

IN THE FEDERAL SHARIAT COURT
(APPELLATE/REVISIONAL JURISDICTION)

PRESENT:

MR. JUSTICE KHADIM HUSSAIN M. SHAIKH

CRIMINAL REVISION NO.01-K OF 2024

JUMAN, SON OF AARI, ADULT, MUSLIM, BY CASTE SHEEDI, RESIDENT OF KARIO GANHWAR, TALUKA SAHEED FAZIL RAHU DISTRICT BADIN.

PETITIONER

VERSUS

THE STATE

RESPONDENT

Counsel for the Petitioner	:	Mr. Imtiaz Ali, Advocate
Counsel for the State	:	Ms. Seema Zaidi, Additional Prosecutor General, Sindh.
FIR No., Date and Police Station	:	32/2023, 24.03.2023, Kario Ganhwar, District Badin.
Date of Impugned Judgment	:	31.01.2024
Date of Institution of Appeal	:	24.02.2024
Date of Hearing	:	18.09.2024
Date of Judgment	:	27.11.2024

J U D G M E N T

KHADIM HUSSAIN M. SHAIKH -J. By means of the captioned Criminal Revision, the petitioner named above has called in question judgment dated 31.01.2024, passed by the 2nd learned Additional Sessions Judge, Badin, dismissing Crl. Appeal No.09 of 2023 re-Juman Sheedi Vs. The State and maintaining the conviction and sentence of 18 months with fine of Rs.20,000/- awarded to the petitioner for offence punishable under Article 4 of The Prohibition (Enforcement of Hadd) Order, 1979 (“**The Hadd Order**”) vide judgment dated 25.08.2023, passed by the learned 2nd Civil Judge & Judicial Magistrate Badin in Cr. Case No.47 of 2023 re-The State vs. Juman Sheedi,

arising out of Crime No.32 of 2023, registered at Police Station Kario Ganhwar for offence under Articles 3 & 4 of The Hadd Order, extending the petitioner benefit of Section 382-B of The Code of Criminal Procedure, (Act V of 1898) (**"The Code"**).

2. Briefly, the facts of the case are that on 24.03.2023 at 1600 hours, complainant ASI Bair Rebari of CIA police Badin, lodged his FIR being the subject crime at P.S Kario Ganhwar, Badin mainly stating therein that he alongwith his subordinate staff namely PC Allah Bux, PC Ali Akbar and DPC Ashfaque Ahmed set out from CIA Center, Badin in Government Vehicle No.SPE-930 vide roznamcha entry No.06 dated 24.03.2023 at 1300 hours for patrolling and for taking action against drug peddlers. It is alleged that after patrolling from difference places they stopped their vehicle adjacent to Notkani Sim Nala at Golarchi road and started checking the vehicles. It is alleged that the petitioner riding on black color motorcycle was seen coming from Golarchi side and on their signal the petitioner stopping his motorbike, tried to run away, but he fell down due to which he received injury on his right knee, resultantly, the police party apprehended him. On checking the white Kata (sack) lying on the front side of the bike, the police party secured two cartons containing in all 54 white whisky wine pints of London Dry Jin i.e. 41 pints in one Kata and 13 pints in another Kata, out of which one pint (bottle) was sealed as a sample for chemical analysis and whereas the remaining pints (bottles) were sealed in the same Kata (sack). The motorcycle was found to be CD-70 of black color, Chassis No.HA-386747, Engine No.EL2214 Model 2023, having no registration number. The complainant then prepared mashirnama of arrest and recovery and obtained signatures of mashirs PC Ali Akbar and PC Allah Bux thereon. Thereafter the petitioner and the secured property were brought at police Station Kario Ganhwar, where

the subject FIR was lodged by the complainant on behalf of the State. After usual investigation, the petitioner was sent up with the challan to face his trial. Then following the legal formalities, a formal charge was framed against the petitioner to which he pleaded not guilty and claimed his trial.

3. To prove its case, the prosecution examined PW.1 complainant of the case ASI Bair Rebari at Ex.3, who produced departure entry No.6 whereby he left CIA Centre, Badin at Ex.3/A, memo of arrest and recovery at Ex.03/B, arrival/case registration entry No.10 at Ex.3/C and FIR No.32/2023 at Ex.3/D; PW.2 mashir of the case namely PC Ali Akbar at Ex.4, who produced memo of site inspection at Ex.4/A; and, PW.3 Investigating Officer ASI Pir Bux Laghari of P.S Kario Ganwhar at Ex.5, who produced entry No.22 of register No.19, whereby he deposited case property to Malkhana of P.S at Ex.5/A, departure and arrival entries No.14 & 24 whereby he went to visit place of incident and returned back at P.S. Kario Ganwhar at Ex.5/B, departure and arrival entries Nos.28 & 14 whereby PC Zahid Hussain went to deposit sample for chemical examination and returned back at P.S at Ex.5/C, letter dated 27.03.2023, addressed to Incharge Chemical Examiner Karachi for analysis of the sample at Ex.5/D, Receipt at Ex.5/E and Chemical report at Ex.5/F. The prosecution side was closed via statement at Ex.06. Whereafter the statement of the petitioner under Section 342 of The Code was recorded, wherein he denying the prosecution allegations and recovery of the alleged pints of wine, professed his innocence. He, however, neither examined himself on oath nor did he examine any person as his defence witness.

