

THE HIGH COURT OF SINDH, KARACHI

Spl. Cr. Revision Appl. No. 85 of 2022

[Dawood-ur-Rehman versus The State]

Applicant : Dawood-ur-Rehman son of Hafeez-ur-Rehman, through Mr. Khalid Mehmood Khan Kiyani, Advocate.

The State : Through Mr. Amer Zeb Khan, Assistant Attorney General for Pakistan.

Dates of hearing : 03-11-2022

Date of decision : 03-11-2022

ORDER

Adnan Iqbal Chaudhry J. - This revision under section 185-F of the Customs Act, 1969 is to challenge the order dated 04-03-2022 passed by the learned Special Judge (Customs & Taxation) in Case No. 94/2021 returning the charge-sheet against the Applicant in FIR No. 18/2020 for submission before the Special Court constituted under the Control of Narcotic Substances Act, 1997, [CNSA].

2. The FIR was lodged on 19-07-2020 on seizing Ketamine concealed in rice-bags packed for purposes of export. The offence alleged was of smuggling, punishable under clauses (8) and (89) of section 156(1) of the Customs Act, 1969 read with sections 3/4 of the Anti-Money Laundering Act, 2010. The interim charge-sheet classified Ketamine as a psychotropic substance and added section 9(c) of the CNSA to the offences alleged, thus submitting the charge-sheet before the Special Court CNS. However, SRO 446(I)/2020, published on 20-05-2020, whereby Ketamine had been included in the Schedule of psychotropic substances under the CNSA, had apparently been withdrawn the next day by notification dated 21-08-2020. Resultantly, the Special Court CNS did not accept the charge-sheet. Eventually, pursuant to order dated 23-04-2021 passed in C.P. No. D-4145/2020,

the charge-sheet was submitted before and accepted by the Special Judge (Customs & Taxation).

3. While the case was pending before the Special Judge (Customs & Taxation), Ketamine and its salts were again included in the Schedule of psychotropic substances under the CNSA *vide* SRO 1350(I)/2021 dated 15-10-2021; hence the impugned order by the learned Special Judge that it no longer had jurisdiction.

4. Heard learned counsel and perused the record.

5. On 18-07-2020, when the alleged smuggling was detected, Ketamine was not classified as a psychotropic substance in the Schedule to the CNSA. While smuggling Ketamine at that time may have constituted an offence of smuggling 'goods' under the Customs Act, 1969, it was not the smuggling of a 'psychotropic substance' and the question of an offence under the CNSA did not arise. It was only on 15-10-2021 *vide* SRO 1350(I)/2021 that Ketamine was included as a psychotropic substance under the CNSA. The only question is whether the subsequent inclusion of Ketamine as a psychotropic substance in the Schedule to the CNSA would make the previous smuggling of Ketamine an offence under the CNSA so as to attract the exclusive jurisdiction of the Special Court constituted under the CNSA ?

6. Article 12(1)(a) of the Constitution of Pakistan provides protection against retrospective punishment by stipulating that "No law shall authorize the punishment of a person for an act or omission that was not punishable by law at the time of the act or omission." Therefore, SRO 1350(I)/2021 dated 15-10-2021, whereby Ketamine was added to the Schedule of psychotropic substances under the CNSA to make its smuggling an offence under the CNSA, operates only prospectively from 15-10-2021. It is not applicable retrospectively to the smuggling allegedly committed by the

Applicant prior to 15-10-2021.¹ Since the offending act was not an offence under the CNSA at the time it was committed, the Special Judge (Customs & Taxation) retains jurisdiction to try the matter. That being said, this revision is allowed and the order dated 04-03-2022 passed by the Special Judge (Customs & Taxation) in Case No. 94/2021 (FIR No. 18/2020) is set-aside.

JUDGE

¹ *Tasneem Jalal v. Deputy Director ANF* (2020 SCMR 454); *Muhammad Fazal v. Saeedullah Khan* (2011 SCMR 1137).