

IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

PRESENT:

MR. JUSTICE MUSHIR ALAM
MR. JUSTICE SARDAR TARIQ MASOOD
MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

CRIMINAL PETITION NO. 994 OF 2020

(On appeal against judgment dated 29.11.2019 passed by the Peshawar High Court, Peshawar in Criminal Revision No. 244-P/2019)

The State through Director General FIA, Islamabad

... Petitioner

VERSUS

Alif Rehman

... Respondent

For the Petitioner: Mr. Sajid Ilyas Bhatti, Addl. Attorney General
Ch. Akhtar Ali, AOR
Syed Kashif Ali, Inspector FIA, Peshawar

For the Respondent: Mr. Arshad Hussain Yousafzai, ASC

On Court Notice: Mr. Awais, in person

Date of Hearing: 15.01.2021

JUDGMENT

SAYYED MAZAHAR ALI AKBAR NAQVI, J.-

Criminal M.A. No. 1587/2020: For reasons mentioned in this application, it is allowed and the delay in filing the Criminal Petition No. 2078/2020 is condoned.

Criminal Petition No. 994/2020: The petitioner Department has filed this petition under Article 185(3) of the Constitution of Islamic Republic of Pakistan, 1973, and has sought indulgence of this Court while calling in question the legality of the impugned judgment dated 29.11.2019 passed by the learned Peshawar High Court, Peshawar, whereby the Criminal Revision filed by the respondent was allowed.

2. Briefly stated the facts of the matter are that on a secret information it was pointed out that the respondent is involved in foreign currency exchange without having any permission from the concerned authorities and as such he is liable

to be proceeded against in terms of Foreign Exchange Regulation Act, 1947. In pursuance of the said information, a raid was conducted and respondent was found in possession of foreign currency of Kingdom of Saudi Arabia, as such a case FIR No. 36/2019 dated 28.08.2019 was registered under Sections 4/23 of the Foreign Exchange Regulations Act, 1947 at Police Station FIA/CBC, Peshawar. It is worth mentioning that during the raid, Saudi Riyals to the tune of 1,57,500/- and Pakistan currency to the tune of Rs.42,66,000/-, which was being utilized in lieu of exchange, was taken into possession by the raiding party. In this regard, seizure memo was duly prepared by the Investigating Officer. During the course of proceedings, the accusation against the respondent was found correct and as such report in terms of Section 173 Cr.P.C was submitted in the case which is still pending adjudication before the court of first instance. An application for *superdari* of the said amount was moved and the learned Trial Court vide order dated 19.10.2019 declined to deliver the Saudi Riyals, however, ordered return of Pakistani currency to the respondent. The order of the learned Additional Sessions Judge-VII, Peshawar, was assailed before the High Court through Criminal Revision, which was allowed vide impugned order dated 29.11.2019. Hence, this petition seeking leave to appeal.

3. The crux of the arguments advanced by the learned Additional Attorney General is that the learned High Court has not taken into consideration that the exchange of currency without approval of the concerned authority is prohibited in terms of Foreign Exchange Regulation Act, 1947; that the learned Trial Court while passing the order dated 19.10.2019 has relied upon the statement of co-accused Khan Bahadar, which was to the effect that he has no objection if the currency is returned to the respondent, and ordered return of Pakistani currency to the respondent, which was not tenable in law; that the Pakistani currency was being used as an exchange currency of Saudi Riyals, which was also seized by the FIA authorities; that the learned Courts have not assigned any plausible reason while ordering return of Pakistani as well as Saudi currency to the respondent and the same are liable to be set aside.

4. On the other hand, learned counsel appearing on behalf of the respondent tried to controvert the arguments advanced by the learned Law Officer but could not substantiate any legal justification.

5. We have heard learned Law Officer as also learned counsel for the respondent and have gone through the record.

6. To evaluate the legality of the order passed by the learned High Court, it would be imperative to reproduce the Preamble of the Foreign Exchange Regulation Act, 1947. The same reads as under:-

"An Act to regulate certain payments, dealings in foreign exchange and Securities and the import and export of currency and bullion.

