

2023 P Cr. L J 164

[Balochistan]

Before Muhammad Ejaz Swati and Iqbal Ahmed Kasi, JJ

RAZA MUHAMMAD---Appellant

Versus

The STATE---Respondent

Criminal Appeal No. 357 of 2022, decided on 1st August, 2022.

(a) Control of Narcotic Substances Act (XXV of 1997)---

---Ss. 32 & 33---Articles connected with narcotics---Procedure for confiscation---Scope---Appellant assailed order passed by Trial Court only to the extent of confiscation of vehicle from which heroin was recovered---Accused was acquitted of the charge, on an application under S. 265-K, Cr.P.C., however, the vehicle along with contraband was ordered to be confiscated in favour of the State---Appellant had not claimed ownership of the vehicle in question during the course of investigation or trial---Appeal was presented before the Court with a considerable delay of four months, that too, without any plausible explanation, whereas, on the other hand the appellant was claiming that the vehicle in question was the only source of his income and his entire family depended upon the same---Document through which the appellant was trying to prove his ownership was a purchase slip---Vehicle was registered in the name of another person---Appellant was not entitled to claim ownership rights over the vehicle in question---Appeal was dismissed.

(b) Control of Narcotic Substances Act (XXV of 1997)---

---S. 32---Articles connected with narcotics---Scope---Whenever an offence has been committed under the Control of Narcotic Substances Act, 1997, the intoxicant, utensils, etc., in respect or by means of which the offence has been committed shall be liable to confiscation along with receptacles or packages and vehicle, vessel or other conveyance used to carry the same.

Noor Bakhsh Baloch for Appellant.

Date of hearing: 28th July, 2022.

ORDER

IQBAL AHMED KASI, J.---Through the instant appeal, filed under section 48 of the Control of Narcotic Substances, Act, 1997 ('the Act of 1997') appellant Raza Muhammad, has challenged the validity of the order dated 17th June 2022 ('the impugned order') passed

by the Special Judge CNS, Khuzdar ('the trial Court') only to the extent of confiscation of vehicle i.e. Toyota Corolla, 20D car (GLI), bearing Registration No.ATW-826 ('the vehicle in question').

2. Briefly stated facts of the case are that, FIR No.03 of 2022, was registered with Levies Station Ornach, dated 19.03.2022, under section 9(c) of the Act of 1997, on the complaint of Dafedar Muhammad Ismail, with the averments that on the alleged date at about 12:30 p.m. a vehicle, bearing Registration No.ATW-826, going towards Karachi from Quetta, was stopped on an spy information and during search 07 bottles of heroin were recovered from its secret cavities. The driver of the vehicle: viz, Munir Ahmed son of Agha Muhammad was arrested and the vehicle along with the contraband material was also seized.

3. Mr. Noor Bakhsh Baloch, learned counsel for the appellant, contended that the appellant is the lawful owner of the vehicle in question and the same is the only source of income of the appellant and his entire family member. He further stated that there is nothing on file to show that the vehicle in question was used in the commission of offence, with the knowledge of the appellant. He further submitted that the appellant is owner of the vehicle and there is no other rival claimant of the same, thus, the vehicle in question may be released in his favour.

4. We have heard learned counsel for the appellant and have also perused the available record, which reveals that the vehicle in question, was taken into custody by the Levies authorities of Ornach, from the possession of one Munir Ahmed, along with 07 bottles of heroin. Record further reveals that after lodging of FIR and completion of the investigation, the said accused was tried by the learned trial Court and, accordingly, after conclusion of the trial, though accused Munir Ahmed was acquitted of the charge, on an application under section 265-K, Cr.P.C, however, the vehicle in question along with the contraband material i.e. 07 bottles of heroin, were ordered to be confiscated in favour of the State.

