

IN THE FEDERAL SHARIAT COURT OF PAKISTAN
(Appellate Jurisdiction)

JUSTICE SYED MUHAMMAD FAROOQ SHAH

Crl. Revision Petition No.03/I of 2018.

**Abid Hussain alias Javed son of Muhammad Sardar,
Caste Jat, resident of village Aurangabad,
Tehsil & District Narowal**

.....Petitioner

Versus

- **Tahawar Khan, S.I, PS City Narowal,
District Narowal.**
- **The State**

.....Respondents.

Counsel for the Petitioner	---	Mr. Ihsan-ul-Haq Advocate.
Counsel for the State.	---	Mr. Muhammad Jaffar, D.P.G, Punjab.
Case FIR No, date & Police Station	---	FIR No.216, dated 13.08.2016, P.S City Narowal, Distt: Narowal.
Date of impugned Judgment.	---	29.05.2018.
Date of institution	---	08.06.2018.
Date of hearing	---	10.10.2018.
Date of decision	---	10.10.2018.

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**SYED MUHAMMAD FAROOQ SHAH, J.—** By invoking the revisional jurisdiction of this Court under Article 203-DD of the Constitution, the captioned revision petition has been directed by the Petitioner against the judgment pronounced on dated 27.02.2018, by the learned trial court, whereby the Petitioner was convicted under Article 4 of the Prohibition

(Enforcement of Hadd) Order of 1979 to undergo rigorous imprisonment for one year and fine of Rs.10,000/-; in default of payment of fine to undergo simple imprisonment for one month more, with benefit of section 382-B Criminal Procedure Code. The judgment delivered by the learned trial court attained finality on dismissal of appeal by the appellate court, vide impugned judgment dated 29.05.2018.

2. Necessary facts for the disposal of the instant revision petition are that on 13.08.2016, on written complaint of Sub-Inspector Muhammad Tahawar Khan (PW.4), the FIR No. 216 dated 13.08.2016, Under Article 3/4 of the Prohibition (Enforcement of Hadd) Order-IV of 1979 was lodged at Police Station Narowal. It is alleged in the FIR by Sub-Inspector Muhammad Tahawar Khan (PW.4) that on spy information he apprehended the accused and from his possession five bottles of liquor containing in a shopping bag, i.e. two small bottles with mark of *Vodka*, one large bottle with mark of *London drygen* and two small bottles with mark of *London Drygen* were recovered. All five bottles were sealed separately under recovery memo. Police constables Samiullah and Asim Saeed signed the memo of recovery being marginal witnesses. He then reduced in writing the complaint (Ex.PA) and sent it to Police Station through Amjad Ali constable. Thereafter, Faryad Ali, Sub-Inspector of said police station reached at the place of occurrence, to whom the case property was handed over alongwith other documents, who conducted the investigation after preparation of the site plan. On completion of usual investigation, final report under section 173 Criminal Procedure Code was submitted in the court.

3. A perusal of the record transpires that the prosecution case hinges on the evidence of police officials; after recording their depositions and affording opportunity to the accused under section 342 Criminal Procedure Code, the impugned judgment pronounced by the learned trial court was confirmed by the learned appellate court. FIR (Ex.PB) as well as memo of recovery (Ex.PC) reflects specific description of recovered two small bottles of *Vodka* and two small bottles of *London drygen* of liquor allegedly secured and sealed for onward transmission to Forensic Science Laboratory. *Insofar* as the prosecution evidence consisting on police officials is concerned, PW.1 ASI Muhammad Ramzan Khan stated that he chalked out formal FIR (Ex.PB) and then transmitted the original complaint alongwith copy of FIR for investigation. PW.2 police constable Samiullah stated in evidence that five bottles of wine containing in a *shopper* were recovered from the accused. In cross examination, this witness clarified that five separate samples of liquor were sealed at the place of occurrence by the complainant Sub-Inspector Muhammad Tahawar Khan in cloth available with the Investigating officer or with complainant; that they remained at the place of occurrence for one and half hour but no private person had joined the proceeding despite the fact of their presence on the spot. PW.3 ASI Muhammad Naseeb Khan deposited the sealed parcels in the laboratory (PFSA) but in cross examination he stated that he cannot produce the acknowledgment letter showing receipt of the sealed parcel in the said office. PW.4 Sub-Inspector Muhammad Tahawar Khan headed the raiding party; stated that he apprehended the accused on spy information and has given the

