

Judgment Sheet
IN THE PESHAWAR HIGH COURT,
PESHAWAR
(Judicial Department)

Cr.A No. 654-P/2014.

JUDGMENT

Date of hearing. 22.10.2015.

Appellant (Abdul Khaliq) By Ms. Farhana Marwat, Advocate.

State By Mr. Waqar Ahmad Khan AAG.

QAISER RASHID KHAN, J. Through the instant appeal, the appellant has questioned the judgment of the learned Additional Sessions Judge-II, Mardan dated 25.4.2014 whereby the vehicle of the appellant was confiscated to the State.

2. Briefly stated facts leading to the instant appeal are that pursuant to prior information on 14.6.2013, a Suzuki Mehran Motorcar No. ICT HH-502 Islamabad was intercepted by the local police which was driven by accused Abdul Muhammad at the relevant time while his co-accused Zarin was sitting on the front seat. During search of the vehicle and on opening the petrol tank of the motorcar, 8 packets of Charas Pukhta each weighing 1000 grams, were recovered. The accused were arrested and the motorcar was taken into possession as case property by the local police vide case FIR No.352 dated 14.6.2013 under section 9 (c) CNS

Act, Police Station Toru Mardan. Before the commencement of trial, the appellant applied to the learned trial court for its return on superdari but his request was turned down vide judgment dated 18.9.2013. At the trial held before the learned Additional Sessions Judge-II/ Judge Special Court Mardan, each of the accused was convicted under section 9 (c) CNSA for jointly possessing 8000 grams Charas and sentenced to six years R.I. and to pay a fine of Rs.30,000/- each or in default to suffer further six months S.I with benefit of section 382-B Cr.P.C and the motorcar was also confiscated in favour of the State vide judgment dated 25.4.2014. Appeal preferred thereagainst before this court was allowed and the judgment impugned therein was set aside but to the extent of acquittal of the accused only and the order regarding confiscation of the vehicle was maintained vide judgment of this court dated 24.9.2014 in Cr.A No. 274-P/2014, hence this 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 has prayed for return of the vehicle being the bonafide owner of the same.

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

Arguments heard and available record perused.

5. The appellant seeks the return of Suzuki Mehran motorcar claiming to be its bonafide owner. As detailed above, from the same very vehicle being driven by Abdul Muhammad and accompanied by his co-accused Zarin, 8 KGs of Charas were recovered and the vehicle was thus impounded on 14.6.2013. Before the commencement of the trial, the appellant had applied for return of the vehicle on superdari but his request was turned down by the learned trial court on 18.9.2013. The said order was not challenged by the appellant in appeal before this court and has thus attained finality. After the commencement of trial, the appellant did not submit any application before the learned trial Judge in order to associate himself with the trial so as to unearth the truth or at least for the purpose of the custody of the vehicle till the trial was concluded and through the impugned judgment besides the conviction and sentence of the

accused, the vehicle in question was also confiscated to the State.

6. The argument of the learned counsel for the appellant that the appellant had no knowledge about the trial proceedings which finally culminated in the confiscation of his vehicle stands totally belied in view of the earlier application submitted by the appellant for the custody of vehicle followed by its dismissal by the learned trial Judge. Thus the appellant can neither feign nor plead ignorance about the proceedings that went on before the learned trial court. Moreover, for all practical purposes, the appellant was stranger to the proceedings before the learned trial court as the vehicle is not registered in his name and he is merely brandishing some bargain receipt in his hand on the basis of which he is laying claim over the vehicle. The argument regarding want of knowledge about the trial proceedings in respect of the vehicle is only available to the registered owner of the vehicle who in the present case has not surfaced to date. Of late, it has been noticed in a good number of narcotics cases that the registered owners always prefer to stay in the background and it is always some bargain receipt holder or a person with an open transfer letter who lodges a claim for the custody of the vehicle before the learned trial Judge. Likewise in many instances it has been observed that such receipts

or for that matter the open transfer letters are procured with a degree of finesse so as to side track the investigation in the case on the one hand and to secure the release of the vehicle on the other. The mafias engaged in the narco trade sitting on the sidelines have adopted various devices for the smooth running of their lucrative illegal business and the same also includes securing the release of the vehicles involved in narcotics smuggling which though belong to them but are registered in the names of their small minions.

7. Another interesting or rather intriguing aspect which has caught the attention of this court is that the appellant did not challenge the impugned confiscation order dated 25.4.2014 before this court till the acquittal of the accused on 24.9.2014 in Cr.A No. 274-P/2014 and thereafter thought it fit to express his grievance against the confiscation order by filing this time-barred appeal on 2.12.2014. The same speaks volumes for the conduct of the appellant and his alleged claim over the confiscated vehicle.

In view of the foregoing discussion, this appeal being meritless and hopelessly time-barred stands dismissed.

Announced:
22.10.2015

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