5. At this juncture, the only question, which requires determination in the instant appeal, is whether, in the peculiar circumstances of the instant case, the vehicle in question could validly be confiscated under section 32 of the Act of 1997, or otherwise. There are two provisions of the CNS Act i.e. section 74, which deals with the temporary custody, whereas, section 32 provides for confiscation or otherwise of such vehicle at the conclusion of the trial. It would be appropriate to reproduce section 32 of the Act of 1997, which reads as under:

"32. Articles connected with narcotics. (1) Whenever any offence has been committed which is punishable under this Act, the narcotic drug, psychotropic substance or controlled substance, materials, apparatus and utensils in respect of which, or by means of which, such offence has been committed shall be liable to confiscation.

(2) Any narcotic drug, psychotropic substance or controlled substance lawfully imported, transported, manufactured, possessed, or sold along with, or in addition to, any narcotic drug, psychotropic substance or controlled substance which is liable to confiscation under subsection (1) and the receptacles or packages, and the vehicles, vessels and other conveyances used in carrying such drugs and substances shall

likewise be liable to confiscation:

Provided that no vehicle, vessel or other conveyance shall be liable to confiscation unless it is proved that the owner thereof knew that the offence was being, or was to be committed."

6. The above provisions of law clearly manifest that whenever an offence has been committed under this Act, the intoxicant, utensils etc. in respect or by means of which the offence has been committed shall be liable to confiscation along with receptacles or packages and vehicle, vessel or other conveyance used to carry the same. The plain reading of section 32 clearly indicates that if any article or vehicle, used to prepare or transport narcotics (covered by the provision of the said Section) the same has to be confiscated. However, some protection/safeguard had been provided in section 32 of the Act of 1997, which reads as under:

"Provided that no vehicle, vessel other conveyance shall be liable to confiscation unless it is proved that the owner thereof knew that the offence was being, or was to be, committed."

7. The section *ibid*, is also covered by section 33 of the Act of 1997, where the procedure for making confiscation is given, which reads as under:

"33. Procedure for making confiscation. 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 32, 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.

Provided further that if any such article, other than a narcotic drug, psychotropic substance or controlled substance is liable to speedy and natural decay or in case of a vehicle, the Director-General, Anti-Narcotic Force, or any other officer authorized by notification in the official Gazette by the Federal Government, is of opinion that the sale of such article or vehicle is for the benefit of its owner, he may with the approval of the Special Court, after due notice to the owner and by public auction, direct that the article, as the case may be, the vehicle be sold in accordance with the rules made under this Act and the sale proceeds shall be deposited in the National Fund for Drug Abuse till the final judgment of the Court.

(3) If on adjudication or, as the case may be, in case appeal the vehicle or, as the case may be, an article so sold is found not to have been liable to such confiscation, the

entire sale proceeds shall be handed over to the owners.

(4) A narcotic drug, psychotropic substance or controlled substance seized under this Act shall be disposed of under section 516-A of the Code of Criminal Procedure, 1898 (Act V of 1898)."

8. So far as merits of the case are concerned, we have found that the vehicle in question was seized on 19th of March 2022 by the levies authorities of Ornach, while the instant appeal has been presented on 22nd July 2022. It is very strange and astonishing to note that neither the appellant claimed ownership of the vehicle in question during course of the investigation or the trial, nor made any application before the investigating officer or the trial Court for temporary possession, as envisaged under section 74 of the Act of 1997. Record reveals that the instant appeal has been presented before this Court after a considerable delay of about four months, that too, without any plausible explanation, whereas, on the other hand the appellant is claiming that the vehicle in question is the only source of his income and his entire family depends upon the same. Furthermore, the only document through which the appellant is trying to prove his ownership, is the purchase slip, issued by one Shah Jee Motors. On contrary, the photocopy of documents of the vehicle, annexed with the instant appeal, are in the name of one Aftab Ahmed, which in our opinion is not sufficient and trustworthy evidence to claim ownership, therefore, in the attending circumstances of the case, the appellant is not entitled to claim ownership rights over the vehicle in question.

Thus, in view of the above discussion, since the possibility of success of instant appeal is not visible, as such, the same, being without merits, is dismissed in limine.

SA/118/Bal.

Appeal dismissed.