IN THE FEDERAL SHARIAT COURT OF PAKISTAN

(Appellate/Revisional Jurisdiction)

JUSTICE SYED MUHAMMAD FAROOQ SHAH

Cr. Revision No.03/L of 2018

Muhammad Riaz son of Rehmat Khan
R/o Mankaywala, Tehsil Shahpur
District Sargodha

--------- Appellant.

Versus

The State
Zafar Abbas, Assistant Sub Inspector,
Police Station Shah Pur Saddar,
District Sargodha. ---------Respondents.

Counsel for the Appellant ---	**---**	**Mr.Ahmed Nawaz Ranjha,**
Counsel for the State	**---**	**Mr. Muhammad Sarwar Sidhu, Addl; P.G, Punjab.**
FIR No, date& P.S	**---**	**FIR No.376 dated 13.10.2016,**
	---	**P.S Shahpur Saddar,**
	---	**District Sargodha.**
Date of impugned judgment	**---**	**16.05.2018.**
Date of institution	**---**	**25.05.2018.**
Date of hearing	**---**	**08.11.2018.**
Date of decision	**---**	**08.11.2018.**

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JUDGMENT

SYED MUHAMMAD FAROOQ SHAH, J. By invoking the revisional jurisdiction of this Court under Article 203DD of the Constitution of the Islamic Republic of Pakistan, the petitioner Muhammad Riaz has directed the captioned petition against the impugned judgment pronounced on 16.5.2018 by the learned Additional Sessions Judge, *Shahpur* District *Sargodha*, whereby the appeal filed by the petitioner against the original judgment dated 26.5.2017 passed by the learned Magistrate Section 30, *Shahpur* was maintained and the conviction and

sentence recorded under Article 4 of the Prohibition (Enforcement of Hadd) Order, 1979 against the petitioner/ accused to undergo simple imprisonment for six months and to pay fine of Rs.10,000/-, in default of payment of fine to undergo simple imprisonment for 15 days more was upheld.

2. Succinct facts of the prosecution case as narrated in the FIR lodged on dated 13.10.2016 under Articles 3/4 of the Prohibition (Enforcement of Hadd) Order, 1979 registered at Police Station *Shahpur Saddar*, district *Sargodha* by ASIP Zafar Abbas of the said police station are that on 13.10.2016 at 9.00 a.m. he alongwith police officials during checking of vehicles at *Jalpana chowk* stopped the car having registration No.0713/Karachi and during its checking they recovered 25 bottles (Kuppies) of liquor lying in a polythene bag on the rear seat of the said car. Driver of the car disclosed his name to be Muhammad Riaz, accused. Subsequently, the entire recovered liquor in 25 *kuppies* was emptied in a plastic cane by separating six ounce for chemical analysis. Two separate parcels were prepared at the spot; the complaint was reduced in writting under Articles 3/4 of the Prohibition (Enforcement of Hadd) Order, 1979 (Exh:PB) and transmitted to the police station for its' incorporation in FIR under section 154 Cr.P. C. (Exh:PA).

3. Investigation of the case was conducted by the complainant ASIP Zafar Abbas. He prepared memo of recovery and arrest of the accused (Exh.PC) in presence of his two subordinates PWs/Mashirs namely constable Ghulam Abbas and constable Shabbir Hussain, who put their signatures on the memo of recovery and arrest of the accused as marginal witnesses; sketch of the place of incident (Exh.PD) was also drawn by the complainant/I.O. The recovered case property was lying at police station for about 18 days and thereafter on 31.10.2016, a parcel of six ounce, allegedly separated from the entire recovered case property was dispatched to the Punjab Forensic Science Laboratory, which was examined and vide report dated 2.11.2016 (Exh.PE), signed by two technicians, without showing their names,

observed that one sealed bottle containing six ounce liquor indicate the presence of alcohol.

4. A perusal of record transpires that final report/ challan was submitted under section 173 of the Code of Criminal Procedure before the concerned Magistrate on 23.10.2016 for cognizance, prior to receiving the chemical examiner report (Exh.PE) from the laboratory.

