

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
PESHAWAR,
JUDICIAL DEPARTMENT

Criminal Appeal No.347-P/2022

Ameer Muhammad .Vs. The State

For appellant: M/s Fida Muhammad Afridi and Abidullah, Advocates.

For State: Ms. Abida Safdar, Additional Advocate General.

Date of hearing: 26.08.2022.

JUDGMENT

FAZAL SUBHAN, J.- Through instant criminal appeal, the appellant has challenged the judgment dated 22.03.2022, passed by the learned Additional Sessions Judge-II/Judge Model Criminal Trial Court/Judge Special Court, Shabqadar, District Charsadda, to the extent of confiscation of motorcar bearing Registration No.AGJ-715/Islamabad.

2. Facts of the case are that on 25.07.2020, the above said motorcar was intercepted by the local Police of Police Station Sro Kally, Charsadda, being driven by accused Malik Aman s/o Faqir Hussain while co-accused Noor Zaman s/o Ali Zaman was present on front seat and on the pointation of accused, four packets of chars, total 4800 grams and four packets of opium, total 5100 grams were

recovered from left side back door of the motorcar and case FIR No.207, dated 25.07.2020, under section 9-D CNSA was registered.

3. Record depicts that initially appellant applied for custody of the vehicle before the learned trial Court/Additional Sessions Judge, Shabqadar, but remained unsuccessful whereafter he filed criminal appeal No.645-P/2020 before this Court, and on 14.12.2020, directions to the following effect were issued:-

“The appellant candidly stated that he is bonafide owner of the car in question and was not in knowledge that the car would be used for the commission of offence, as the same has already been given to Excellent Rent A Car. However, neither the appellant has recorded his statement under section 161 Cr.P.C, nor the owner of the Rent A Car. Therefore, the appellant shall record his statement before the police that how the car under consideration came in possession of the accused. In this respect all the copies of the relevant documents be handed over to the police and statement of owner of the Rent A Car be also recorded while after recording statements of both, owner of the Rent A Car as well as the appellant, be submitted before this Court. Till then, the case is adjourned.”

The available record, however suggest that no such exercise was carried out because the statement of appellant and that of the owner of Excellent Rent A Car, are not available on the record, however certain documents are placed on file.

4. As per record, the accused of the case faced their trial and at the conclusion of trial, the Special Court vide judgment dated 22.03.2022, convicted and sentenced the accused Malik Aman and

Noor Zaman, and through the same judgment, the motorcar in question was ordered to be confiscated in favour of State which is now impugned through this appeal.

5. After hearing arguments of learned counsel for appellant and learned AAG for State, this Court is of the view that while passing the impugned judgment to the extent of confiscation of motorcar bearing Registration No.AGJ-715/Islamabad, the law on the subject was not followed in its true spirit. Through Khyber Pakhtunkhwa Act No.XXXI of 2019, a new section 34B has been inserted to the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 (hereinafter called the Act), prescribing procedure for making confiscation. The relevant section 34B(1)(2) and first proviso, being more relevant, are reproduced for the sake of convenience and understanding:-



34B. Procedure for making confiscation.--

(1) In the trial of offences under this Act, whether the accused is convicted or acquitted, the Special Court shall decide whether any article frozen or seized in connection with such offence is liable to confiscation.

(2) Where any article seized under this Act, appears to be liable to confiscation under section 34A, but the person who committed the offence, in connection therewith, is not known or cannot be found, the Special Court may inquire into and decide such liability and may order confiscation accordingly:

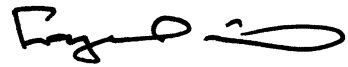
Provided that no order of confiscation of an article shall be made until the expiry of one month from the date of freezing or seizure or without hearing any person who may claim any right thereto and the

evidence, if any, which he produces in respect of his claim:

An accumulative effect of the said provision is that when on conclusion of trial the Special Court established under the Act has come to the conclusion to pass an order of conviction or acquittal in relation to the accused, it in all cases shall decide the fate of seized articles (in the present case, vehicle) as to whether it/these are liable to confiscation or otherwise. Before arriving to such a conclusion, the Special Court may come across two kind of situations, firstly, if owner of the seized article is not known or cannot be found, in that case, the Special Court has to inquire the matter before passing an order of confiscation, and secondly, if any person claim any right in an article so seized or freezed, the Special Court shall provide him an opportunity of hearing by recording evidence in support of his claim, whereafter the fate of such article seized or frozen, shall be decided. Due to the mandatory nature of the said provision, the procedure laid down therein cannot be neglected or bypassed in any manner, for simple reason, that non-compliance thereto may cause immense loss to an innocent owner, who may not have any knowledge of use of his vehicle in a crime. In the instant case learned Special Court, before passing an order of confiscation, has not observed the legal procedure contained in section 34B(2) first

provo of the Act despite the fact that the present appellant was claiming ownership to the vehicle right from day one, hence the confiscation order of the vehicle in question was illegal being violative of the above said provision, hence by accepting this appeal the impugned judgment to the extent of confiscation of vehicle in question is set aside; the case is remanded to the trial Court with the direction to adopt the proper procedure before passing any further order. Needless to say that appellant shall be summoned and be provided opportunity to record his evidence in support of his claim.

Announced
26.08.2022



J U D G E

(S.B) Hon'ble Mr. Justice Fazal Subhan.
(Mahmood Shah,SSS)