

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Sardar Tariq Masood
Mr. Justice Tariq Parvez

Criminal Appeal No. 254 of 2014

(Against the judgment dated 16.06.2010 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in Criminal Appeal No. 424 of 2003)

The State through Director General, Anti-Narcotics Force

...Appellant

versus

Abdul Jabar alias Jabbara

...Respondent

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| For the appellant: | Raja Inam Amin Minhas, Special Prosecutor, Anti-Narcotics Force Muhammad Tariq, Deputy Director, Anti-Narcotics Force Waseem Ahsan, Assistant Director, Anti-Narcotics Force |
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| For the respondent: | Syed Zulfiqar Abbas Naqvi, ASC Mr. Arshad Ali Chaudhry, AOR |
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| On Court's notice: | Syed Nayyab Hussain Gardezi, Standing Counsel for the Federation |
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| Date of hearing: | 18.05.2016 |
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JUDGMENT

Asif Saeed Khan Khosa, J.:

Criminal Miscellaneous Application No. 819 of 2016

This miscellaneous application is allowed and the documents appended therewith are permitted to be brought on the record of the main appeal. Disposed of.

Criminal Appeal No. 254 of 2014

2. Abdul Jabar *alias* Jabbara respondent was tried by a learned Judge, Special Court (CNS), Rawalpindi on the allegation of

having acquired and being in possession of assets derived from narcotic substances, etc. and after a full-dressed trial he was acquitted of the charge *vide* judgment dated 08.07.2003. The respondent's acquittal was assailed by the State before the Lahore High Court, Rawalpindi Bench, Rawalpindi through Criminal Appeal No. 424 of 2003 and the said appeal was dismissed by a learned Division Bench of the said Court *vide* judgment dated 16.06.2010. Hence, the present appeal by leave of this Court granted on 28.04.2014.

3. We have heard very detailed and elaborate arguments of the learned counsel for the parties and have gone through the relevant statutory provisions cited at the bar as well as the precedent cases referred to.

4. While dismissing the appeal filed by the State against acquittal of the respondent by the trial court the learned Division Bench of the Lahore High Court, Rawalpindi Bench, Rawalpindi had concluded that an appeal could not have been filed by the State against acquittal of the respondent recorded by the trial court under the Control of Narcotic Substances Act, 1997 and also that even if the appeal filed by the State was maintainable still such an appeal could not have been filed before the High Court by a Special Prosecutor unless he was authorized to do so by the Federal Government. As depicted by our interim order dated 30.03.2016 essentially there are two questions involved in the present appeal and they are as follows:

- i) Whether the State can file an appeal against acquittal of an accused person in a case under the Control of Narcotic Substances Act, 1997? and
- ii) Whether a Special Prosecutor, Anti-Narcotics Force is competent to file an appeal before a High Court against acquittal of an accused person by a Special Court under the Control of Narcotic Substances Act, 1997?

The first question mentioned above has already been answered by this Court through the judgment rendered in the case of *The State v. Mst. Fazeelat Bibi* (PLD 2013 SC 361) but the second question abegs an answer in the absence of any authoritative judgment on

that issue thus far. The learned Standing Counsel for the Federation of Pakistan and the learned Special Prosecutor, Anti-Narcotics Force have assisted us on behalf of the appellant/State and have referred to various provisions of the Control of Narcotic Substances Act, 1997 as well as the Anti-Narcotics Force Act, 1997 besides relying upon different notifications issued by the Federal Government from time to time for arguing that the State was quite competent to file an appeal against acquittal before the High Court and for doing that the Director-General, Anti-Narcotics Force had the requisite authority to require any official of the Force to file such an appeal on behalf of the State acting through the Director-General. As against that the learned counsel for the respondent has vehemently maintained that the Control of Narcotic Substances Act, 1997 does not provide the procedure whereby an appeal is to be filed before a High Court on behalf of the State or the Director-General acting on behalf of the State and for that procedure one is to follow the provisions of section 417, Cr.P.C. and in that respect the provisions of section 10 of the Pakistan Criminal Law Amendment Act, 1958 may also be relevant. He has also highlighted that the appeal filed by the State before the High Court had been filed through the Force Commander, Regional Directorate, Anti-Narcotics Force, Rawalpindi and such Force Commander was not authorized by any law to act on behalf of the State for the purposes of filing an appeal. The learned counsel for the respondent has, thus, maintained that the impugned judgment passed by the High Court is legally correct and the same, therefore, does not warrant any interference by this Court.

5. We must state at the outset that we have found the impugned judgment passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi to be nothing but a jumble of confusion and we have found it quite difficult to understand as to what was actually meant by the High Court *vis-à-vis* the issue regarding filing of an appeal against acquittal by the State before a High Court. We have found that the references in the impugned judgment to section 417, Cr.P.C. and section 10 of the Pakistan Criminal Law Amendment Act, 1958 were totally unnecessary and were not even

relevant to the controversy at hand because the provisions of the Control of Narcotic Substances Act, 1997 and those of the Anti-Narcotics Force Act, 1997 themselves provided a sufficient answer to the issues involved.

