

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Maqbool Baqar
Mr. Justice Yahya Afridi
Mr. Justice Qazi Muhammad Amin Ahmed

Criminal Petition No.849 of 2019 and
Criminal Petition No.850 of 2019

*(Against judgment dated 09.07.2019 of the
Islamabad High Court, Islamabad, passed in
Criminal Appeal Nos.191 of 2018)*

Aamir Shahzad

(in Cr.P. No.849/2019)

Qaiser Shahzad

(in Cr.P. No.850/2019)

...Petitioner(s)

Versus

The State & another

(in Cr.P. No.849/2019)

The State

(in Cr.P. No.850/2019)

...Respondent(s)

For the Petitioner(s):

Raja Rizwan Abbasi, ASC
Syed Rifaqat Hussain Shah, AOR

For the State:

Mian Asghar Ali,
Deputy Attorney General for Pakistan.

Date of hearing:

10.06.2020.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- Aamir Shahzad son of Talib Hussain and Qaisar Shahzad son of Muhammad Akram, petitioners, were returned a guilty verdict by the Drug Court Islamabad for commission of offences under sections 23(1)(a)(vii), 23(1)(c) and 23(1)(i) of the Drugs Act, 1976; convicted under sections 27(1) and 27(4) of the Act *ibid*, they were sentenced to rigorous imprisonment for 5 & 3 years along with fine respectively or to undergo six months simple imprisonment in default thereof; the sentences were ordered to run concurrently; their appeals met with no better fate vide impugned judgment dated 9-7-2019, *vires* whereof, are being assailed through the captioned petitions; bound by a common thread, these are being decided through this single judgment.

2. Learned counsel for the petitioners contends that Drug Inspector, Shabbir Ahmed (PW-1), had no authority to search the premises or to impound drugs and as such entire exercise is a nullity in the eye of law; it is further argued that there is nothing on the record to confirm that the impounded drugs were unregistered inasmuch as no such certification from the DRAP has been brought on record by the prosecution; his next grievance is that none from amongst the members of the Quality Control Board entered the witness-box and, thus, mere reliance by the Courts below on an affidavit purportedly submitted by the petitioners is far from being sufficient to drive home the charge; he blamed Dr. Shuja Nawaz to be the actual owner of the outlet, let off by the prosecution for considerations other than noble. The Law Officer has faithfully defended the impugned judgment.

3. Heard. Record perused.

4. Argument that Shabbir Ahmed, Drug Inspector (PW-1), lacked authority to carry out the raid and seize the contraband is entirely beside the mark; in the witness-box, he categorically asserted his status on the strength of Notification No.1(19)-Law/2004(Vol-III)-578 dated 17th February, 2012 (Mark-A), a position uncontroverted during the trial. Section 18(d) of the Drugs Act, 1976 does not place any clog on the powers of Inspectors so as to *“enter and search, with such assistance, if any, as he considers necessary, any building, vessel or place, in which he has reason to believe that an offence under this Act or any rules has been or is being committed or may continue to be committed”*. In exercise of powers vesting in the witness, he was well within the remit of law to seize unregistered drugs. These were secured vide inventory Ex.P1 to P-18 on Form-5 (Ex.PA), transmitted to the Quality Control Board Islamabad vide letter dated 12.9.2017; an exercise that required no additional authorization.

Both the petitioners appeared before the Quality Control Board in response to show cause notice dated 25.9.2017, before whom Aamir Shahzad took the following position, in writing, depicted as Ex.PB and Ex.PE, respectively:-

منکہ مسمی عامر شہزاد ولد طالب حسین ساکن ڈاکخانہ خاص، کورال، تحصیل و ضلع اسلام آباد حلفاً بیان کرتا ہوں

1- یہ کہ من مظهر کلینک بنام علی حیدر کلینک واقع نزد پولیس سٹیشن کورال، اسلام آباد کا پروپر اینٹر ہے بوجہ مندرجہ ذیل وجوہات کی بناء پر سیل کر دی گئی تھی۔

i. یہ کہ کو الیفا نید پر سن (ڈاکٹر شجاع نواز ولد راجا محمد نواز) کی عدم موجودگی۔

- 2 یہ کہ من مخلف جناب کو یقین دلاتا ہوں کہ منہ: ہ مندرجہ بالا وجوہات جن کی وجہ سے من مخلف کا مزکورہ بالا کلینک سیل کر دیا گیا ہے کا خاص خیال رکھوں گا اور اس سلسلے میں کسی بھی قسم کی کوئی کوتاہی نہ کروں گا۔
 - 3 یہ کہ اس سلسلے میں من مخلف متعلقہ محکمے کے تمام قوانین و ضوابط کا سختی سے پابند رہے گا۔
 - 4 یہ کہ من مخلف کی جناب سے استدعا ہے کہ من مخلف کا مزکورہ بالا کلینک ڈی سیل کرنے کے احکامات صادر فرمائے جائیں۔
 - 5 یہ کہ مذکورہ کو ایفائنڈ پر سن کلینک اوقات شام 5:00 سے شام 7:00 تک بیٹھنے کا پابند ہو گا۔
 - 6 یہ کہ مذکورہ کو ایفائنڈ پر سن کا کلینک کے اندر ایلو پیٹھک ادویات سے کسی قسم کا کوئی تعلق نہ ہو گا۔
- درج بالا بیان میرے علم و یقین کے مطابق درست اور صحیح ہیں اور کوئی امر مخفی نہ رکھا گیا ہے۔“

