

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

**Criminal Revision No.98-P/2022.**

Mr. Gohar Ali .Vs. The State

For petitioner: Mr. Atta Ullah Khan, Advocate.

For State: Qazi Babar Irshad, Deputy Attorney General  
alongwith Mr. Muhammad Arif, Sub-  
Inspector, FIA, Mardan.

Date of hearing: 02. 08. 2022.

**JUDGMENT**

**FAZAL SUBHAN, J.-** This judgment is aimed to decide instant criminal revision petition filed by the petitioner through which order dated 15.03.2022 of the Court of learned Additional Sessions Judge/MCTC, Mardan/Tribunal established under the Foreign Exchange Regulations Act, 1947 (FER Act, 1947), has been challenged whereby petition u/s 516-A Cr.P.C, 1898 for return of foreign currency was dismissed.

2. Facts giving rise to the revision petition are that Assistant Director FIA, Mardan had information that huge foreign currency is to be brought to Mardan and Peshawar from Butkhela to different dealers through motorcar bearing Registration No.AAS-516. Upon this information a raiding party, named in the *murasila*, under his command was constituted, and deployed at Karnal Sher Khan

Interchange Swabi. On arrival of the said motorcar, it was stopped and two persons Lal Said s/o Khan Said and Wakil Said s/o Anwar Said, both r/o District Malakand were debarked. Upon search of the motorcar, Saudi Riyals 2,22,500/- and Pakistani currency an amount of Rs.11,270/- alongwith other articles were recovered from different boxes and upon query, accused Lal Said disclosed that they work in illegal foreign currency for one Gohar r/o Butkhela, Kamran Khan r/o Chowk Yadgar, Kazim and Yasir r/o Rawalpindi, therefore, upon his report, case FIR No.144, dated 01.11.2021, u/s 4/23 FER Act, 1947 read with 3/4 AMLA, 2010 of Police Station FIA/Cyber Crime, Mardan was registered.

3. The present petitioner through his application dated 02.03.2022 applied for return of Saudi and Pakistani currencies, to the Court of learned Additional Sessions Judge, Mardan but his application was turned down through order dated 15.03.2022, hence this petition.

4. Learned counsel for petitioner in his arguments submitted that a fake and baseless case has been registered against petitioner rather he is the lawful owner of the Saudi Riyals, which he received from one Fazal Akbar s/o Naseeb Khan, after sale of his landed property. That the said Fazal Akbar works in Saudi Arabia and he paid the sale consideration in Saudi Riyals instead of Pakistani currency. A

sale deed in this respect has been placed on file to prove the transaction. It was contended that the learned Additional Sessions Judge, Mardan dismissed the application illegally and disregard to the relevant law. That petitioner is lawful owner and received the Saudi Riyals through lawful sources hence impugned order is not sustainable, thereby praying for acceptance of the revision petition and return of 2,22,500/- Saudi Riyals on superdari, till the decision of the case.

5. Conversely, learned AAG on behalf of State submitted that on the basis of prior information motorcar bearing Registration No.AAS-516 was stopped and huge foreign currency was recovered therefrom, being provided to different dealers for illegal currency exchange. That petitioner alleged to have sold a plot on one Fazal Akbar and received the Saudi Riyals as sale consideration, and this aspect was inquired from Deputy Commissioner Malakand which was responded by Sub-Registrar, District Malakand vide letter No.59 dated 16.02.2022 denying the existence of any record and the story forwarded about sale of plot is not confirmed. It was further submitted that as per Notification No.F.E.4/2018SB Dated 06.08.2018, issued by the State Bank of Pakistan, u/s 4(2)(g) of the Protection of Economic Reforms Act, 1992, any person carrying foreign currency notes exceeding US\$ 10,000 or equivalent shall

ensure that (1) such foreign currency is acquired through Authorized Sources and (2) the funds for such acquisition of foreign currency are legitimate, and in case of failure to prove these two requirements, the person shall be liable for legal action under FER Act, 1947 and Anti Money Laundering Act, 2010 or any other law relating to these offences. That when petitioner has not proved his ownership nor has provided sufficient proof of authorized and legitimate sources, then he has not be granted superdari of the foreign currency.

6. After hearing the above arguments and considering the record available before this Court, needless it is to say that every citizen of the country, in view of Article 18 of the Constitution of the Islamic Republic of Pakistan, has the right of freedom of trade, business or profession. The said Article is reproduced for the sake of convenience and understanding:-

**“18. Freedom of trade, business or profession.—**  
Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:”

The above freedom of trade, business and profession is however subject to the condition that person carrying such profession must have required qualification and the trade and business must be lawful. To conduct a legal business of foreign currency, a person has

to seek permission and authorization u/s 3A of the FER Act, 1947, from the State Bank of Pakistan. At present, the petitioner against whom a case for illegal foreign exchange currency is registered has been unable to produce any such permission or authorization. He rather has taken the plea that he has received such foreign currency as a sale consideration which on inquiry has been proved unsubstantiated and groundless. The august Supreme Court of Pakistan in the case titled The State through Director General FIA, Islamabad vs. Alif Rehman, reported in 2021 SCMR 503, has held that:-

“A mechanism has been devised to avail the benefits of such legislation, which could regulate the exchange of foreign currency, which otherwise can be beneficial for the economic and financial interest of the State. However, any deviation while defeating the mechanism devised would adversely affect the interest causing hazardous affect and result into financial debacle. Any person who is citizen of Pakistan is authorized to establish business of foreign currency notes subject to moving an application to the State Bank of Pakistan on a prescribed form after payment of a prescribed fee seeking permission/authorization.”

7. Taking guidance from the above ruling of the august Supreme Court and keeping in view the available record it is clear that there is sufficient material on record to show that the Saudi Riyals 2,22,500/- were recovered from motorcar occupied by two accused Lal Said and Wakil Said r/o Butkhela, who have given affidavit that this foreign currency was given to them for exchange. No permission or

authorization of State Bank is available with the petitioner. This being the situation, the two conditions of last possessor or bonafide ownership of the petitioner are not forthcoming, and therefore the impugned order is neither found to be illegal nor perverse, hence the impugned order is maintained and this revision petition, being without merit, is dismissed.

**Announced**  
**02.08.2022**



**JUDGE**

(S.B) Hon'ble Mr. Justice Fazal Subhan.

(Mahmood Shah,SSS)