

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Revision Application No.S-01 of 2023

Applicants: Muhammad Amir Kalwar, through Mr. Abdul Rehman Bhutto, Advocate

Respondent/State: Through Muhammad Noonari, DPG.

Date of hearing: 23.04.2025

Date of Judgment: 23.04.2025

JUDGMENT

Jan Ali Junejo, J:-- This Criminal Revision Application under Sections 435, 439-A read with Section 561-A Cr.P.C. is directed against the impugned judgment dated 04.11.2022 passed by the learned 5th Additional Sessions Judge, Shikarpur in Sessions Case No.383 of 2021, whereby the applicant Muhammad Amir was convicted under Section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019 and sentenced to three years R.I. with fine of Rs. 200,000/-, and additionally, his Toyota Corolla car bearing registration No. ATN-197, Chassis No. NZE140-2049854, Engine No. Y098295, Model 2010 was confiscated. The applicant prays that the portion of the impugned judgment relating to the confiscation of the said vehicle be set aside and the vehicle be restored to him.

2. Briefly stated, on 24.04.2021, ASI Talib Hussain of P.S. Lakhi Ghulam Shah along with his team was patrolling the Sukkur-Shikarpur highway when they intercepted a white Toyota Corolla and a six-wheeler truck. Upon search, 60 kilograms of Gutka/Manpuri were recovered from the Toyota Corolla allegedly driven by the applicant, and 57 bags (weighing 28 mound) were found in the truck. All accused were arrested, and Gutka/Manpuri samples were taken and

later confirmed to be harmful for human consumption as per the Food Laboratory report. The case was registered under Sections 4, 5 & 8 of the Sindh Gutka and Manpuri Act, 2019.

3. Learned counsel for the applicant contended that the applicant was merely driving the car as a taxi and had no knowledge of the contraband material allegedly found in it. It was submitted that the car was being used for commercial purposes and the applicant had just dropped passengers in Sukkur and was returning home. He was falsely implicated after refusing to pay a bribe to the police. It was argued that the prosecution failed to produce any independent witnesses, relied only on interested police personnel, and did not establish exclusive possession. Furthermore, the confiscation of the vehicle was termed arbitrary and excessive, especially as the applicant was not proven to be the owner of the recovered Gutka/Manpuri. Lastly, the learned counsel for the Applicant has prayed for allowing the Criminal Revision Application.

4. Learned APG for the State supported the impugned judgment, asserting that the applicant was caught red-handed driving the car loaded with banned substances. It was emphasized that the Food Laboratory analysis confirmed the substances to be harmful. The prosecution maintained that safe custody of samples and proper testing protocols were followed. The APG further argued that as the contraband was being transported in the vehicle under the control of the applicant, the vehicle itself became an instrument of crime and its confiscation was legally justified under the provisions of the Gutka and Manpuri Act. Lastly, the learned APG prayed for dismissal of the Criminal Revision Application.

5. I have carefully considered the submissions advanced by the learned counsel for the Applicant as well as the learned Additional Prosecutor General

for the State. I have also meticulously examined the available record. Upon a thorough review of the material on record, it appears that the Applicant was tried by the learned trial Court for an offence under Section 8 of the *Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019*. He was convicted and sentenced to three years of rigorous imprisonment along with a fine of Rs. 200,000/-. Additionally, his vehicle—a Toyota Corolla bearing Registration No. ATN-197, Chassis No. NZE140-2049854, Engine No. Y098295, Model 2010—was ordered to be confiscated. The Applicant challenged the impugned judgment dated 04.11.2022 by filing Criminal Appeal No. S-60 of 2022 before this Court. The appeal was dismissed vide judgment dated 08.12.2022, and the conviction by the learned trial Court was upheld, albeit with a modification: the sentence was reduced to the period already undergone by the Applicant, and the fine was reduced from Rs. 200,000/- to Rs. 50,000/-. With regard to the confiscation of the vehicle, it is noted that the vehicle is registered in the name of the Applicant, Muhammad Aamir, son of Muhammad Hashim. Since the Applicant asserts ownership of the said vehicle, it becomes necessary to examine the applicability of Section 517 of the Code of Criminal Procedure (Cr.P.C.) in this context as follows:-

517. Order for disposal of property regarding which offence committed : (1) When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding whiter any offence appear to have been committed or which has been used for the commission of any offence.

