

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**
(Judicial Department)

Cr.A No. 406-P/2014.

JUDGMENT

Date of hearing. 08.10.2015.

Appellant (Fazal-ur-Rehman) By Ms. Farhana Marwat, Advocate.

State By Mr. Muhammad Iqbal Mohmand,
SPP for ANF.

QAISER RASHID KHAN, J. Through this appeal, the appellant has questioned the judgment of the learned Judge Special Court (CNS) Peshawar dated 23.5.2014 whereby the vehicle of the appellant was confiscated to the State.

2. The prosecution case as per FIR is that on 23.2.2013 having received spy information that inter provincial smuggler namely, Farid, resident of Bara would smuggle huge quantity of narcotics from Peshawar through his agents to Karachi via Kohat through bus bearing registration No. JA-6851 Karachi, S.I Raja Shoaib Ahmad (PW-2) arranged a raiding party alongwith other ANF staff and held nakabandi at the crime spot when at 19:40 hours the said bus coming from Dara Adamkhel side was signaled to stop for the purpose of checking. The bus was carrying 31 passengers and three crew members. The person sitting on the driving seat disclosed his name as Ijaz Khan s/o Meerdil while the person sitting alongwith him on the

‘Tapa’ disclosed his name as Meer Khatam and the person sitting on the VIP seat disclosed his name as Habib Khan s/o Gul Habib being 2nd driver of the bus. On cursory interrogation all the three accused separately disclosed and pointed out the presence of narcotics i.e. charas garda hidden in both sides of the bus. He prepared the pointation memo on the spot duly signed by the marginal witnesses. As a precautionary measure, the owner/ conductor of the bus namely, Meer Khatam, was asked to return the ticket fare and luggages of the passengers to them and the passengers were let free. The bus alongwith three accused was brought to the Police Station for thorough search. During search in the presence of the three accused and marginal witnesses both the sides of the bus were opened with different tools and on thorough search 79 packets of charas garda which was wrapped in white envelopes as well yellow solution tape were recovered which on weighment total turned out to be 94.800 Kgs. 10/10 grams from each packet of charas garda were separated for FSL examination while the remaining packets were sealed into four plastic sacks. The accused were arrested, the narcotics and the bus were taken into possession and the FIR ibid was registered against the accused.

3. Investigation commenced and at its conclusion, complete challan was submitted against the accused before the learned trial Judge who after holding a full

dressed trial convicted and sentenced the accused through the impugned judgment and also confiscated the bus to the State, hence the appeal.

3. Learned counsel for the appellant argued that the vehicle in question is the sole ownership of the appellant and there is no rival claimant of the same; that the learned trial court has committed serious illegality by not complying with the provisions of sections 32 and 33 of the CNSA; that the appellant was unaware regarding use of the vehicle in the commission of the offence and that the vehicle has been parked in the Police Station in the open sky and its condition is deteriorating day by day. Therefore, the appellant prays for the return of the vehicle being the bonafide owner of the same.

4. The learned SPP appearing for the State supported the impugned judgment on almost the same grounds as mentioned therein.

Arguments heard and available record perused.

5. The appellant seeks the return of bus bearing registration No. JA-6851 claiming to be its bonafide owner. As detailed above, from the same very bus being driven by Ijaz Khan and accompanied by his co-accused Meer Khatam and Habib Khan, 94.800 KGs of Charas Garda were recovered and the bus was thus impounded on 23.2.2013. After the commencement of trial, the appellant submitted an application to the learned trial Judge for the return of the vehicle on superdari on

14.6.2013. Thereafter, as the entire order sheets reveal, the matter was adjourned at the request of the learned counsel for the appellant for arguments alongwith the main case. No effort was made by the appellant to associate himself with the trial proceedings so as to prove his alleged title of the vehicle and he only watched the trial of the accused from the sidelines. As per the registration book, the vehicle is registered in the name of one Ghulam Hussain. The appellant derives his title from Ghulam Hussain on the basis of an affidavit dated 4.10.2012. However, the said document was not produced during trial by the appellant. As per Iqrar Nama dated 10.1.2013 which was exhibited during the trial of the accused as Ex.P-13, the appellant had allegedly sold the vehicle to Iran Badshah s/o Shah Jehan (absconding accused) and brother of Meer Khatam, convict-appellant through payment of certain installments as detailed in the Iqrar Nama. When the vehicle was taken into custody in case FIR No.03 dated 23.2.2013, only then the appellant surfaced and laid claim over the vehicle through the said Iqrar Nama. However, he stayed back during the trial and made no serious effort to unearth the truth about his association with the absconding accused, Iran Badshah, till the trial was concluded and through the impugned judgment besides the conviction and sentence of the three accused, the bus in question was also confiscated to the State.

Admittedly, the vehicle is not registered in his name and the appellant is only brandishing an affidavit in his name by the registered owner namely, Ghulam Hussain, and the onward sale of the vehicle through Iqrar Nama by the appellant in favour of Iran Badshah. The surreptitious manner through which the appellant has proceeded all along right from the submission of his application before the learned trial Judge and thereafter displaying an altogether indifferent attitude towards the court proceedings, speak volumes for his conduct. Lately, it has been noticed that the narco Dons and their clandestine mafias engaged in this illegal trade have adopted various modus operandi to oversee the smooth running of their lucrative business and the same also includes securing the release of the vehicles involved in the narcotics smuggling which either belong to them or registered in the names of their small minions and petty agents.

For the foregoing reasons, this appeal being devoid of any substance stands dismissed.

Announced:
08.10.2015

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****Qaseem****