

ORDER-SHEET  
IN THE HIGH COURT OF SINDH, KARACHI  
Spl. Cr. Acquittal Appeal No. 54 of 2017  
Spl. Cr. Acquittal Appeal No. 55 of 2017

Date of hearing	Order with signature of Judge
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Spl. Cr. Acquittal Appeal No. 54 of 2017

Director, Directorate General of  
Intelligence & Investigation FBR. .... Appellant.

Versus

Tafzeel Ahmed Shah. .... Respondent.

Spl. Cr. Acquittal Appeal No. 55 of 2017

Director, Directorate General of  
Intelligence & Investigation FBR. .... Appellant.

Versus

Abid Aziz & another. .... Respondents.

Date of hearing  
as well as of short order: 11.09.2019

Appellant Director, Directorate General of Intelligence & Investigation FBR  
through Mr. Ashique Ali Rana, Special Prosecutor Customs.

Respondents Tafzeel Ahmed Shah and Abid Aziz in both the Spl. Cr. Acquittal  
Appeals through Mr. Aqil Ahmed, advocate for respondent.

## J U D G M E N T

**FAHIM AHMED SIDDIQUI, J:-** Through this single judgment,

both the captioned special acquittal appeals are being disposed of as both are directed against one and the same judgment. By filing these appeals, the appellant / Department has questioned the legality and propriety of the impugned judgment dated 24-08-2017, passed by the learned Special Judge (Customs & Taxation), Karachi in Case No. 02/2010 (State vs. Tafzeel Ahmed Shaha & others). Through the impugned judgement, the learned trial Judge

acquitted the respondents from the charge, as such the instant appeals were preferred.

2. Facts in brevity are that the F.I.R. was lodged on some tip that M/s. Five Star Chemicals, Karachi have imported 2 x 20 containers containing some mis-declared goods which would be cleared from MCC, PaCCs (QICT). On such information, action was taken and the said containers were put on electronic hold and detained. The said containers were imported by Gul Fraz of M/s. Five Star Chemicals and when the containers were physically examined, some mis-declared electronic goods were recovered instead of 44,000 Kgs of sodium sulphate and in this way duty and taxes to the tune of Rs. 27,97,681/- was evaded.

3. After usual investigation, the respondents were sent up for trial through a final report on which cognizance was taken by the trial Court. The trial Court completed the requisite formalities and framed charge against the respondents, which was denied by them and they claimed for trial after pleading not guilty. The trial commenced and after examining the prosecution witnesses and giving opportunity of hearing, the trial Court came to conclusion that the prosecution could not establish the charge; hence impugned judgment was passed and the respondents were acquitted.

4. The learned Special Prosecutor argued the matter at length. Briefly his contention is that the trial Court erred in holding that the respondents are innocent without considering the real facts and circumstances. The prosecution has established the charge through credible evidence but the same was not considered by the learned Special Judge. The respondents being the clearing agents are fully responsible for the imported goods. The prosecution produced sufficient documentary evidence to establish the charge against the respondents. The impugned judgment is required to be set aside and the respondents be convicted accordingly.

5. On the other hand, the learned defence counsel overwhelmingly opposed the instant criminal acquittal appeals by submitting that there is no wrong in the impugned judgment. The prosecution could not establish the charge against the respondents. The very important document in the hands of the prosecution was in the shape of GD, which was filed by the importer himself as such none from the office of clearing agents is responsible for the same. In the end, he submits that both the special criminal acquittal appeals are required to be dismissed.

6. I have heard the arguments and scanned the record of the case under the able assistance provided by the learned Special Prosecutor and the defence counsel. It is a well settled principle that in case of acquittal the doctrine of double innocence comes to play part. The prosecution is required to establish its case on rather a strong footings during acquittal appeal filed by them. In the instant case, the prosecution could not point out any discrepancy in the impunity judgment, which itself speaks volumes regarding the flaw and fault of the prosecution case as against the respondents. It is the admitted position that GD was placed by the importer himself; therefore, the respondents are having no hand regarding the same as well as the prosecution witnesses also could not bring forth anything during the deposition, which may go against the respondents. In these circumstances, I am of the considered view that there is no misreading or non-reading of evidence by the trial Court is available on the record. Resultantly, there remains no other alternate but to dismiss the instant special criminal acquittal appeals; hence the same are dismissed through my short order dated 11-09-2019 and these are the reasons for the same.

Dated:\_\_\_\_\_

J U D G E