5. The trial commenced on 16.02.2017 by framing the charge under Article 4 of the Prohibition (Enforcement of Hadd) Order, 1979, to which the accused pleaded not guilty.

6. To prove its case, the prosecution examined PW.1 ASIP Ghulam Shabbir, who recorded the FIR. Evidence of PW.2 police constable Ghulam Abbas, who acted as a marginal witness of recovery memo and arrest of the accused and testimony of PW.3 complainant/I.O ASIP Zafar Abbas was recorded . Thereafter, the learned prosecutor by submitting the report of Punjab Forensic Science Laboratory (Exh.PE) closed the prosecution side on 25.5.2017. On conclusion of the prosecution evidence, statement of the accused was recorded under section 342 of the Code of Criminal Procedure, in which the accused has professed his innocence.

7. The learned trial court, after affording opportunity of hearing to the learned counsel for the accused and the learned State Counsel, convicted and sentenced the petitioner/accused, vide impugned judgment, as mentioned supra. The appeal preferred against the said judgment was also dismissed; hence the captioned Revision Petition has been filed to set aside the concurrent findings of learned lower courts on facts and grounds averred therein.

8. Mr. Ahmed Nawaz Ranjha, learned counsel for the petitioner contended with vehemence that the petitioner was involved in a false and fictitious case, so much so that neither the vehicle containing the alleged case property was secured nor the person, who as per evidence of complainant/I.O, found present in the car at the time

of incident, was examined or arrested. The learned counsel further argued that the trial court in paragraph 13 of the impugned judgment absolved the petitioner from the charge of an offence punishable under Article 3 of the Prohibition (Enforcement of Hadd) Order, 1979 in clear words that ***"So far as question of sale Under Article 3 of PEHO is concerned, no evidence has surfaced on record therefore; this offence has not been found attracted".*** However, the accused was held guilty under Article 4 of the Prohibition (Enforcement of Hadd) Order, 1979 for possessing 25 *kuppies* of liquor, though a small quantity of six ounce from entire alleged recovered case property was separated and transmitted to the laboratory after inordinate delay of 18 days without any explanation and as per prosecution case, the entire case property was lying with the Head *Muharrir* who has not been put in the witness box by the prosecution. The learned counsel argued that it is an admitted fact that entire recovered case property had not been sent to the laboratory/chemical examiner and a very small quantity, i.e. six ounce was allegedly dispatched to the Chemical Examiner for analysis and such report was produced by the prosecutor at the verge of closing prosecution evidence and therefore, such report was not cross examined; moreso, the said incriminating piece of evidence was not put to the accused while recording his statement under section 342 of the Criminal Procedure Code, being mandatory in nature. The learned counsel argued that neither the case property nor the vehicle which was allegedly carrying the contraband liquor was produced during trial. Learned counsel argued that both the learned lower courts have seriously erred by not passing an appropriate order under section 517 of the Code of Criminal Procedure, regarding the disposal of liquor as well as the vehicle. The learned counsel next argued that place of recovery was situated in a thickly populated area but no independent person of the locality was examined to act as a recovery witness. The learned counsel has pointed out contradictions and discrepancies in the prosecution evidence. According to the learned counsel, the police officials may be competent witnesses, but their contradictory evidence

has to be scrutinized with due care and caution and the same cannot be relied upon without any independent corroboration as required under section 103 of the Code of Criminal Procedure. To support his contention, learned counsel placed reliance on the following rulings;- i. **1997 SCJ 787** (*Jamil Shah Vs The State*), ii. **2002 SD 101** (*Imtiaz Ahmed Vs The State*), iii. **2000 SD 539** (*Mst. Iqbal Bibi Vs The State*), iv. **1997 SD 231** (*Muhammad Ramzan Vs The State*) and v. **2017 SCMR 148** (*Qaddan and others Vs the State)*.