(2) When a High Court or Court of Sessions makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried into effect by the [District Officer (Revenue)].

(3) When an, order is made under this section such order shall not, except where the property is livestock or subject to speedy and natural decay, and save as provided by subsection (4), be carried out for one month, or, when an appeal is presented, until such appeal has been disposed of.

(4) Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions of sub-section (1) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court; engaging to restore such property to the Court if the order made under this section is modified or set aside on appeal.

Explanation : In this section the term “property” includes in the case of property regarding which an offence appear to have been committed, not only such property as has been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise.

A plain reading of Section 517 of the Code of Criminal Procedure reveals that it empowers a criminal court to pass appropriate orders regarding the disposal of property or documents involved in a case upon the conclusion of an inquiry or trial. The underlying objective of this provision is to ensure the judicious management of case-related property in a manner that balances the interests of justice, public interest, and the rights of individuals. Section 517 contemplates four principal modes for the disposal of such property:

- **Destruction**
- **Confiscation**
- **Delivery to the Person Entitled**
- **Other Lawful Means of Disposal**

The phrase “*make such order as it thinks fit*” confers broad discretionary powers upon the Criminal Courts to determine the appropriate method of disposal of property or documents connected with the case. However, this discretion is not unfettered. It must be exercised with due regard to legal norms,

principles of natural justice, and the specific facts and circumstances of each case. The court's decision should reflect a balanced approach, ensuring that the disposal neither causes undue hardship nor contravenes the intent of justice. However, the present case falls within the ambit of the *Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019*; therefore, the disposal of the case property must be governed in accordance with the provisions of the said Act, read with Section 517 of the Code of Criminal Procedure, 1898. Section 2(x) of the Act, 2019 defines the term "*property*", while Section 13 deals specifically with the forfeiture of assets belonging to an offender found guilty of offences under Sections 4, 5, 6, and 7 of the Act. Conversely, Section 517 of the Cr.P.C. provides protection to the rights of individuals who are the lawful owners or entitled possessors of property, including vehicles, and mandates that no order of confiscation be passed unless the prosecution proves the owner's knowledge of or complicity in the commission of the offence. A perusal of the record reveals that the learned trial Court ordered the confiscation of the subject vehicle without affording the Applicant an opportunity of hearing specifically on the issue of confiscation, and without assigning any reasons for such an order. Since the Applicant was not granted an opportunity to be heard in this regard, the fundamental right to a fair trial—embodied in the principle of *natural justice* and enshrined under Article 10-A of the Constitution of the Islamic Republic of Pakistan, 1973—stands violated.

It is also a matter of record that the learned trial Court did not pass any order under Section 13 of the *Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019*, with respect to the forfeiture of assets belonging to the Applicant. Therefore, in the absence of a proper application of mind and non-fulfilment of the essential ingredients

stipulated under Section 13 of the said Act, the order directing confiscation of the vehicle is legally unsustainable. Consequently, the property order contained in the impugned judgment dated 04.11.2022, insofar as it pertains to the confiscation of the vehicle, is improper and vitiated by material irregularity.

6. For the foregoing reasons, the property order incorporated in the impugned judgment dated 04.11.2022, relating to the confiscation of the Toyota Corolla car bearing Registration No. ATN-197, Engine No. Y098295, Chassis No. NZE140-2049854, Model 2010, is hereby set aside. The learned trial Court is directed to release the subject vehicle to the Applicant in accordance with law.

JUDGE