6. Section 48 of the Control of Narcotic Substances Act, 1997 provides a right of appeal against an order passed by a Special Court constituted under the said Act and it has already been clarified by this Court in the case of *The State v. Mst. Fazeelat Bibi* (PLD 2013 SC 361) that an appeal can competently be filed by the State against acquittal of an accused person by a Special Court. Subsection (1) of section 50 of the Control of Narcotic Substances Act, 1997 provides for appointment of a Special Prosecutor by the Federal Government who is competent to conduct proceedings under the said Act before a Special Court and, thus, an argument has been advanced before us that authority of a Special Prosecutor and his conduct of proceedings are restricted only to a Special Court and he can neither file an appeal nor can prosecute the same before an appellate court even if so directed by the State or the Director-General of the Anti-Narcotics Force. We have, however, found the said argument to be difficult to accept. Subsection (1) of section 71 of the Control of Narcotic Substances Act, 1997 clearly provides that the Federal Government may delegate all or any of its powers and functions under the said Act as it may deem necessary or expedient in favour of the Provincial Government, Director-General of the Anti-Narcotics Force or any other authority or officer of the Federal Government. The record produced before us shows that on 07.08.1997 the Federal Government had issued a notification whereby in exercise of its powers conferred by section 71 of the Control of Narcotic Substances Act, 1997 all the powers and functions of the Federal Government under the said Act had been delegated to the Director-General, Anti-Narcotics Force. The record further shows that on 19.11.2014 in pursuance of the provisions of subsection (1) of section 50 of the Control of Narcotic Substances Act, 1997 the Director-General, Anti-Narcotics Force had, in exercise of his powers conferred under section 71 of the said Act read with the

Government of Pakistan Special Prosecutors (Terms and Conditions) Rules, 2013, not only appointed a Special Prosecutor but had also authorized him to conduct proceedings under the said Act for and on behalf of the Anti-Narcotics Force with effect from 17.10.2014. We have been informed that similar notifications have consistently been issued by the State regarding appointment and authorization of Special Prosecutors since the year 2001. The provisions of section 2(c) of the Anti-Narcotics Force Act, 1997 define the "Force" as the Anti-Narcotics Force constituted under section 3 of the said Act and subsection (2) of section 3 of the said Act provides that the "Force" shall consist of a Director-General to be appointed by the Federal Government and such number of other officials as the Federal Government may, from time to time, appoint to be members of the Force. Section 5(a) of the Anti-Narcotics Force Act, 1997 clearly and unambiguously provides that the functions of the "Force" shall be to inquire into, investigate and prosecute all offences relating to or connected with the various activities mentioned therein. It has already been held by this Court in the cases of Muhammad Hanif and others v. The State and others (2001 SCMR 84) and The State through Advocate-General, N-W.F.P., Peshawar v. Naeemullah Khan (2001 SCMR 1461) that an appeal in a criminal case is a continuation of the trial. We may add that in case an accused person is acquitted by a trial court then filing of an appeal against his acquittal may also be a step towards his prosecution. It is, thus, clear to us that filing of an appeal against the respondent's acquittal in the present case fell within the functions of the Anti-Narcotics Force and such function could be exercised by the Director-General, Anti-Narcotics Force under the delegated authority of the Federal Government and for the purposes of filing of the appeal the Director-General could act through any of the officials of the Force. In the case in hand the right of appeal was that of the State/Federal Government and it is not disputed before us that at all stages of this case it was the State/Federal Government which was prosecuting the respondent before the trial court and had also filed an appeal before the High Court against the respondent's acquittal. The legal position which emerges is that the State/Federal Government could competently

file an appeal before the High Court; the Director-General, Anti-Narcotics Force could act in the matter as a delegatee of the Federal Government; and the function of the Anti-Narcotics Force regarding filing of an appeal could competently be performed by any official of the Force, including a Special Prosecutor, as directed by the Director-General, Anti-Narcotics Force. In this view of the matter the whole controversy over the State and the Director-General having acted in this case before the High Court through a Special Prosecutor has appeared to us to be making a fetish of technicalities which cannot be allowed to defeat the ends of justice if the jurisdictional competence is not doubted in the matter of filing of the appeal by the State/Federal Government or the Director-General, Anti-Narcotics Force. These observations made by us also take care of the argument addressed before us regarding the State acting in this case before the High Court through a Force Commander because it is not doubted that it was the State which had filed the appeal before the High Court and even before this Court it is the Special Prosecutor who is prosecuting the matter.

7. For what has been discussed above this appeal is allowed, the impugned judgment passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi on 16.06.2010 is set aside and the matter is remanded to the said Court to decide Criminal Appeal No. 424 of 2003 afresh on its merits.

Judge

Judge

Judge

Islamabad

18.05.2016

Approved for reporting.

Arif