9. Conversely, the learned State counsel supported the concurrent findings of both the learned lower courts and submitted that prosecution has successfully established the case of possessing the contraband alcohol by the petitioner punishable under Article 4 of the Prohibition (Enforcement of Hadd) Order, 1979. He has prayed for dismissal of the instant revision petition being devoid of merits.

10. After hearing the respective contentions of the learned counsel for the parties, I deem it appropriate to firstly discuss hereinbelow relevant crux of the prosecution evidence.

11. Admittedly, the case of prosecution hinges on testimony of two police officials, i.e. PW.2 police constable Ghulam Abbas, who acted as marginal witness of recovery and arrest of accused; supported the complainant/I.O ASIP Zafar Abbas. PW.1. ASIP Ghulam Shabbir, who recorded the FIR on 13.10.2016, stated that on 30.10.2016 *Muharrir* handed over to him a parcel which he deposited at **PFSA** laboratory. He has categorically stated that the parcel was lying with Muharrir from 13.10.2016 to 31.10.2016. He has further stated that only six ounce *sample* of liquor was sent to the laboratory. He was found unaware about the name of the accused and number of case or FIR. From careful perusal of testimony of ASIP Zafar Abbas, i.e. star witness of the prosecution, who being a complainant conducted the investigation, stated that he recovered 25 *kuppies* of liquor of "*Kacha Sharaab*" were emptied in a plastic cane by separating six ounce for chemical analysis. In cross examination, he was found unaware about the number and colour of

official vehicle in which he alongwith police party proceeded to the place of occurrence. He has also shown his ignorance about the departure entry from the police station. Police constable PW Ghulam Abbas, who acted as a witness of recovery and arrest of the accused stated that *Desi* liquor was recovered under the driving seat of the car, though complainant stated that the same was lying in a shopper on rear seat. He further stated in cross examination that the quantity of sealed *kuppies* was not in his knowledge nor anything was written on it including weight. Further stated that he did not participate in counting the *kuppies* those were emptied in a cane. Since the complainant /I.O ASIP Zafar Abbas is main/star witness of the prosecution who being a complainant conducted the investigation as well, stated in his deposition as under:-

"برحلف بیان کیا کہ وہ تھانہ شاہ پور صدر میں مورخہ 13.10.16 کو تعینات تھا۔ وہ مع غلام عباس کنسٹیبل نمبر796 C-شبیر حسین 1195 C-ظفر عباس PQR بمع سرکاری گاڑی موبائیل جلیانہ چوک موجود تھا کہ کار نمبر0713 Karachi/لک موڑ کی طرف سے آئی۔ جس کو مسمی محمد ریاض ولد رحمت خان قوم قصائی ساکن مانکے والا چلا رہا تھا، سیٹ کے پیچھے شاپر میں 25 کپیاں دیسی شراب برآمد ہوئی ، جس نے اپنا نام محمد ریاض بتایا ، جسکو ایک جیسا پاکر کین پلاسٹک میں یکجا کرکے برآمدہ شراب میں سے 6 اونس علیحدہ نکال کر ہر دو علےحدہ علیحدہ پارسل تیار کئے اور فرد مرتب کیا ، گواہان کے بیانات تحریر کئے نقشہ موقع نظری بلا سکیل مرتب کیا ، مقدمہ ہذا میں ملزم حقیقی گنہگار پاکر حوالات جوڈیشل بھجوا دیا۔"

