

**IN THE FEDERAL SHARIAT COURT**

Revisional Jurisdiction )

**PRESENT**

**MR.JUSTICE CH. EJAZ YOUSAF, CHIEF JUSTICE**

**CRIMINAL REVISION NO.15/I OF 2005**

Adam Khan son of Alam Khan - Caste Swati, resident of Galli Adam Khan, Mohallah,Dab No.1, Mansehra.		Petitioner
	Versus	
The State	--	Respondent
Counsel for the petitioner	--	Mr.Shah Nawaz Asim, Advocate
Counsel for the State	--	Mr.Muhammad Sharif Janjua, Advocate.
No.date of FIR and Police station	--	No.533 dated 21.5.2002 P.S.City,Mansehra.
Date of the order of Trial Court	--	10.7.2004
Date of institution	--	25..4.2005
Date of hearing	--	22.9.2005
Date of decision	--	22.9.2005

**JUDGMENT**

**CH. EJAZ YOUSAF, CHIEF JUSTICE.** This revision is directed against the judgment dated 10.7.2004 passed by the learned Additional Sessions Judge-I, Mansera whereby the learned trial Judge while convicting Abdul Shakoor, Noor Muhammad, Muhammad Khan and Agha Gai under section 495 PPC for committing dacoity has ordered that case property i.e. gold ornaments, cash and watches etc be kept intact till arrest and trial of the proclaimed offenders namely, Asadullah and Haleem.

2. It has been contended by the learned counsel for the petitioner that since the case property belong to the petitioner, therefore, the learned trial Judge, while deciding the case, ought to have returned the same to him. He has maintained that the learned Judge has gone wrong in law by ordering that the case property till arrest of the proclaimed offenders be kept intact. Having been questioned as to whether, at the trial, any application for obtaining the property on 'superdari' was ever made? the learned counsel replied that in fact,

during trial, an application was filed on 11.10.2004, but it was subsequently withdrawn and thereafter the Court was not approached because after pronouncement of the impugned judgment the Court had become functus officio.

3. Mr.Muhammad Sharif Janjua, Advocate, learned counsel for the State, has urged that there is nothing wrong with the impugned judgment because earlier application, filed for custody of the property in question, on 'superdari', was withdrawn by the petitioner himself. He has added that if the petitioner was desirous to have custody of the property then he should have approached the trial Court, again.


4. It appears that, the instant petition, has been filed under some misconception because the learned trial Judge while ordering for keeping the property in custody till arrest and trial of the proclaimed offenders has in fact deferred his decision regarding disposal of the property and rightly so because at the relevant time there was no claimant before him. Had the application for custody of the property on spurdari, filed by the petitioner, been not withdrawn the learned

trial Judge would have certainly passed some order thereon either while passing the impugned judgment, or separately because the case being not “finally decided” and pending against the proclaimed offenders, jurisdiction of the trial Court to their extent was definitely intact. It would not be out of place to mention here that while dealing with a “case” the Court has to take cognizance of the “offences” and not of the “offenders” and, therefore, if the case, to the extent of a particular accused is decided then it cannot be said that the Court seized to have jurisdiction over the matter with regard to the remaining accused persons as well.

In the above context, it would also be pertinent to mention here that in legal sense though the words case, cause or action are convertible terms, each meaning a proceedings in a Court yet, in common parlance the word “case” is more comprehensive and enfolds not only a decision on a particular issue or with regard to an accused but also includes determination of matters ancillary thereto or

connected therewith, hence, in my view, the Court would not become functus officio till final decision of the case.

The petitioner can, therefore, approach the trial Court for custody of the property if he is entitled and so advised. The petition, however, being misconceived is hereby dismissed.

  
( Ch. Ejaz Yousaf )  
Chief Justice

Islamabad, dated the  
22<sup>nd</sup> September, 2005  
ABDUL RAHMAN/\*\*

FIT FOR REPORTING

  
CHIEF JUSTICE