Whereas it is expedient in the economic and financial interests of Pakistan to provide for the regulation of certain payments, dealings in foreign exchange and securities and the import and export of currency and bullion;"

7. A mechanism has been devised to avail the benefits of such legislation, which could regulate the exchange of foreign currency, which otherwise can be beneficial for the economic and financial interest of the State. However, any deviation while defeating the mechanism devised would adversely affect the interest causing hazardous affect and result into financial debacle. Any person who is citizen of Pakistan is authorized to establish business of foreign currency notes subject to moving an application to the State Bank of Pakistan on a prescribed form after payment of a prescribed fee seeking permission/authorization. The method is duly mentioned in Section 3A of the Act, which is reproduced as under:-

"3A. Authorized money changers in foreign exchange.

(1) The State Bank may, on application made to it in this behalf, and on payment of a fee prescribed by it, from time to time, authorize any person to deal in foreign currency notes and coins.

(2) The power conferred under sub-section (1) shall be exercised on the basis of criteria prescribed, and recommendations made, by a committee consisting of such official and non-official representatives as may be nominated by the State Bank.

(3) An authorization made under this section may be for a specific period of time, which may be renewed thereafter.

(4) An authorized money changer shall, in all his dealings under the authorization, comply with such general or special directions or instructions as the State Bank may, from time to time, think fit to give including those for supply of data, the rate and code of conduct in doing business. Failure to comply with the instructions may lead to suspension of the licence or other actions as necessary."

8. Similarly the exchange companies can be formed. The procedure is almost the same, which is provided in Section 3AA of the Act. The same reads as under:-

"3AA. Exchange Companies.—*(1) The State Bank may, on application made to it in this behalf, and on payment of such fee as it may, from time to time prescribe, authorize any company to deal in foreign currency notes, coins, postal notes, money orders, bank drafts, travellers cheques and transfers.*

(2) For the purposes of sub-section (1), the expression "company" means a company having been formed and registered under the Companies Ordinance, 1984 (XLVII of 1984) pursuant to no objection certificate issued by the State Bank in respect thereof to the Securities and Exchange Commission of Pakistan upon receiving an intimation from the said Commission that it has received an application for the formation of the company.

(3) The power conferred under sub-section (1) shall be exercised on the basis of the eligibility criteria prescribed for exchange companies by the State Bank.

(4) Exchange Companies shall, in all their dealings, comply with—

- (i) the terms and conditions of the authorizations issued to them under sub-section (1); and*
- (ii) such general or special directions or instructions as the State Bank may, from time to time, issue including those set out in the circulars and foreign exchange manual of the State Bank.*

(5) Failure to comply with any such terms and conditions, directions or instructions imposed, given or issued may lead to suspension of authorization or any other action as deemed necessary by the State Bank."

9. A bare reading of aforesaid provisions would show that there is an ample opportunity to enter into the business of foreign currency while crossing over the required legal impediments subject to satisfaction and authorization by the State Bank of

Pakistan. However, we have noticed that in the instant case, the respondent neither sought any permission nor produced any document during raid or afterwards during investigation. It has been apprised to us that the report in terms of Section 173 Cr.P.C. has already been submitted before the Court of competent jurisdiction and trial of the case is likely to be commenced in near future. We are in agreement with the learned Additional Attorney General that the learned High Court has extended artificial reasoning while passing the impugned judgment and the same is not supported by the law of the land. As the matter of dealing in foreign exchange is of grave importance, which is also linked with the national interest, an amendment has been brought to Section 23 of the Act on 26.02.2020 whereby after the word 'with' the word 'rigorous' has been inserted in Section 23(1) and the punishment for the delinquents who contravene or attempt to contravene or abet the contravention of any of the provision of the Act has been enhanced from 2 years to 5 years. In view of the facts and circumstances of the case, we are of the considered view that the order passed by the learned High Court is totally in disregard of the facts and law and the same is not sustainable in the eyes of law. So far as the issue of Pakistani currency is concerned, *prima facie* it was being used as an exchange currency for Saudi Riyals, otherwise, there seems no reason for keeping such a huge amount in the shop. The matter of handing over the Pakistani currency has not been challenged before us. However, for doing complete justice, this Court under Article 187 of the Constitution of Islamic Republic of Pakistan, 1973, can pass any order or a direction which it deems appropriate. The framers of the Constitution while inserting the aforesaid Constitutional provision in-fact had assigned unfettered powers for a purpose which squarely comes within the ambit of complete justice *stricto sensu*. The said Article reads as under:-