"بدوران جرح کہا کہ سرکاری گاڑی کا نمبر نہ بتا سکتا ہوں ، تھانہ میں روانگی میں ایک روزنامچہ میں درج تھی، روانگی کی رپٹ کا میری تفتیش کی کسی ضمنی میں اندراج نہ ہے ، گاڑی کا رنگ کونسا تھا ، مجھے یاد نہ ہے ، میں نے فرد مقبوضگی میں بھی گاڑی کا رنگ تحریر نہ کیا ہے۔مجھے یہ بھی یاد نہ ہے کہ مورخہ 13.10.16کو کوئی SOS بابت شراب نوشی نارکوٹیکس افسران بالا کی طرف سے جاری کی گئی ، شام چھ بجے تھانہ تھانہ سے روانہ ہوئے تھے ، معاملات گشت صبح تک تھے ، مجھے یاد نہ ہے کہ ملزم ریاض کے ساتھ کوئی اور شخص تھا یا نہیں ، میں اپنی پوری یاداشت کے ساتھ بیان کرتا ہوں کہ مجھے یہ یاد نہ ہے کہ بوقت وقوعہ ملزم کے ساتھ دیگر کون کون سے اشخاص تھے، کوئی اور آدمی ہوگا لیکن مجھے یاد نہ ہے ، میں نے ہمراہ ملزم جو شخص اسکے ساتھ تھا اس کا کوئی ذکر نہ کیا اور نہ ہی اس کا بیان موقع پر لکھا ہے ۔ جلیانہ چوک جاتے وقت کافی مصروف سڑک ہے۔"

"شراب کی کپیاں میں نے خود گنی تھیں ، ان بوتلوں پر کسی قسم کا کوئی کاغذ کا ریپر موجود نہ تھا، کین پہلے ہی ہمارے پاس موجود تھا یہ کین ہم نے شراب کی برآمدگی کے لئے رکھا ہوا تھا ، مجھے کین کی مقدار ڈالے جانے کا علم نہ ہے ،کہ وہ کس پیمائش کا تھا، اور کتنی مقدار میں اس میں شراب ڈالی جاسکتی تھی ۔ گواہان کے بیانوں پر ہم نے دستخط نہ کروائے تھے۔ میں ساری شراب پارسل سمیت محرر کے حوالے کردی، جب یہ پارسل شبیر ASIکو برائے لیبارٹری دیا گیا اسوقت میں موجود نہ تھا ، میرے سامنے نہ دی گئی تھی۔ "

"مورخہ13.10.16 کو محرر کے حوالے کیا گیا اور یہ مجھے معلوم ہے برائے لیبارٹری شبیر حسین ASIکے حوالے کب دیا گیا، میں 13.1016 سے لیکر 30.10.16 تک ایک دفعہ بھی مال خانے نہ گیا ہوں۔ "

12. The aforementioned self contradictory statement of the complainant is not only adversely reflects on his credibility but creates doubt in the prosecution version of the occurrence and it would be unsafe to base reliance on such a statement in the absence of any reliable convincing or independent corroborative evidence. The contradiction in the testimony of two police officials examined by the prosecution has carefully been scrutinized. The entire record is silent with regard to recovery of the vehicle and the person who was allegedly found sitting in the said car has neither been examined nor apprehended. The recovered case property has not been produced by the prosecution before the court at the time of recording evidence.

13. *Insofar* as the conviction of petitioner under Article 4 of the Prohibition (Enforcement of Hadd) Order, 1979 is concerned, here again the trial court had committed an illegality by not putting an incriminating piece of evidence to the petitioner/accused and seeking explanation under section 342 of the Code of Criminal Procedure with regard to the vehicle in question or the case property viz six ounce of alcohol dispatched to the Chemical Examiner. More so, perusal of Chemical Examiner report reflects that it was analyzed and reviewed by Forensic laboratory technicians without mentioning their names and that the said sealed bottle containing six ounce liquor was having same material/description/particulars or not as the forwarding letter of concerned police station has not been brought on record. These lapses on the part of the prosecution as well as the trial court has resulted into an illegality, more particularly both the learned lower courts did not pass order under section 517 of the Code of Criminal Procedure for destruction of alleged recovered liquor or confiscation or delivery of vehicle to any person claiming to be entitled to possess thereof or otherwise which is a serious miscarriage of justice.

