

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Mr. Justice Mushir Alam

Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No.1143 of 2019

(Against the order dated 28.02.2019

passed by the Lahore High Court Lahore in

CrI. Revision P. No.(T)2/2019)

Nakhuda Mustafa & another

...Petitioner(s)

Versus

The State & another

...Respondent(s)

For the Petitioner(s):

Mr. Kamran Murtaza, Sr.ASC

Mr. Tahir Ali Baloch, ASC

For the State:

Mr. Baqir Shah, State counsel

Date of hearing:

16.10.2020.

ORDER

Qazi Muhammad Amin Ahmed, J.- The petitioners were

intercepted by the Fisheries Department of Government of Balochistan while fishing inside internal waters in contravention of the provisions of the Balochistan Sea Fisheries Ordinance, 1971 (*BalN Ord. IX of 1971*) on 14.12.2018; all on board, 21 in number, were taken into custody; fishing craft, named as Al-Faisal-II along with prohibited net was secured vide inventory of even date; indicted before a learned Judicial Magistrate at Gawadar, they were convicted under section 9 of the Ordinance *ibid*; the petitioners were sentenced to 9-months R.I. whereas the remainders were sentenced to 28-days, served out without challenge, vide judgment dated 10.01.2019. The confiscated fishing craft was directed to be auctioned. The learned Sessions Judge Gawadar, in appeal vide judgment dated 23.1.2019 maintained the conviction, however, the High Court of Balochistan vide judgment dated 22.02.2019 set aside the fine and also reduced the sentence of imprisonment to the period already undergone by the convicts. Against the above backdrop, the petitioners primarily seek release of the fishing craft, confiscated by the learned trial Magistrate for auction, a course affirmed by the Court of Session as well as the High Court of

Balochistan on the ground that the impugned action being harsh merits recall, particularly its being the sole source of sustenance for the petitioners. Mr. Tahir Ali Baloch, ASC, vehemently argued that there was no occasion for the learned Magistrate to return a guilty verdict, as according to him, the prosecution had miserably failed to drive home the charge beyond reasonable doubt, an error that escaped notice of learned Sessions Judge as well as the learned Judge-in-Chamber and as such while the days of incarceration endured by the convicts cannot be recompensed, release of the fishing craft would, nonetheless, indemnify the wrong.

2. Heard. Record perused.

3. We have gone through the record. The petitioners were intercepted while using a banned net within the internal waters. The location is unambiguously established with map Ex.P/3-B. The prohibited net being used for fishing was secured by the raiding party and all those on board were arrested, leaving no space to entertain any hypothesis other than their guilt. Three courts meticulously appraised the evidence to discard bald denial pleaded by the petitioners in the face of positive evidence, supported by scientific proof. In the matter of sentence, the convicts were dealt with leniently. Proviso to section 9 of the Ordinance *ibid*, in the event of contravention, mandatorily provides auction of fishing craft, thus, the impugned direction by the learned Magistrate, upheld in appeal by the Court of Session as well as the learned Judge-in-Chamber being within the remit of law calls for no interference. Petition fails. Leave declined.

Judge

Judge

Islamabad, the
16th October, 2020
Not approved for reporting
Azmat/-