"187. (1) Subject to clause (2) of Article 175, the Supreme Court shall have power to issue such directions, orders or decrees as may be necessary for doing complete justice in any case or matter pending before it, including an order for the purpose of securing the attendance of any person or the discovery or production of any document.

(2) Any such direction, order or decree shall be enforceable throughout Pakistan and shall, where it is to be

executed in a Province, or a territory or an area not forming part of a Province but within the jurisdiction of the High Court of the Province, be executed as if it had been issued by the High Court of that Province.

(3) If a question arises as to which High Court shall give effect to a direction, order or decree of the Supreme Court, the decision of the Supreme Court on the question shall be final."

10. In such like cases, this Court in exercise of its inherent jurisdiction under Article 187(1) of the Constitution is required to do complete justice, which must prevail ignoring technicalities. This Court in the case of Khalid Iqbal Vs. Mirza Khan (PLD 2015 SC 50) has categorically held that the power of this Court to exercise its inherent jurisdiction under Articles 187, 184(3) & 188 of the Constitution is not dependant upon an application of a party. In the case of Muhammad Zahid Vs. Muhammad Ali (PLD 2014 SC 488) while relying on earlier judgments of this Court, it was held by this Court that "*the approach in all these cases leads to one conclusion that this Court in matter of doing complete justice has not been handicapped by any technicality nor by a rule of practice.*" In the case of Martin Dow Marker Ltd, Quetta Vs. Asadullah Khan (2020 SCMR 2147) while relying on the earlier judgments, this Court held as under:-

"This Court under Article 187(1) of the Constitution has the power to issue such directions, orders or decrees, as may be necessary for doing complete justice and in doing so, the Court is also empowered to look at the changed circumstances of the case as it has appeared before it and also to mould relief as is just and proper for meeting the ends of justice. Reference in this regard is made to the case of Imran Ahmad Khan Niazi v. Mian Muhammad Nawaz Shlarif, Prime Minister of Pakistan and 9 others [PLD 2017 SC 265]; Muhammad Zahid v. Dr. Muhammad Ali [PLD 2014 SC 488]; Dossani Travels (Pvt.) Ltd. and others v. Messrs Travels Shop (Pvt.) Ltd. and others [PLD 2014 SC 1]; Mst. Amatul Begum v. Muhammad Ibrahim. Shaikh [2004 SCMR 1934] and Imam Bakhsh and 2 others v. Allah Wasaya and 2 others [2002 SCMR 1985].

13. We may note that in exercising the jurisdiction to do complete justice and to issue directions, orders or decrees, as may be necessary, this Court is not bound by any procedural technicality when a glaring fact is very much established on the record and even stand admitted. Reference in this regard is made to the case of Muhammad Shafi v. Muhammad Hussain [2001 SCMR 827]; Gul Usman and 2 others v. Mst. Ahmero and 11 others [2000 SCMR 866] and S.A.M. Wahidi v.

Federation of Pakistan through Secretary Finance and others [1999 SCMR 1904]."

11. For what has been discussed above, we convert this petition into appeal, allow it and set aside the impugned judgment of the learned Peshawar High Court, Peshawar, dated 29.11.2019 as also the order of the learned Trial Court dated 19.10.2019. The application of the respondent for *superdari* to the extent of Pakistani currency, already handed over to the respondent, shall be deemed to be pending before the learned Trial Court and shall be decided afresh by a judicious order after affording an opportunity of hearing to both the parties strictly in the spirit of the law.

JUDGE

JUDGE

JUDGE

Islamabad, the
15th of January, 2021
Approved For Reporting
Khurram