

**SUPREME COURT OF PAKISTAN**  
(Appellate Jurisdiction)

**Present:**

Mr. Justice Munib Akhtar  
Mr. Justice Shahid Waheed  
Ms. Justice Musarrat Hilali

**Civil Appeal No.277 of 2014**

(On appeal against the judgment dated 30.05.2012 passed by the Peshawar High Court, Peshawar in W.P.1770/2005).

The State through A.N.F., Rawalpindi ...Appellant(s)

**Versus**

Obaid Khan (decd) through LRs & others ...Respondent(s)

For the Appellant(s) : Mr. Inaam Amin Minhas, Special  
Prosecutor General, ANF  
Ch. Ehtisham ul Haq, Special  
Prosecutor NAB  
Syed Rifaqat Hussain Shah, AOR

For the Respondent(s) : Mr. Saleem Shah Hoti, ASC

Date of Hearing : 23.11.2023

**JUDGMENT**

**Shahid Waheed, J:** We granted leave for this appeal as it involves a question that has not been addressed by this Court before. The question for the decision is short, but its legal import is significant and merits an incisive examination of the Prevention of Smuggling Act, 1977 (**the Act**). The question is whether the complainant, particularly the Anti-Narcotic Force, can be considered a “person aggrieved” to prefer an appeal under section 43 of the Act before the Special Appellate Court.

2. A thumbnail sketch of the sequence of facts may be in place to fully comprehend the moot question.

On the 28th of April, 1998, the *Anti Narcotic Force*, established under the Anti Narcotic Force Act, 1997, furnished information to the Special Judge (Central), Customs, Taxation and Anti Smuggling in Peshawar. The information stated that the private respondents (accused) had specific properties suspected of being acquired through smuggling. In response, the Special Judge issued a notice under Section 31 of the Act, calling on the accused to explain why the properties should not be declared as acquired through smuggling. The accused were also required under section 31(2) of the Act to indicate the source of their income, the income and assets used to acquire the properties and provide evidence to refute the complaint against them. The accused responded by denying the allegations against them. After reviewing the explanation and evidence presented and allowing the accused to be heard, the Special Judge recorded his finding on the 15th of January, 2004, that the accused had acquired up to 40% of the alleged properties through smuggling. The Special Judge, thus, under Section 32 of the Act, declared that the share of the properties acquired by smuggling stood forfeited to the Federal Government, while the share of properties acquired through legitimate means belonged to the accused. Since the share of the accused could not be easily separated, they were given the option to pay a fine equivalent to the market value of the property prevalent at the time, which was Rs.9,461,200,

in lieu of forfeiture of that part of the property under section 34 of the Act. Through the Deputy Attorney General for Pakistan, the State filed an appeal under section 43 of the Act against the order of the Special Judge before the Special Appellate Court. The accused objected to the maintainability of the appeal under section 43 of the Act, citing the precedent set by *Haji Iqbal Shah*,<sup>1</sup> which stated that the right of appeal under section 43 of the Act was restricted to a "person" who did not include the State. Since the Peshawar High Court Division Bench had approved this precedent, the Special Appellate Court found it binding. It dismissed the appeal as being not maintainable by judgment dated 21<sup>st</sup> of March, 2005. The State, the Government of Pakistan, and the Anti Narcotic Force then jointly filed a petition under Article 199 of the Constitution in the Peshawar High Court seeking an order, like a writ of certiorari, to quash the above-stated orders. The High Court upheld the view of the Special Appellate Court and dismissed the petition by its order dated 30<sup>th</sup> of May, 2012.<sup>2</sup>

3. Given the facts, the question at hand appears to depend entirely on the true construction of section 43 of the Act. Before we go any further, it is important to remember one general principle: the right of appeal is a

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<sup>1</sup> *Anti Narcotics Force v. Haji Iqbal Shah* [1999 P.Cr.L.J 1125].