4. On the conclusion of the trial and after hearing the parties' counsel, the learned trial Court vide judgment dated 25.08.2023 convicted and sentenced the petitioner, who then filed the aforesaid CrI. Appeal No. 09 of 2023 against the conviction judgment dated 25.08.2023, passed by the learned trial Court,

which has been dismissed by the learned 2nd Additional Sessions Judge Badin vide judgment dated 31.01.2024, as discussed in paragraph-I *supra*. Having felt aggrieved by both the aforesaid judgments passed by the learned trial Court as well as the learned Appellate Court, the petitioner has preferred this Criminal Revision Petition.

5. Mr. Imtiaz Ali, learned Advocate for the petitioner has mainly contended that the petitioner is innocent and he has been falsely implicated in this case by the police at the instance of an influential person namely Rais Manoo Nizamani; that there are material contradictions in the evidence led by the prosecution; and, that the prosecution has failed to prove its case against the petitioner beyond a reasonable doubt. The learned counsel prays for acquittal of the petitioner.

6. The learned Additional Prosecutor General, Sindh, supporting the impugned judgments of both the learned Courts below, has contended that no enmity or animosity of the police officials, examined by the prosecution has been proved by the defence, therefore, per her, the contradictions and discrepancies in the prosecution case may be ignored; and, that the learned trial Court as well as Appellate Court have rightly passed the impugned conviction judgments against the petitioner. The learned Additional Prosecutor General prays for dismissal of the instant Criminal Revision Petition.

7. I have considered the arguments of the learned Counsel for the petitioner and the learned Addl. Prosecutor General for the State and have gone through the evidence brought on record with their assistance.

8. From a perusal of the record, it would be seen that recovery of 54 pints (bottles) purported to be wine was shown to have been made from the possession of the petitioner on 24.03.2023, but only one pint out of 54 pints

(bottles) was sent vide letter dated 27.03.2023 Ex.5/D to chemical analyzer through PC Zahid Hussain; according to PW.3 Investigating Officer ASI Pir Bux, the case property was kept at Malkhana through WHC Bhai Khan Mangrio, but neither PC Zahid Hussain, who allegedly carried and delivered the parcel in the chemical examiner's laboratory, was examined by the prosecution nor WHC Bhai Khan Mangrio, under whose custody the property was kept, was examined and as such the prosecution has failed to establish the safe custody of the property and safe transmission of even one pint (bottle), shown to have been sent for its analysis to the laboratory. And, hence no sanctity could be attached to the chemical examiner's report Ex.5/F, relating to one pint (bottle); furthermore, one pint (bottle) allegedly sent to the chemical examiner's laboratory for its analysis, by no stretch of imagination could be the representative sample of the remaining 53 pints (bottles), for that all the 54 pints (bottles), shown recovered, and/or at least some substance from each pint (bottle) was required to be sealed separately and sent to the chemical analyzer so as to determine as to which substance all the 54 pints (bottles) contained; admittedly, opinion of chemical examiner, was not obtained to prove the nature and nomenclature etc of the substance contained in 53 remaining pints (bottles), and as such there is absolutely no evidence available on the record to suggest that the alleged remaining 53 pints (bottles) contained wine; even remaining substance of the pint (bottle) after consumption of 100 ml fluid during the process of analysis, shown to have been kept in the sealed condition by the chemical analyzer, as revealed from chemical examiner's report Ex.5/F, was not produced in Court nor the motorcycle, allegedly secured from the petitioner at the time of incident was produced in evidence; according to the contents of FIR the petitioner while running away had fallen down and sustained injury on his right knee and in

result whereof he was apprehended by the police party, but neither mashirnama of such injury was prepared by the Investigating Officer nor any document relating to his referral and/or examination by a medical officer was produced in evidence, even all the three PWs, who examined by the prosecution, purposely suppressed such material aspects of the case and did not utter a single word about petitioner's sustaining the injury on his right knee as disclosed in the subject FIR; according to PW.1 complainant Bair Rebari *"accused ran towards northern side prior to the arrest"* but PW.2 mashir Ali Akbar has stated that *"the accused on seeing us tried to escape towards western side"* PW.3 Investigating Officer Pir Bux Laghari in cross examination has stated that *"I did not interrogate any person at time of conducting site inspection"* but PW.2 mashir Ali Akbar has stated that *"Investigating Officer interrogated the people of the locality about this incident and they disclosed that this incident had taken place"*, while PW.1 complainant Bair Rebari did not state about IO's interrogating the people of the locality about the incident; PW.3 Investigating Officer Pir Bux Laghari has stated that *"on the same day, I left P.S for inspecting the place of incident in a private vehicle alongwith complainant and mashirs of the case vide entry No.14 at about 1645 hours and conducted site inspection on the pointation of complainant of the case"*, but PW.1 complainant ASI Bair Rebari did not state a single word about his having accompanied PW.3 Investigating Officer Pir Bux to the place of incident and about his showing the place of incident to the Investigating Officer and PW.2 mashir Ali Akbar also did not state about the complainant's accompanying the Investigating Officer to the place of incident for its inspection, but he has stated that *"IO conducted site inspection on our pointation"*. It has also not been brought on record as to who was the owner and/or driver of that private vehicle in which the Investigating Officer and

other staff went to inspect the place of incident nor the pattern etc of that private vehicle was disclosed. Per PW.3 ASI Pir Bux vide departure entry No.14 dated 24.03.2023, he alongwith complainant and sub-ordinate staff left the P.S and went to inspect the place of incident, but mashirnama of inspection at Ex.04/A produced by Ali Akbar does not reveal reference of departure entry No.14.

