

**IN THE FEDERAL SHARIAT COURT**

**(Revisional Jurisdiction)**

**PRESENT:**

**MR. JUSTICE MUHAMMAD JEHANGIR ARSHAD**

**CRIMINAL REVISION NO.07/L OF 2011 L/W**

Muhammad Jamshaid Appellant  
son of Haji Muhammad  
caste Arain, resident of Sok. Kalan,  
Tehsil & District Gujrat.

Versus

1. The State Respondents
2. Ghulam Shabbir,  
Sub-Inspector, Incharge Chowki,  
Garhi Ahmad Abad, Gujrat.

**JAIL CRIMINAL REVISION NO.02/L OF 2012**

Wajid Ali son of Fakhar Din Appellant  
caste Kashmiri,  
resident of Muhallah Shafiabad,  
District Gujrat.

Versus

1. The State Respondent

Counsel for the petitioner : Ch. Salamat Ali Haidary,  
in Cr. Rev. No.07/L of 2011 Advocate

Counsel for the petitioner : Mr. Walayat Umar Chaudhry,  
in J. Cr. Rev. No.02/L of 2012 Advocate

Counsel for the State : Mian Muhammad Awais Mazhar,  
Deputy Prosecutor General  
Punjab for State

FIR No. and date : 202/2010, dated 28.06.2010,  
P.S. Lorri Adda,  
District, Gujrat.

Criminal Revision No.07-L of 2011 L/W,  
Jail Criminal Revision No.02-L of 2012

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Date of impugned judgment : 11.11.2011

Date of Institution of Cr. Rev. No.07/L of 2011 : 31.12.2011

Date of Institution of J. Cr. Rev. No.02/L of 2012 : 22.02.2012

Date of hearing : 05.07.2012

Date of Judgment : 05.07.2012



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**JUDGMENT:**

**Justice Muhammad Jehangir Arshad, J:** As both

these revisions arise out of the same judgment dated 11.11.2011 of the learned Additional Sessions Judge, Gujrat, therefore, are being disposed off through this single order.

2. Both the petitioners are aggrieved of the judgment dated 11.11.2011 passed by the learned Additional Sessions Judge, Gujrat whereby the appeal filed by the petitioners against their conviction under Article 3 and 4 of Prohibition (Enforcement of Hadd) Order, 1979 passed by Judicial Magistrate 1<sup>st</sup> Class, Gujrat on 22.10.2011 was dismissed.

3. Briefly stated the facts are that both the petitioner were booked by Police Station, Lari Adda, Gujrat vide FIR No.202/2010, dated 28.06.2010 for manufacturing, transporting as well as being in possession of intoxicants.

4. After investigation, the challan was submitted before the learned trial Court and the learned trial Court after charging both the



petitioners under the above noted articles recorded evidence and ultimately finding them guilty of charge and punished them as follows on 22.10.2011:-

- (i) 3 years R.I. each alongwith fine of Rs.10,000/- each under Article 3 of Prohibition (Enforcement of Hadd) Order, 1979 in case of non payment of fine to further undergo S.I. for 3 months each.
- (ii) 2 years R.I. each alongwith fine of Rs.5,000/- each under Article 4 of Prohibition (Enforcement of Hadd) Order, 1979 and in case of non payment of fine to further undergo 2 months S.I. each.

Besides extending the benefit of section 382 (b) Cr.P.C.,

the learned trial Court also directed that the sentences to run concurrently.

5. Against the above noted judgment of the learned trial Court, both the petitioners filed appeal but the same was also rejected

by the learned Additional Sessions Judge, Gujrat on 11.11.2011,  
hence these revisions.

6. Vide order of this Court dated 19.04.2012 concerned Superintendent, District Jail, Gujrat was directed to submit the detailed report about the served or un-served period of sentence of the petitioners including remissions, if any. Accordingly, Superintendent, District Jail, Gujrat has submitted his report dated 28.04.2012, according to which till 28.04.2012 the un-served period of sentence of Muhammad Jamshid, petitioner was 1 year, 10 months and 07 days whereas said period of Wajid Ali, petitioner remained 1 year 10 months and 14 days.

