

IN THE FEDERAL SHARIAT COURT  
( Appellate Jurisdiction )

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PRESENT

MR.JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE

JAIL CRIMINAL APPEAL NO.221/I OF 1994

Abdul Jabbar son of  
Muhammad Ashiq, r/o  
Mohallah Majidpura, ... Appellant  
Kot Muhammad Hussain,  
More Amenabad,  
Gujranwala

Versus

The State ... Respondent

7k For the appellant ... Malik Muhammad Anwar,  
Advocate

For the State ... Mr.Muhammad Aslam Uns,  
Advocate

F.I.R. No., date and ... 189, 5.6.1992 P.S.  
Police Station Saddar Komeke

Date of the Order of ... 7.7.1994  
the Trial Court

Date of Institution ... 2.10.1994

Date of hearing ... 1.11.1994

Date of decision ... 2.11.1994

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JUDGMENT:

NAZIR AHMAD BHATTI, CHIEF JUSTICE.- Heroin

weighing 11 grams was recovered from appellant Abdul Jabbar on 5.6.1992 by Muhammad Yaqub, A.S.I., Police Post, Amenabad of Police Station, Saddar Kamoke. The appellant was sent up for trial before Magistrate Ist Class, Gujranwala exercising powers under section 30 Cr.P.C., who charged him on 10.11.1992 under Articles 3 and 4 of the Prohibition (Enforcement of Hadd) Order, 1979. The appellant pleaded not guilty to the charges and claimed trial.

He The learned Magistrate adjourned the case for recording of prosecution evidence but on 7.7.1994 the appellant allegedly made a confessional statement before the learned Magistrate whereupon he convicted and sentenced the appellant for both the offences. The appellant has challenged his conviction and sentence by the appeal in hand, sent from jail. Although the appeal was barred by 26 days but it was admitted for hearing by my learned predecessor.

2. The learned counsel for the appellant has brought to my notice that the appellant had not pleaded guilty at the time when charge was framed against him

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and when he allegedly made a confessional statement on 7.7.1994, the learned Magistrate, who was then seized with the case, did not carry out legal formalities before recording the confessional statement.

3. I have minutely perused the entire record of the case. Section 164 Cr.P.C. enjoins upon a Magistrate, competent to record a confession of an accused, to observe certain legal formalities before recording the confession. In accordance with the provisions of section 164 Cr.P.C. and numerous judgments of the superior Courts the said formalities can be the following:-

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- (a) when any accused discloses his intention to record a confessional statement, the first act of the Magistrate is to remove the handcuffs of the accused if he is in handcuffs;
  - (b) the police officials present inside the Court room are to be immediately turned out from the Court room;
  - (c) the Magistrate has to explain to the accused that he is appearing before a Magistrate;
  - (d) that the accused is not bound to make any confession and if he makes any confession it may be used against him and he may be convicted on its strength;
  - (e) the Magistrate has to ask the accused if police had used any coercive method to obtain a confession from him;

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(f) the Magistrate is required to give sufficient time to such accused to ponder over the matter;

(g) thereafter the Magistrate has to again ask the accused whether he was still willing to make a confession and on his reply in the affirmative he may record the confession;

(h) thereafter the Magistrate has to remand the accused to judicial custody if he is in handcuffs;

(i) even after recording the confessional statement of the accused the Magistrate is required to record some prosecution evidence in corroboration of the confession;

(j) it is also mandatory that the Court should record a statement of the accused under section 342 Cr.P.C. wherein he may be asked the question whether he had made confession voluntarily or whether he had made the same under coercion or duress;

(k) when the accused had refused to plead guilty at the time of framing the charge and he wants to make a confession thereafter, conviction should not be based on the sole confessional statement of the accused but some corroborative prosecution evidence must be recorded.

3. The proceedings carried out by the learned Magistrate in recording the confessional statement of the accused on 7.7.1994 were not carried out after observing the aforesaid mandatory legal requirements.

I apprehend that the Magistrate may have himself

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exerted undue influence or coercion against the appellant for extracting the confessional statement from him. See in the light of the aforesaid legal requirements the confessional statement of the appellant recorded by the learned Magistrate on 7.7.1994 is a nullity in the eyes of law and could not be acted upon to record the conviction and sentence against the appellant. The learned Magistrate carried out grave illegality in recording the confessional statement of the appellant thus causing not only a grave miscarriage of justice but also caused great prejudice to the appellant.

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4. For the aforesaid reasons I accept this appeal, set aside the conviction and sentence of the appellant and remand the case back to the learned Magistrate for proceeding denovo from the stage it was when he allegedly recorded confessional statement of the appellant. The learned Magistrate shall record prosecution evidence and if the appellant still wanted to make a confessional statement then he shall record the same after observing the aforesaid legal requirements and after satisfying himself of the fact that the appellant wanted to make a confession.

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voluntarily and without any undue influence or coercion. The appellant shall be released on bail by the learned Magistrate in the sum of Rs.25,000/- with two sureties in the like amount to his satisfaction.



CHIEF JUSTICE

Announced on 2. 11.1994  
at Islamabad  
Bashir/\*

FIT FOR REPORTING



CHIEF JUSTICE