9. Moreover, PW.3 Investigating Officer Pir Bux Laghari has admitted in his cross examination that *"it is correct to suggest that Kario Golarchi Road is busy road"* and PW.2 mashir Ali Akbar has stated in his cross examination that *"I.O interrogated the people of locality about this incident and they disclosed that this incident had taken place"*, but no independent person from the locality was associated with the alleged recovery proceedings and/or even during the course of inspection of the place of incident by the prosecution nor any effort was shown to have been made for doing so that is violative of mandatory provisions of Section 103 of The Code, for the official making searches, recovery and arrest, are required to associate private persons, more particularly, in case in which the availability of private persons cannot be disputed, for the transparency in the recovery proceedings and to eliminate the chance of fabrication; it is also strange enough that PW.2 PC Ali Akbar, who is an police official of CIA Center, Badin and subordinate to PW.1 ASI Bair Rebari, acted as mashir of all purposes, but no official from police station Kario Ganhwar was associated even as mashir of inspection of place of incident. In case of **THE STATE VS. BASHIR AND OTHERS (PLD 1997 SC 408)**, the Hon'ble Supreme Court of Pakistan has held that:

"It has been repeatedly held that the requirements of Section 103 Cr.P.C., namely, that two members of the public of the locality should be mashirs of the recovery, is mandatory unless it is shown by the prosecution that in the

circumstances of a particular case it was not possible to have two mashirs from the public."

10. Manifestly, the witnesses, examined by the prosecution despite being skillful and expert witnesses of police department with vast service career, are inconsistent on material aspects of the case and their statements regarding the mode and manner in which the recovery was shown to have been made, being contradictory to each other, are self-destructive as discussed *supra*.

11. So far the chemical examiner's report Ex.5/F is concerned, the same relating to one pint (bottle of alleged wine) out of 54 bottles, is manifestly unworthy of trust and reliance, for, safe custody, safe transmission and safe handing over of the sealed parcel, containing that one pint (bottle), was not proved on record.

12. The contention of learned APG for ignoring the aforesaid discrepancies and inconsistencies in the prosecution case, in view of the fact that that there is no enmity or animosity of police with the petitioner to falsely implicated him in this case, being untenable is rejected for the reason that mere fact that the police witnesses have no enmity with the petitioner, by itself, is not a strong circumstance to hold that whatever has been alleged by the prosecution witnesses should be implicitly relied upon without asking for supporting evidence.

13. In view of what has been stated above, it is crystal clear that the prosecution case is full of doubts and the prosecution has failed to prove its case against the petitioner beyond a reasonable doubt. It needs no reiteration that a single circumstance creating reasonable doubt in the prudent mind about the guilt of the accused, benefit thereof is to be extended to the accused not as a matter of grace or concession, but as matter of right. Reliance in this context is placed on the cases of *GHULAM QADIR AND 2 OTHERS V. THE*

STATE (2008 SCMR 1221), MUHAMMAD MANSHA and MUHAMMAD AKRAM V. THE STATE (2009 SCMR 230).

14. Patently, the aforesaid material and glaring contradictions, infirmities, omissions and admissions adverse to the prosecution case and dishonest and deliberate improvements in the statements of the prosecution witnesses during the trial, which did go to the root of the case, rendering it doubtful, were not at all attended to by the learned trial Court while passing the impugned judgment dated 25.08.2023, convicting and sentencing the petitioner and similarly, the learned Appellate Court, which is the Court of re-appraisal of evidence, without considering the aforesaid aspects of the case and appreciating the evidence in its true perspective, has dismissed the appeal filed by the petitioner against the impugned conviction judgment dated 25.08.2023 and maintained the conviction and sentence awarded to him by the learned trial Court. In such view of the matter, both the impugned judgments passed by the learned trial Court as well as learned Appellate Court; suffer from mis-reading and non-reading of the evidence, which could not sustain. Accordingly, the captioned Criminal Revision Petition is allowed and conviction and sentence awarded to the petitioner vide impugned judgment dated 25.08.2023, passed by the learned trial Court and the impugned judgment dated 31.01.2024, passed by the learned Appellate Court, maintaining the conviction and sentence of the petitioner, are set-aside and the petitioner is acquitted of the charge, extending him benefit of doubt. The petitioner is on bail and his bail bond is cancelled and his surety is discharged.

(JUSTICE KHADIM HUSSAIN M.SHAIKH)
JUDGE