

IN THE HIGH COURT OF SINDH, KARACHI
Special Criminal Revision Application No. 116 / 2018

Date

Order with signature of Judge

Applicant:

**The State,
Through Mr. Syed Mehmood
Alam Rizvi, Advocate.**

Respondent:

**Kamran,
Through Mr. Mohsin Shahwani,
Advocate.**

Date of hearing:

06.03.2023.

Date of Order:

06.03.2023.

J U D G M E N T

Muhammad Junaid Ghaffar, J: Through this Special Criminal Revision Application, the Applicant has impugned Judgment dated 19.05.2018 whereby, the Respondent has been convicted till rising of the Court with fine of Rs. 1.5 million. Learned Counsel for the Applicant submits that this Revision is in respect of the quantum of fine as according to him, the duties and taxes involved were much higher and therefore, the learned trial Court ought to have imposed an appropriate fine. On the other hand, Respondent's Counsel submits that insofar as the quantum of duties and taxes is concerned, an adjudication order has been passed against the present Respondent, therefore, this Revision does not merit any consideration.

I have heard both the learned Counsel and perused the record. Admittedly, the Respondent pleaded guilty before the trial Court and the learned trial Court came to the following conclusion.

"From the admission of accused, it is established/proved without any shadow of reasonable doubt that the prosecution has proved the case against accused Kamran son of Mohammad Siddiq as alleged. The accused even did not deny the truthfulness of the charge leveled against him. Moreover, under Article 113 of Qanoon-e-Shahadat Order "facts admitted need not to be proved". 1, therefore, left with no option but to hold that the accused guilty of an offence punishable under section 156(1)(14-A) of the Customs Act. 1969.

For awarding sentence I would like to take into consideration the object of the provision of section 35 Cr.PC. which provides that the purpose of sentence is two

fold, firstly it would create such atmosphere which could become a deterrence for the people who had inclination towards crime, secondly to work as a medium in reforming the offender. sentence should be neither so severe that offender could out of frustration become desperate and hardened criminal nor it should be so mild that it encouraged to commit offence again. In judging adequacy of sentence certain other factors, such as, circumstances in which offence was committed, age and character of offender and injury to individuals and the society, etc., were also to be considered. Reliance is placed on 2006 P.Cr. LJ. 954.

I, therefore, keeping in view of the above reasons and taking the lenient view convict the accused Kamran son of Mohammad Siddiq till rising of the Court and fine of Rs. 1500,000/- (Rs. Fifteen hundred thousand only). If the fine amount is not paid the accused shall suffer S.I for two months.”

On perusal of the above observations, it appears that the learned trial Court after going through the record and considering the fact that the Respondent pleaded guilty has exercised its jurisdiction in terms of Clause 14-A of Section 156(1) of the Customs Act 1969 which provides that upon conviction a person may be liable to imprisonment for a term which may extend to 10 years but shall not be less than five years **or** to fine **or** to both. Admittedly, the Applicant is not aggrieved by the sentence, whereby, the Respondent was convicted till rising of the Court; but only to the extent of quantum of fine. Since, there is no limit as to the minimum or maximum quantum of fine provided in law, in my view, the learned trial Court has exercised its discretion fairly in imposing fine and merely for the fact that quantum of duties and taxes was higher, there is no mandatory requirement for the Court to impose the fine proportionately with the amount of duty and taxes alleged to have been evaded.

In view of the above, no case for indulgence is made out, hence, this Special Criminal Revision Application is dismissed.

Arshad/

J U D G E