<sup>2</sup> *Federal Government v. Obaid Khan* [2012 P.Cr.L.J 1765].

creation of a statute, and no such right can be implied.<sup>3</sup> We now proceed to consider the language of section 43 of the Act. This section enacts that *“any person aggrieved by an order of the Special Judge passed under section 31, section 32 or section 34 may, within thirty days from the date of such order, prefer an appeal before the Special Appellate Court whose decision thereon shall be final.”* The words *“person aggrieved”* seems to be the governing words, and show that the object of the legislature is to give an appeal where the legal right of the person is infringed and he has suffered a legal wrong or injury, in the sense that his interest, recognised by law, has been prejudicially and directly affected by order of the Special Judge passed under section 31, 32 or 34 of the Act. To perfect the understanding of this point, we deem it appropriate to quote here the remarks made by James L. J. in *Re Sidebotham*.<sup>4</sup> He said, *‘the words “person aggrieved” do not really mean a man who is disappointed of a benefit which he might have received if some other order had been made. A “person aggrieved” must be a man who has suffered a legal grievance, a man against whom a decision has been pronounced which has wrongfully deprived him of something, or wrongfully refused him something, or wrongfully affected his title to something.’* However, in the present case, it is said that the Anti Narcotic Force, being

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<sup>3</sup> *Benson v. Northern Ireland Road Transport Board* [(1942) All E.R 465].

<sup>4</sup> *Re Sidebotham* [(1880) 14 Ch. D. 458].

the complainant, was “aggrieved” as it had informed the Special Judge that the properties were acquired by smuggling, which was erroneously found not true by the Special Judge. We are not disposed to accept that. A plain reading of the Act’s scheme, particularly section 31, clarifies that the Special Judge may receive information (complaint) from ‘*any person*’. In this case, as discussed above, the informer was the Anti-Narcotic Force. After the information was conveyed to the Special Judge, the informer had no further role, as there was no statutory duty for the informer to appear before the Special Judge nor to produce evidence supporting the information. The informer was also not required to file a written statement in response to the accused’s position, and the Special Judge was not required to adjudicate between the accused and the informer. Quite the contrary, after receiving the information, the matter entirely had become one between the Special Judge and the accused. This is so because, under Section 33 of the Act, the accused bears the burden of proving that any property specified in a notice under Section 31 is not acquired through smuggling. It appears that it was for this reason the Anti-Narcotic Force, apart from the information presented to the Special Judge, did not adduce any oral or documentary evidence. At that, its no legal right was infringed, and it had suffered no legal wrong or injury. In the circumstances, the Anti-Narcotic Force, which could not succeed in getting a forfeiture

order against all the properties of the accused, could be said, to be annoyed by the findings of the Special Judge. It could also feel that what was considered a breach of law was wrongly held to be not a breach of law by the Special Judge. Despite all this, the Anti Narcotic Force could not be described as a person aggrieved rather as a person annoyed at best, and so, was not entitled to prefer an appeal against the Special Judge's order under section 43 of the Act.<sup>5</sup> As a result, its appeal was rightly held to be not maintainable. We accordingly dismiss this appeal.

4. Before parting, we are compelled to observe in light of the points explained in the preceding paragraphs that serious procedural and substantive lacunas exist in the Prevention of Smuggling Act, 1977, which, in our opinion, necessitates Parliament's intervention to amend the law. The Act does not provide any room for rectification of an incorrect order, as it is only a "*person aggrieved*" who may appeal against an order of the Special Judge under section 43, which, in essence, renders the order in favour of the accused final. It is further to be noted that we examined the practices and statutes pertaining to property forfeiture resulting from criminal activity in other jurisdictions. In our research, we found a consistent provision expressly providing the right to the State or Government to appeal against an order of a court

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<sup>5</sup> *The Queen v. The Keepers of the Peace and Justices of the County of London* [(1890) 25 QBD 357], and *R v. London Justices, Ex-parte Fulham Vestry* [(1886-90) All E.R 537].

if it is not satisfied by the outcome in almost all jurisdictions.<sup>6</sup> Therefore, we deem it appropriate to refer the matter to Parliament to consider providing the State or Government the right of appeal under section 43 by amending the Act, in order to achieve its true objective and intended purpose.

5. The Registrar of this Court shall send a copy of this judgment to the Hon'ble Chairperson of the Law and Justice Commission, Attorney General for Pakistan and Secretary Law to Government of Pakistan for their information and appropriate action.

**Judge**

**Judge**

**Judge**

Islamabad  
23.11.2023  
"APPROVED FOR REPORTING"  
Rashid / Agha M. Furqan

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<sup>6</sup> Section 490.1(3) of Criminal Code, R.S.C, c.C-46 (Canada), 1985,  
Section 303s of Proceeds of Crime Act (UK), 2002,  
Rule 32.2 of Federal Rules of Criminal Procedure (United States of America), and  
Section 142(5) of Confiscation Act (Australia), 1997.