description of all five bottles of liquor as mentioned in the FIR and memo of recovery and handed over the case property and all other documents to Sub-Inspector Faryad Khan for further investigation; he stated in cross examination that he did not take into possession the recovered shopper nor he apprehended any buyer from the place of occurrence. PW.5 Sub-Inspector Faryad Khan who conducted the investigation and submitted final report under section 173 Criminal Procedure Code before the concerned court did not mention specific description of recovered case property or its quantity, however, in cross examination he has admitted that “ *It is correct that I did not mention the case number on recovery memo (Ex.PC) during my investigation; Muhammad Tahawar Khan Sub-Inspector handed over to me the case property and shopper. I did not prepare any recovery memo regarding shopper. On 13.08.2016 I did not record the statement of the moharrir of the police station. I handed over five sealed parcels containing liquor to moharrir of the police station*”.

PW.6 HC Muhammad Arif, who was posted as moharrir at Police Station City Narowal, did not explain the reason of keeping the case property for ten (10) days in his possession. However, he explained that, “*I delivered the representative of sealed parcel contained liquor of this case to the office of PFSA through Muhammad Naseeb Khan ASI alongwith road certificate*”.

4. The most important document viz report of Forensic Science Agency (Ex.PE) having great effect to substantiate the prosecution case has neither reflects specific description nor quantity of liquor contained in the bottles, therefore, it cannot be said with certainty that as to whether

the same recovered property, viz *Vodka* two bottles and *Londen Dragen* ie one large and two small bottles, showing specific description and detail were dispatched to the laboratory after ten (10) days or it was some other property.

5. Arguments heard. Record perused.

6. It is an admitted position that as per record the samples of the liquor were sent to PFSA after the delay of ten days and this delay was unexplained by the prosecution. Learned counsel for the petitioner submitted that the petitioner has falsely been implicated in this case as nothing has been recovered from his possession, rather police planted a fake recovery against the accused. Moreso, there are material contradictions in the statements of the prosecution witnesses; conversely learned State Counsel supported the impugned judgment by arguing that there is no illegality, gross irregularity or infirmity in the impugned judgments, which warrant interference of this Court.

7. After arguing the case at some length, Mr.Ihsan-ul-Haq, Learned Advocate, representing the petitioner, without pressing the revision petition on merits, contended that the petitioner is a young man, first offender and sole breadwinner of his family and has remained behind the bar for more than three months being convict and that he shall be satisfied if this Court by considering the aforementioned peculiar facts and circumstances of the case, reduce the awarded sentence into one the petitioner has already undergone, which is sufficient to meet the ends of justice. On the other side, learned counsel representing the State recorded no objection for reduction of sentence.

6. A perusal of record transpires that the petitioner has served the substantive sentence of more than three months; therefore, without advertent to the merits/demerits of the case, plea of reduction of sentence has been considered. It is not out of context to mention here that plea of reduction of sentence does not constitute a bar for this Court from interfering, more particularly, where findings are based on erroneous speculative presumption, likewise in the instant case as ten (10) days delay in dispatching the recovered case property to FSL is unexplained, moreso, perusal of laboratory report (Ex.PE) does not transpire the complete description or quantity of the case property received or consumed in analysis. The aforementioned dimensions of the case certainly creates doubt at least to the extent of the contraband liquor samples showing as to where the samples were lying for ten days and sent to the chemical examiner for analysis as the report of forensic science laboratory did not reflect either quantity or description or that how much quantity was consumed in chemical analysis. Consequently, by reducing the awarded sentence into one already undergone by the petitioner, the instant revision petition is dismissed.

JUSTICE SYED MUHAMMAD FAROOQ SHAH

Islamabad the  
October 10<sup>th</sup>, 2018  
*F.Taj/\**

Approved for reporting.