7. At the very out and rightly, so learned counsel for the petitioners submitted that the petitioners could either be convicted nor punished simultaneously under Article 3 and 4 of Prohibition (Enforcement of Hadd) Order, 1979, the contention is that if some narcotics kept for sale that the element of possession by the holder is necessarily present under Article 4 of Prohibition (Enforcement of

Hadd) Order, 1979, learned counsel in support of his contention has placed reliance on *1992 SCMR 108 (Shariat Appellate Bench) and 2004 Shariat Decisions 625*. On the other hand learned Deputy Prosecutor General Punjab for State has not been able to satisfactorily repel the above noted contention of the learned counsel for the petitioners. The Honourable Supreme Court of Pakistan in *1992*

*SCMR 108 (Shariat Appellate Bench) in express terms held*

”جب ملزم دفعہ نمبر 3 میں سزایاب کر دیا گیا ہو تو  
تصفیہ کی بنیاد پر دفعہ نمبر 4 میں رگ سے سزایاب  
کردنہ ضروری اور نہ ہی عام حالات میں مناسب  
ہوگا“

8. In the light of the above noted declaration of law by the apex Court, this Court has no option but to agree with the contention of the learned counsel for the petitioners. Resultantly, the conviction of both the petitioners under article 4 of Prohibition (Enforcement of Hadd) Order, 1979 is set aside ~~it~~ being without lawful authority and to this extent these revision petitions are accepted.

9. However, on the question of merits under Article 3 of Prohibition (Enforcement of Hadd) Order, 1979, learned counsel for the petitioners submits that the vehicle carrying disputed narcotics was owned by one Muhammad Iqbal who was never arrested nor prosecuted whereas the appellants being the employees were made escape goats and further the report of the medical examiner was never put to the petitioners while recording their statements under section 342 Cr.P.C., learned counsel further argued that even the learned Additional Sessions Judge in para 9 of the impugned judgment directed disciplinary proceedings against the Investigation Officer of the case namely Qaiser Abbas, ASI who deliberately omitted to join owner of the vehicle namely, Muhammad Iqbal apparently due to extraneous consideration, learned counsel for the appellants after making the above mentioned submissions finally argued that as the petitioners never derived any financial benefits from the said narcotics and were acting as employees, therefore, it would be in the fitness of justice, if, in the light of the report of the Superintendent, District Jail,

Gujrat the sentence of imprisonment as imposed by the learned trial Court is reduced to one already undergone specially when the petitioners are the first offender and there is no adverse previous record against them.

10. On the other hand, learned Deputy Prosecutor General Punjab for State has strongly opposed these petitions by arguing that in view of the consist judgments of the to two course below holding them guilty of the charge and further the fact that both the petitioners were caught read handed while carrying the narcotics in the vehicle, therefore, both these revisions petitions to be dismissed being without force.

11. Criminal Miscellaneous Application No.92-L of 2011 filed by the petitioner Muhammad Jamshed in Criminal Revision No.07-L of 2011 has no force, in view of the proposed judgment deciding this Revision Petitions on merits, ~~there~~ no order is called for in this criminal miscellaneous, which is accordingly disposed of.





12. I have considered the above noted contention of the learned counsel for the petitioners and have also perused the original record. Admittedly, the vehicle carrying the narcotics was owned by one Muhammad Iqbal who was neither investigated nor joined with the investigation by the I.O. during investigation compelling the learned Additional Sessions Judge <sup>to</sup> express his strong displeasure over the conduct of I.O. and also recommending action against him who allegedly omitted to join the owner due to extraneous consideration. However, this fact alone cannot be considered for holding the petitioners innocent or not guilty of the charge. In view of the cogent evidence produced by the prosecution both ~~these~~ Courts below while deciding the matter consciously applied their judicial mind and committed no illegality or irregularity, therefore, no exception can be taken to the impugned judgment and conviction of both the petitioners under Article 3 of Prohibition (Enforcement of Hadd) Order, 1979 is maintained and both the petitions are dismissed. However, the fact that both the petitioners have undergone 1 year and 3 months of


sentence and they being first offender and further original owner of the vehicle was not prosecuted, the Court feels that the end of justice would be sufficiently met, if these sentence of both the petitioners is reduced to one already undergone till date with the further direction that both the petitioners would deposit fine of Rs.2,000/- each with the learned trial Court before their release and warrants of release would not be issued till they have deposited the amount of fine. With the above modification in sentence, both these revision petitions are dismissed.

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**Justice Muhammad Jehangir Arshad**

Dated Lahore the  
5<sup>th</sup> July, 2012  
*Hummayun*\*-

*Approved for reporting.*

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**Justice Muhammad Jehangir Arshad**