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REGISTERED
No.CrI.A.573/2018 - SCJ
SUPREME COURT OF PAKISTAN
Islamabad, 08 Nov 2018

From The Registrar,
Supreme Court of Pakistan.
Islamabad.

To The Registrar,
Peshawar High Court.
Peshawar.

Subject: CRIMINAL APPEAL NO.573 OF 2018
OUT OF
CRIMINAL PETITION NO.1245 OF 2017

Peshawar High Court	
Receipt No	1868-0
Date:	12/11/18
1- MIT	6- PSO
2- Dir (HRC)	7- DBA
3- Dir (ReG)	8- DIT
4- Dir (HR.W)	9- AR(J)
5- DPD	10- AR(G)

Said Afzal s/o Abdul Ghafoor
Versus
The State thr. SHO, Police Station FIA, CBS Peshawar

On appeal from the Judgment/Order of the Peshawar High Court,
Peshawar dated 17/10/2017 in CrI.A.253-P/2017 in case FIR No.107/2016
dated 30/09/2016 registered at Police Station FIA/CBC, Peshawar


Dear Sir,

I am directed to enclose herewith a certified copy of the Order/Judgment
of this Court dated 06/11/2018 converting into appeal and allowing the above cited
case in the terms stated therein for information and further necessary action.

Please acknowledge receipt of this letter along with its enclosure
immediately.

Encl: Order/Judgment:

Yours faithfully,


(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

@CFMS

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Sardar Tariq Masood
Mr. Justice Mazhar Alam Khan Miankhel

Criminal Petition No. 1245 of 2017

(Against the order dated 17.10.2017 passed by the Peshawar High Court, Peshawar in Criminal Appeal No. 253-P of 2017)

Said Afzal

...Petitioner

versus

The State

...Respondent

For the petitioner:

Qazi Jawad Ehsanullah, ASC

For the State:

Mr. Muhammad Sohail, Deputy
Attorney-General for Pakistan


Date of hearing:

06.11.2018

ORDER

Asif Saeed Khan Khosa, J.: The petitioner is an Afghan national and some Saudi Riyals were recovered from somebody else's possession on a police check post and the petitioner had claimed that the said currency belonged to him as the same had been given to the petitioner by one Syed Naeem (PW2) in consideration for sale of a business of the petitioner to PW2 and the investigating officer of this case had confirmed the correctness of the said stance of the petitioner. After a regular trial conducted in connection with case FIR No. 107 registered at Police Station FIA, CBC, Peshawar on 29.09.2016 in respect of offences under sections 4/23 of the Foreign Exchange Regulation Act, 1947 read with section 14 of the Foreigners Act, 1946 the petitioner was

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convicted by the trial court for an offence under section 4 of the Foreign Exchange Regulation Act, 1947 and was sentenced to rigorous imprisonment for one year and a fine of Rs. 1,00,000/- or in default of payment thereof to undergo simple imprisonment for two months and simultaneously an order was passed by the trial court under section 23 of the Foreign Exchange Regulation Act, 1947 regarding confiscation of the recovered foreign currency. The petitioner was also convicted by the trial court for the offence under section 14 of the Foreigners Act, 1946 and was sentenced accordingly. On appeal the High Court acquitted the petitioner of the charge under section 14 of the Foreigners Act, 1946 as well as of the charge under section 4 of the Foreign Exchange Regulation Act, 1947 and all his sentences for the said offences were set aside while maintaining the order passed by the trial court regarding confiscation of the foreign currency recovered in this case. Hence, the present petition before this Court.

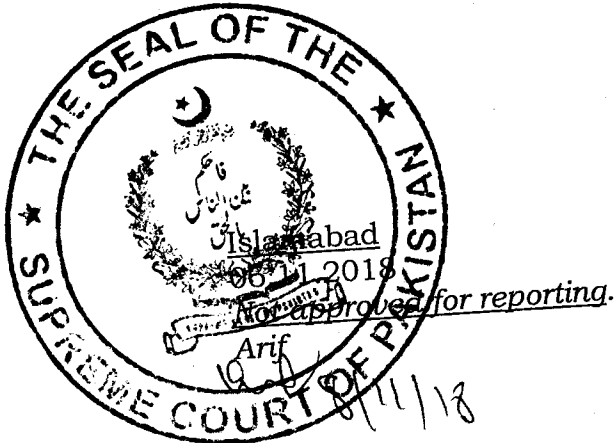
2. We have heard the learned counsel for the petitioner as well as the learned Deputy Attorney-General for Pakistan appearing for the State and have gone through the record of the case with their assistance.

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

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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 of 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.



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