

J.Cr.A.No.20/K/2016

Hadd) Order, 1979 of P.S. Pangrio, whereby the appellants were convicted under Article 3 of Prohibition (Enforcement of Hadd) Order, 1979 and sentenced to suffer R.I. for two years and two months along with fine of Rs.5000/- each, in default of payment of fine to suffer further R.I. for three months. The sentences were ordered to run consecutively. However, benefit of Section 382-B, Cr.P.C. was given to them.

2. Initially, the above referred judgment was challenged before the Sessions Judge Badin from where it was transferred to the 2nd Additional Sessions Judge Badin for disposal in accordance with law. Subsequently, vide order dated 22.06.2016 on the point of jurisdiction, appeal was returned to the appellants to file the same before the proper forum having jurisdiction. Thereafter the instant appeal was received in this Court on 27.03.2017.

3. The facts in a nut shell as stated in the F.I.R. are that on 13.03.2015, complainant ASI Muhammad Essa kunbhar during patrolling in the area along with subordinate staff received spy information to the effect that accused Husain Mallah and others were involved in business of processing and selling desi liquor, injurious to human health, in forest area near their houses. At about 1545 hours, police party reached at the pointed place, where they found Husain having silver jeri-cane and Saleh with white colour jeri-cane who on seeing the police party, left their jeri-canes and succeeded to escape taking advantage of forest. On checking, 10 liters of local liquor was found in silver jeri-cane and 08 liters local liquor was found in white jeri-cane. Besides inside the forest area two iron tins were found placed on fire and 20 blue colour jeri-canes of 30 liters each were found filled with raw wine. Five long pitchers were found buried under the ground each filled with 150 liters of raw wine, six

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pitchers buried under the ground with 25 liters of raw wine. One iron box was found containing Jaggery (*Gur*) along with 20 polythene bags, one thread reel and two utensils of zinc. Some wine was separated in bottles from the canes and sealed for chemical examination. The pitchers were broken and raw wine was disposed of. F.I.R. was lodged under Article 3/4 of Prohibition (Enforcement of Hadd) Order, 1979. The investigation of this case was conducted by ASI Muhammad Essa Kunbhar of P.S. Pangrio, who arrested accused Husain Mallah and Saleh Mallah on 18.03.2015 and after completing the usual investigation challaned them before the Court of law.

4. Charge under Article 3 and 4 of the Prohibition (Enforcement of Hadd) Order, 1979 was framed against both the accused on 11.05.2015 to which they pleaded not guilty and claimed trial.

5. Prosecution in support of its case examined ASI Muhammad Essa Kunbhar, complainant of this case, who produced F.I.R. as Ex.3/A, Daily Diary Entries Ex.3/B & C, Mushirnama of recovery Ex.3/D, Mushirnama of arrest as Ex.3/E, Chemical Examiner's Report as Ex.3/F and record of the accused persons showing their involvement in other criminal cases of similar nature as Ex.3/G. The next witness examined by the prosecution was P.C. Muhammad Arif who adduced his evidence but his cross-examination was reserved as the accused persons moved application that they want to plead guilty in the present crime. Upon this, the Trial Court issued them show cause Notices dated 11.05.2016 warning them that if they plead guilty such confession can be used against them for awarding conviction and also enquired to explain in writing if they were threatened, pressurized or induced to plead guilty. In reply to above show cause notices, both the accused gave in writing that they were confessing their

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guilt without any pressure. Thereafter prosecution closed its side and statement of both the accused were recorded under Section 342 Cr.P.C. wherein they in clear words confessed their guilt and replied all the questions put to them regarding commission of offence in affirmative. However, at the same time they requested that lenient view may be taken in awarding sentence to them. Thereafter the impugned judgment was passed on 19.05.2016. Subsequently, as stated earlier, the above judgment was challenged before the Court of Sessions from where it has been received to this Court on the point of jurisdiction.

6. I have heard Mr. Kazi Wali Muhammad Advocate appearing for the appellants as well as Mr. Zahoor Shah, Assistant prosecutor General Sindh, for the State.

7. It is contended by the learned counsel for the appellants that no doubt the appellants had admitted their guilt before Court but it was not voluntary but due to threat of the arrest of their family members by the police, therefore, finding no other alternate they pleaded guilty. He further submitted that the present case is false, fabricated and has been made due to enmity and the case property has been foisted upon them unlawfully.

8. On the other hand it is submitted by the learned Assistant Prosecutor General Sindh that the prosecution witnesses have deposed the real facts against the present appellants and they themselves confessed their guilt before the Court, therefore, the present appeal merits no consideration.

9. I have considered the arguments advanced before me and perused record which reveals that the prosecution led evidence against the

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appellants which has gone unchallenged in cross-examination on all material points. The report of Chemical Examiner dated 26.03.2015 also reveals that sample bottles contained alcohol. The appellants voluntarily moved application before the Trial Court that they want to confess their guilt. The learned Trial Court before recording confession even issued show cause notice to them to the effect that their confession before the Court can lead into their conviction in the crime but even then they again in writing stated that their confession is without any pressure or duress. Thereafter, their statements were recorded under Section 342, Cr.P.C. wherein they in clear words admitted the charge of preparing / processing and manufacturing local wine. However, at the same time they requested for lenient view in awarding sentence. It is pertinent to note that both the appellants were represented before the Trial Court by Mr. Kanya Lal Advocate who never raised any objection to the proceedings regarding their confession before the Trial Court.

10. Perusal of record further reveals that prosecution had also produced on record a list of cases in which the present appellants were involved in similar type of cases showing appellant Muhammad Saleh involved in eleven cases and Muhammad Husain involved in seven cases which *prima facie* reflect that both are habitual offenders. The Trial Court has already taken lenient view in awarding punishment to them. Thus, the present appeal, in view of above mentioned facts, merits no consideration and is dismissed accordingly.

JUSTICE MRS ASHRAF JAHAN

Karachi
Dated, 05.06.2017
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