

IN THE HIGH COURT OF SINDH, KARACHI

Special Criminal Appeal No. 03 of 2018

The Director, Directorate General of
Intelligence & Investigation, FBR,
Karachi.

....

Appellant.

Versus

Muhammad Junaid.

.....

Respondent.

Date of hearing as well
as short order

: 17.09.2019

Appellant The Director, Directorate General of Intelligence & Investigation,
FBR, Karachi through Mr. Ashiq Ali Anwer Rana, Special Prosecutor Customs.

Respondent Muhammad Junaid through Mr. Zain A. Jatoi, advocate

J U D G M E N T

FAHIM AHMED SIDDIQUI, J:-

Through the instant appeal,

the appellant department impugned the Order dated 10-01-2018 passed by the learned Special Judge (Customs and Taxation), Karachi in Case No. 130/2017. Through the impugned order, the learned Special Judge issued directions to release all the personal articles belonging to the respondent except the property involved in the criminal case (i.e. the case properties).

2. The contextual facts of the case are that some credible information was received that owner / partner of M/s. K.K. Metal Industries, Sialkot in association with Customs Bonded Carrier M/s. Saif-ur-Rehman & Brothers, Karachi are involved in the clandestine removal/smuggling of Mobile Phones, Tablets, LED TVs and other misc. electronic goods under the garb of computer broken parts. On such tip off, the customs officials intercepted a trailer bearing Registration No. TKB-682, loaded with 'IX20' Container No. PONU-0673711, at an open yard located at off Mai Kolachi Road, Karachi. It was noticed by the raiding party that the seals of the container were broken

and the same was stuffed mobile phones, tablets, LED TVs and other electronic goods, which were removed from the container and under the process of loading in a Shehzore Mini Truck bearing Registration No. KP-9342. From the spot two persons were arrested namely Adnan, trailer driver and Muhammad Junaid available in a Honda Vezel pilot car bearing Registration No. BG-1072.

3. The learned Special Prosecutor submits that the impugned order is patently illegal as the respondent is one of the accused and he was available there in a pilot car and supervising the act of transferring the goods from the trailer to the mini truck. He submits that the prosecution has no objection for releasing/returning the personal belongings recovered from the respondent but his car and the Pakistani currency recovered from the car should not be released to the respondent. According to him, as per provisions of Section 168 of Customs Act 1969, the said vehicle and currency recovered ought to be confiscated.

4. Mr. Zain A. Jatoy, learned counsel for the respondent, submits that the respondent was shown to be available in the car at the time of alleged raid; as such the car as well as all the other personal belongings ought to be restored to the respondent. He emphatically submits that the respondent has nothing to do with the alleged offence and it was just by chance that he reached at the spot at the time of alleged raid committed by the Customs officials. He submits that recovery of Pakistani currency is no offence under the Customs laws as Pakistani currency cannot be smuggled. He contends that the car of the respondent was neither used for removal of goods nor it is the case of prosecution that any smuggled item was recovered from the car of the respondent. According to him, actually the respondent has not committed alleged offence; as after the incident, the department initiated adjudication, which was ended in favour of the respondent and his all personal belongings

including licensed pistol, recovered amount of Rs. 8,98,000/- and Honda Vezel Car were ordered to be restored to him. Mr. Jatoi supplied a compendium and draws attention towards the Order-in-Original and Order of the Tribunal available in the compendium, which verifies the contention of Mr. Jatoi.

5. I have heard the arguments advanced by either side and have gone through the available material placed on the record or supplied during the course of arguments. In response to a query, Mr. Rana, the learned Special Prosecutor admits that neither the recovered currency nor the vehicle of the respondent was made case property. It is also the admitted position that nothing from the purported smuggled articles was recovered from the car of the respondent. The learned Special Prosecutor emphasises upon Section 168 of the Customs Act, 1969 and submits that the goods recovered from the respondent i.e. Honda Vezel Car and currency are liable to be confiscated. Nevertheless, it is not deniable that none of the properties belonging to the respondent was either smuggled goods or used in the process of smuggling. The confiscation is only allowed as per clause 8 of Section 156 or sub-section (1) & (2) of the Customs Act, according to which only the smuggle goods and/or packaging of smuggle goods as well as conveyance used for the smuggle goods can be confiscated. In the present case, none of the properties belonging to the respondent falls under the definition of smuggled goods, while the car of the respondent was also not used as a conveyance for the purpose of transportation of the smuggled goods. In the existing circumstances, the personal properties of the respondent cannot be confiscated; as such the impugned order was passed in accordance with the law and the same does not require any interference of this Court under the appellate jurisdiction. Hence, instant special criminal appeal was dismissed through a short order dated 17-09-2019 and these are the reasons for the same.

J U D G E