

IN THE HIGH COURT OF SINDH AT KARACHI

CR. APPEAL NO.301/2018

Applicant : Muhammad Shafiq,
Present in person on date of hearing.

Respondent : The State,
through Mr. Malik Sadaqat, Special Prosecutor,
SSGC.

Date of hearing : 26.09.2018.

Date of order : 26.09.2018.

J U D G M E N T

Salahuddin Panhwar, J: Appellant assailed judgment dated 10.05.2018 passed by learned District Court concerned in Sessions Case No.1732/2017 arising out of FIR No.35/2017, u/s 15 and 17 of Gas (Theft Control and Recovery) Act 2016, PS SSGC, Karachi.

2. Complainant Abdul Rasheed Kalwar, Deputy Manager, SSGC reported that on 25.07.2017 he alongwith other team members reached at Plot No.8/2, Willayatatabad, Manghopir Road, Pak Colony, Karachi and found a Biryani House/shop being run; on checking found rubber pipe connected with service / auxiliary line of sui gas through which gas was being theft whereby a 32 nozzle stove, two 24 nozzle stoves and a 18 nozzle stove were being illegally torched/fired; such illegal connection was removed by their team and two 24 nozzle stoves, a 18 nozzle stove and 7/8 feet rubber pipe were taken into possession, the person available in that Biryani house was

apprehended who on enquiry disclosed his identity as Muhammad Shafi and other formalities were completed.

3. To substantiate their case, prosecution examined official witnesses. In their statements they have contended that they found illegal gas connection by installing rubber pipes for Biryani house; on enquiry the person sitting there disclosed that Biryani Center was being run by him; he disclosed his identity as Muhammad Shafiq; they recovered nozzles, stoves and other material and disconnected the gas connection.

4. I have heard appellant and learned Special Counsel for SSGC.

5. It is pertinent to mention that onus was always on the prosecution/SSGC to establish that it was the appellant who *himself* had *either* tampered with auxiliary pipelines of gas or had abetted such tampering. It was never the case of prosecution (SSGC) that present appellant was *ever* found tampering with auxiliary pipelines or that he (*appellant*) had abetted the alleged *illegal connection* but that on enquiry (at time of raid), the person (*present appellant*), sitting there, had disclosed that Biryani Center was being run by him. In such eventuality, the prosecution (SSGC) was legally obliged to have brought some more material than mere *fingering* at appellant to be guilty of **abetment** which legally requires establishing any of following three things (Section 107 PPC):

- i) *First. Instigates any person to do that thing, or*

- ii) *Secondly. Engages with one or more other person or persons in any conspiracy for the doing of that thing, if an act or illegal omission takes place in pursuance of that conspiracy, and in order to doing of that thing; or*
- iii) *Thirdly. Intentionally aids, by any act or illegal omission, the doing of that thing;*

Thus, *least* to prove a charge of **abetment** in such like offences, the prosecution (SSGC) would always be required to prove *least* that it was the **charged person** who had been beneficiary of such *illegal* connection (theft) which *legally* cannot be proved unless it is proved that appellant is owner (*controlling person*) of *premises* or *business* where benefit of illegal connection is being availed. Such *duty* though already exists upon prosecution (SSGC) but a little more caution is required when the rights of SSGC to recover compensation / damages are protected by the *very* Act itself.

6. Now, would revert to merits of the case, per record, neither ownership of that Biryani house was established nor any efforts were taken in that regard but mere disclosure of appellant was the *only* material on basis whereof the appellant was sought to be convicted for offence of **tampering** or **abetting** tampering with auxiliary pipelines. Such claim would never be sufficient to convict one for such offence particularly where such person denies the charge thereby requiring the prosecution (SSGC) to bring more material on record in that regard.

7. When confronted with such legal position, the Special Counsel for SSGC contends that witnesses are officers of the company hence their statements are credible and cannot be

discarded. I am not impressed with such contention nor such contention could *legally* be accepted because **Criminal Administration of Justice**, it is never the person but the *intrinsic* value of statement which matters. Mere status of one to be **official** would never attach a *presumption* of truth thereto nor would be sufficient to detract the court from adjudging it on well settled principles of law. Reference may be made to the case of Abid Ali & 2 others v. State 2011 SCMR 208 wherein it is held as:-

21. To believe or disbelieve a witness all depends upon intrinsic value of the statement made by him. Even otherwise, there cannot be a universal principle that in every case interested witness shall be disbelieved or disinterested witness shall be believed. It all depends upon the rule of prudence and reasonableness to hold that a particular witness was present on the scene of crime and that he is making true statement. A person who is reported otherwise to be very honest, above board and very respectable in society if gives a statement which is illogical and unbelievable, no prudent man despite his nobility would accept such statement.

22. As a rule of criminal jurisprudence, prosecution evidence is not tested on the basis of quantity but quality of the evidence. It is not that who is giving the evidence and making statement; what is relevant is what statement has been given. It is not the person but the statement of that person which is to be seen and adjudged.

In short, if the veracity and credibility of a witness is examined on his status it would frustrate the whole scheme of the criminal administration of justice. The claim of the SSGC is that appellant was running the Biryani house and such gas connection was illegally obtained hence he has committed theft but record is silent about the ownership of the premises or any private witness to state that Biryani house was under the control of appellant. Thus, in absence of such

material, it would never be safe to maintain a conviction for the charged offences. These are the detailed reasons of the short order dated 26.9.2018 whereby appeal was allowed.

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J U D G E