"بخدمت جناب کو الٹی کنٹرول بورڈ، آئی سی ٹی، اسلام آباد

جواب شوکاژ نوٹس

بینا حلفی

- 1 منہ: مسی عامر شہزاد ولد طالب حسین سکنہ کورال، تحصیل و ضلع اسلام آباد کارہائشی ہوں اور حلفاً بیان کرتا ہوں یہ کہ من مظہر M/s علی حیدر میڈیکل سنٹر واقع نزد پولیس سٹیشن کورال چوک اسلام آباد کا پروپر ایئر ہے جسے شوکاژ نوٹس نمبر QCB/ICT/2012-(1)18 مورخہ 25.09.2017 جاری کیا گیا تھا۔

- i. sale of un-registered drugs.
 - ii. Sale/ purchase of schedule B/ G drugs.
 - iii. Sale/ purchase of drugs without Drug sale License.
 - iv. Sale/ purchase of drugs without warranties.
1. کیونکہ من مظہر کے کلینک میں جتنی بھی غیر رجسٹرڈ ڈرگس تھیں وہ تمام ختم کر دیں گئیں ہیں۔ اور منہ: ہ کوئی بھی غیر رجسٹرڈ ڈرگس نہیں رکھی جائیں گی۔
 2. چونکہ من مظہر کے پاس لائسنس نہیں تھا جس کی وجہ سے شیڈول B/ G کا علم نہ تھا۔
 3. یہ من مظہر کلینک چلا رہا تھا اس وجہ سے سٹور کا لائسنس نہ لے سکا من مظہر میڈیکل سٹور کا لائسنس جلد از جلد بنوائے گا۔ اور منہ: ہ لائسنس کے بغیر کوئی بھی دوا نہیں بیچی جائے گی اور جناب کو منہ: ہ کسی بھی شکایت کا موقع نہیں دیا جائے گا۔
 4. یہ کہ ڈرگ سیل لائسنس جاری کروانے کے بعد تمام ادویات مکمل وارنٹی کے ساتھ خریدیں جائیں گی۔ تمام ڈسٹری بیوٹرز سے اب وارنٹی مل لیے بغیر درگس نہیں خریدی جائیں گی۔
 - 2 یہ کہ من مظہر معافی کا طلبگار ہے اور جناب کو مکمل یقین دہانی کرواتا ہے کہ وہ منہ: ہ کوئی بھی غیر قانونی کام یا قانون کی خلاف ورزی نہ کرے گا لیلیہ: ہ اس کیس کو ختم کیا جائے۔
 - 3 یہ کہ تمام قوانین و ضوابط کا پابند رہے گا۔
- درج بالا بیان میرے علم و یقین کے مطابق درست اور صحیح ہیں اور کوئی امر مخفی نہ رکھا گیا ہے۔“

Perusal of above exhibits confirms purchase of stamp papers by Aamir Shahzad, petitioner, from a stamp vendor, with his thumb impression affixed on its back while both of them signed and thumb marked the statements. Plea for the exclusion of Ex.PB & PE from consideration on the ground of their admission in evidence being violative of procedure provided under section 364 of the Code of Criminal Procedure, 1898 does not hold water; before the Board, petitioners were neither being

indicted nor called upon to plead guilty; the Board merely solicited their response to the complaint and furnished cause as to why they be not proceeded for contravention of the provisions of the Act *ibid* to comply with the procedural requirement, *sine qua non* to launch prosecution under the Act; by their own choice, they pledged future good conduct and took positions, seemingly voluntary, however, found by them embarrassing during the trial. Qaisar Shahzad petitioner was confronted by the trial Court with Ex.PE during his examination under section 342 of the Code *ibid* when he denied to have submitted any reply whereas Aamir Shahzad petitioner when confronted with his response evaded the answer. An obstinate bald denial or evasive response cannot override positive evidence. Similarly, the prosecution was not required to produce any member of Quality Control Board to join the witnesses to drive home the charge. The functions of the Quality Control Board are supervisory/regulatory in nature and as such for prosecution of an offence under the Act, the Drug Inspector himself can discharge the onus. The argument is otherwise irrelevant as the petitioners never opted to summon any member of the Board during the trial nor any prejudice has been alleged. The entire line of defence is unrealistically hyper technical. Likewise, no certification was required by the DRAP as all the registered medicines are officially listed by the Ministry of Health. Contrary to their counsel, the petitioners never blamed Dr. Shuja Nawaz as being the man behind the scene; according to their statements before the Quality Control Board, Dr. Shuja Nawaz was a qualified person employed by them, statedly absent during the raid. View concurrently taken by the Courts below being well within the remit of law is not open to any legitimate exception. Petitions fail. Leave declined.

Judge

Judge

Judge

Islamabad, the
10th June, 2020
Not approved for reporting
Azmat/-