE

This judgment has been dictated
and pronounced on 08.10.2024
whereas after preparation, signed
on 14.10.2024.

“Asif”