14. Though the FSL report has been placed on record, is in affirmative but the fact remains is that only six ounce from 25 bottles were examined and analyzed by the technicians of the lab: and in absence of conducting the examination of the remaining recovered

contraband it cannot be presumed that the remaining material was also containing alcohol or otherwise. This fact on the face of it contradicts the ratio of the law declared by the Hon'ble Supreme Court in the case of ***Ameer Zeb..Vs..The State*** (PLD 2012 SC 380) as well as in the case of ***Faridullah..Vs..The State*** (2013 SCMR 302), whereby it has been held that representative sample from each slab/packet, etc should have been taken and each sample should have been sealed in a separate parcel for chemical examination. If no *sample* is taken from any particular piece for analysis of Chemical Examiner, then the *sample* would not be a representative *sample* and it would be unsafe to rely on mere words of the mouth of prosecution witnesses. In the case of ***Shakeel..Vs..The State*** (PLD 1998 SC AJ & K 31), 23 bottles of intoxicant were recovered but only two bottles were sent for chemical examination and it was held that in such situation it could not be said with regard to 21 bottles as to which type of material they were containing. Whether they were containing intoxicant material or not is a mere suspicion which cannot be substituted by a proof which is strictly required in a criminal case to be proved against the accused. In such view of the matter, Mr. Ahmed Nawaz Ranjha, representing the petitioner has rightly argued that if no examination of all the recovered substance is carried out then under such situation it cannot be presumed that the entire substance were contraband.

15. Admittedly, neither the car which was allegedly contained the contraband was recovered nor *kuppies* emptied in a cane or the said cane were brought before the court during trial. Discrepancies and material contradictions highlighted above are sufficient to create reasonable doubt and dent in the prosecution case, particularly the *sample* of a small quantity was dispatched to the chemical Examiner with a considerable delay of more than 18 days, therefore, the veracity of the alleged recovery was not above board. It is settled principle of law that every doubt may arise would go in favour of accused.

16. From perusal of record, I found force in the arguments raised by the learned counsel for the petitioner. Admittedly, the police

had kept the parcel with it and a very small quantity had been transmitted to the Chemical Examiner for analysis after a considerable delay; the vehicle has also not been secured and the person associated with the petitioner/driver had not been arrested as a co-accused or to act as a witness, therefore, the petitioner does not in any manner connected with the commission of the alleged offence. Prosecution evidence is not worthy of credence, recovery proceedings are shrouded in mystery, the conduct of police party is not confidence inspiring. All these facts speak the volume of the conduct of the investigation agency. The petitioner has sufficiently undergone the rigor of trial, besides he was confined for sufficient period after his conviction and sentence.

17. Suffice it to say that the prosecution has miserably failed to prove its case beyond the shadow of reasonable doubt. It is settled proposition of law that a single circumstance creates a reasonable doubt in a prudent mind about the guilt of accused, then he shall be entitled to such benefit not as a matter of grace but as a matter of right as held in authoritative pronouncements of Hon'ble Supreme Court of Pakistan in the cases (i) **1995 S C M R 1345** (*Tariq Parvez v. The State*) (ii) **1997 S C M R 25** (*Muhammad Ilyas v. The State),* (iii) **2008 S C M R 1221** (*Ghulam Qadir and 2 others v. The State.* In the case of *Yasin alias Ghulam Mustafa v. The State* reported as **2008 S C M R 336;** the Apex Court held that proof defined under Article 2(4) of the *Qanoon-e-Shahadat* Order, 1984 containing conclusive duty upon prosecution to prove its case beyond any shadow of doubt. Admittedly, conviction cannot be based on high probabilities and suspicion cannot take the place of proof, therefore, no legal sanctity is attached to the FIR lodged after inordinate delay merely on disclosure of some unknown source or information. The case law relied upon by the learned counsel for the petitioner is fully attracting in the peculiar facts of the case.

18. In view of the above discussion, I am of the firm view that the prosecution has miserably failed to prove the charge against the petitioner. Accordingly, by accepting this revision petition, I hereby acquit the petitioner from the charge leveled against him. He is on bail, his bail bonds stand discharged and the surety is absolved from the liability of bail bonds executed by him.

JUSTICE SYED MUHAMMAD FAROOQ SHAH

Islamabad the
October 25th 2018
F.Taj/**

Approved for reporting

(Syed Muhammad Farooq Shah**, J**)