

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT: Justice Muhammad Hashim Khan Kakar
Justice Ishtiaq Ibrahim

Criminal Petition No.876/2022

(Against the order/judgment dated 27.05.2022
passed by the High Court of Balochistan, Quetta,
in CrI. Revision (T) No. 5/2022)

Altaf Hussain

Petitioner(s)

Versus

The State

Respondent(s)

For the Petitioner(s):

Mr. Raja Muhammad Farooq, ASC

For the State:

Syed Pervaiz Bukhari, State Counsel

Date of Hearing:

14.04.2025

JUDGMENT

Muhammad Hashim Khan Kakar, J. Through this petition for leave to appeal under Article 185(3) of the Constitution of the Islamic Republic of Pakistan, 1973, the petitioner, Altaf Hussain, has called in question the vires of judgement dated 27.05.2022, passed by the High Court of Balochistan, Quetta, whereby case property i.e. Trawler bearing registration number B-16922, was confiscated in case FIR No. 07 of 2021, registered under Section 3 and 9 of the Balochistan Sea Fisheries Ordinance, 1971.

2. Briefly, as per the prosecution, this case was registered on 06.10.2021 at 6:00 p.m., on the basis of a report made by Inspector Fisheries, Shakeel Ahmed, which was formally recorded by Bashir Ahmed, Assistant Director Fisheries, Pasni, wherein it was stated that he alongwith patrolling team were on routine patrolling when at about 11:02 a.m., they noticed a "trawler Nodia" bearing registration number B-16922, in which accused persons, namely, Rehman Dad khan, Sabreen Khan, Zia Ullah, Bakht Zada, Syed Ali Shah, Waleed-ur-Rehman, Sami-ur-Rehman, Noor-ud-Din, Wasi Ullah, Bakhtiar Khan, Hazrat Kareem, Sabz Ali, Sami

Ullah, Roheedad Ullah and Zahid Hussain were illegally fishing with prohibited wire net within three nautical miles from Zarrain mountain.

3. Before dilating upon the contentions of the learned counsel for the petitioner, it would be relevant to produce sections 3 and 9 of the relevant law which read as under:

“Section 3 – Licensing of Fishing Craft and Gear

(2) No person shall be allowed to fish with encircling net or improvised purse seine net locally called “wire net” or “gujja” or ring net and bottom trawls locally called “trawls” or “gujja” in the close bays of Sonmiani and Kalmat and twelve nautical miles from shore along the rest of Balochistan coast.

Section 9 – Penalty. Whoever contravenes any provision of this Act or of the rules made there under, shall be punishable with imprisonment which may extend to one year or with fine which may extend to one hundred thousand rupees or with both:

Provided further that fishing craft/trawler operating with the banned fishing gear/net or without valid fishing license shall also be liable to confiscation along with the banned fishing gear/net; and on conviction the banned fishing gear/net shall be destroyed in the presence of a Magistrate, while the fishing craft/trawler shall be auctioned through wide publicity in leading newspapers.”

3. In the present petition, the petitioner’s counsel has argued that the petitioner is the registered proprietor of the trawler and had no knowledge of its use in the commission of the illegal fishing activity by the accused persons. It was contended that the prosecution did not provide any substantive evidence to substantiate the petitioner’s knowledge or involvement. Additionally, it was alleged that the petitioner was not provided with any notice prior to the confiscation of the trawler and other materials by the courts below.

4. Admittedly, the trawler in question was found in illegal fishing activity within a prohibited area without a valid license, which is prohibited by law. The illegal, unreported and unregistered (IUU) fishing is a major threat to marine biodiversity and the health of ocean ecosystems at Gwader, Pasni and Ormarah. It undermines conservation efforts, disrupts food chains and leads to the depletion of fish stocks, endangering marine species and the livelihood of the coastal communities. We have observed with distress that trawler owners frequently engage in illegal fishing in the aforementioned areas by employing the common man from

lower socio-economic backgrounds. These individuals may lack knowledge of the law and occasionally simply obey the instructions of their employers. The fishermen in this case were sentenced to one year of rigorous imprisonment and a substantial fine. They acknowledged that they lack the financial resources to acquire trawlers, navigators and other equipment, which are provided by the proprietors of the trawlers for the purpose of illegal fishing. The petitioner was obligated to take all reasonable measures to ensure that his property was being used for lawful purposes as the proprietor of the aforementioned trawler.

5. Despite the petitioner's assertion of ignorance, the overwhelming evidence of illicit fishing on his vessel is insufficient to absolve him of liability. Even if the petitioner does not possess actual knowledge of certain facts or information, he is presumed to be aware of them as the proprietor of the trawler. This presumption is based on the fact that the information was reasonably accessible to him and that he should have been aware of the facts in light of his position, duty, and circumstances. The petitioner is responsible for the illegal actions of his employees as the proprietor of the trawler as a result of his failure to conduct reasonable background checks. Constructive knowledge is a critical legal principle that guarantees accountability by assuming knowledge in situations where it is reasonable to anticipate awareness. It also prevents individuals and organizations from evading liability by claiming ignorance when they had the ability and obligation to be aware of the pertinent information. The petitioner, as the proprietor of the trawler, profits from the fishing activities that are conducted on it. Consequently, they are obligated to assume some responsibility for its use beyond legal channels.

6. It is also important to note that the petitioner has not been arrayed as an accused in the current case. It appears that the officials of the fisheries department and the investigating agency were negligent. The outcome would be preposterous if the State and the relevant departments choose to penalize impoverished citizens for possessing fruit from the forbidden tree and refrain from cutting the tree and holding its beneficiaries accountable. The legal maxim "*Qui sentit commodum, debet et sentire onus*" translates to "*He who derives a benefit ought also to bear*

a burden." The petitioner, as the proprietor of the trawler, profits from the fishing activities that are conducted on it. Consequently, he is obligated to assume some responsibility for its use beyond legal channels.

7. Accepting the petitioner's claim and request for the release of the trawler and prohibited fishing nets in his favor, as they are his sole source of income, is akin to a murderer or dacoit requesting the return of his crime weapon, as it is the sole source of his subsistence. The record reveals that the petitioner did not file any application for release of trawler in question/superdari at the trial stage, likely to have been awaiting the outcome of the trial at that time.

8. For the above reasons, since the possibility of success of the instant petition is not visible, as such, the petition is dismissed and leave to appeal is refused.

ISLAMABAD

14.04.2025

(Farrukh/Mahnoor Omer LC)

Announced in open Court at Islamabad on 23.4.2025

Approved for Reporting