

# **IN THE HIGH COURT OF SINDH AT KARACHI**

Criminal Acquittal Appeal No.461 of 2022

Appellant : M/S Sui Southern Gas Company Ltd.  
For the appellant : Malik Sadaqat Khan, advocate  
Date of hearing : 09.05.2023  
Date of Order : 09.05.2023

## **ORDER**

**AMJAD ALI BOHIO. J-** In the present Criminal Appeal filed under section 417 Cr.P.C, the appellant, M/S Sui Southern Gas Company Ltd., has challenged the validity of the judgment dated 03.06.2022 rendered by the learned Sessions Judge, Karachi Central (Gas Utility Court). The judgment pertains to Sessions case No. 1208/2017, which arises from FIR No. 60/2017 lodged on 27.09.2017 at Police Station SSGC Karachi. The case involves allegations of offences under sections 15, 17, and 24 of the Gas (Theft Control and Recovery) Act, 2016. The impugned judgment resulted in the acquittal of the respondent, Tahir Ali.

2. According to the FIR, the case involves Complainant Ramesh Kumar, Deputy Manager of Sui Southern Gas Company (SSGC), who, accompanied by his team and a police party from the SSGC Police Station, discovered an illegal Sui Gas connection at Plot No. 2347/3, KESC Block-Q, Umer Farooq Colony, North Nazimabad, Karachi. This illegal connection was being utilized for commercial purposes in the production of "Til Kay Ladoo." Promptly taking action, the complainant's team, with the assistance of a technical team, disconnected the illegal connection and confiscated several items, including a 2.5 KVA Generator, one stove equipped with 24 nozzles, two burners with six stars each, and an eight-foot-long rubber pipe. During the course of the inquiry, the complainant discovered that the owner of the aforementioned factory was Tahir Ali, son of Qurban Ali. Subsequently, an FIR was lodged, leading to the investigation of the case and the subsequent trial against the accused named above.

3. After the submission of police papers and documents, the charge was framed, to which, the accused pleaded not guilty, opting for a trial.

Subsequently, the prosecution presented its evidence by examining complainant Ramesh Kumar (PW-1), Muhammad Majid (PW-2), Muhammad Arif (PW-3), and Sub Inspector Abid Shah (PW-4) during the course of the trial. Following the conclusion of the prosecution's evidence, the statement of the accused under Section 342 of the Code of Criminal Procedure (Cr.P.C) was recorded. In this statement, the accused denied the allegations made against him in relation to the aforementioned offence.

4. After considering the arguments presented by both parties, the trial court acquitted the respondent. The grounds for acquittal were that the prosecution was unable to establish the respondent's ownership or any connection with the business, whether as an owner or as a tenant. Consequently, the prosecution failed to prove the charge against the respondent. Dissatisfied with this judgment, the appellant has filed the present appeal against the acquittal.

5. During the initial stage of the appeal hearing, the counsel for the appellant has argued that the prosecution presented the complainant as a witness who confirmed the details mentioned in the FIR. The complainant stated that an illegal gas connection was discovered at Plot No.2347/3, KESC Block-Q, Umer Farooq Colony, North Nazimabad, Karachi, which was being used for commercial purposes. The complainant specifically identified the respondent, Tahir Ali, as the owner of the said commercial business. The raiding party also seized various items, including a 2.5 KVA Generator and other materials. However, the trial court failed to properly consider the prosecution's evidence and consequently rendered the impugned judgment. The counsel argues that this judgment is not sustainable and should be set aside.

6. After considering the arguments presented by the appellant's counsel, I have carefully reviewed the evidence provided by the prosecution. It is evident that the complainant implicated the respondent based on statements from individuals present at the scene, who claimed that Tahir Ali was the owner of the business or factory where the illegal gas connection was allegedly being used. However, it is important to note that the investigating officer (I.O) did not gather any evidence regarding the ownership of the property in question. Furthermore, during the trial, the I.O admitted that he was unaware of the

ownership details of the premises. Similarly, the complainant also failed to provide the names of the witnesses who informed him about Tahir Ali's ownership of the factory. As a result, the very foundation of the allegations against the accused, upon which he was implicated, was not proved. In a similar case, *Waseemullah v. The State* (2016 SCMR 1282), the issue of lack of evidence regarding ownership arose, and the Honorable Supreme Court observed that *“a specific question has been asked by us to learned DAG and Investigating Officer (present in court), who have stated that no evidence has so far been collected in connection with the premises from where alleged extraction of the gas was being carried.”*

7. Based on the aforementioned observations and the principles established in the case of *Waseemullah v. The State* (2016 SCMR 1282), it is clear that the prosecution has failed to prove the ownership or connection of the accused with the premises where the alleged gas theft took place. The failure to produce such a crucial piece of evidence undermines the entire case and weakens the prosecution's ability to establish the accused's guilt beyond a reasonable doubt.

8. Based on the analysis of the prosecution evidence, including the testimony of the complainant and the investigating officer, it is apparent that the trial court has not misinterpreted or overlooked any substantial evidence that could establish the accused's guilt. The investigating officer's failure to collect evidence regarding the ownership of the business at the location of the incident, coupled with the complainant's inability to establish the accused's connection to the premises, has resulted in a lack of credible evidence to prove the commission of the offence. This negligence has not only caused a loss to the public exchequer but also highlights the need for the concerned authorities, including SSGC and the relevant police/investigating agency, to exercise vigilance and gather incriminating evidence to substantiate the charges in cases of gas theft. Without concrete evidence linking the accused to the premises, it becomes difficult to establish their involvement in the alleged offence.

9. In light of the above discussion, it is evident that the accused, Tahir Ali, has been implicated based on hearsay evidence, and no direct or independent

evidence has been presented to establish his connection with the commission of the offence.

10. The judgment passed by the trial court, which acquitted the accused, is supported by valid and well-founded reasons. Therefore, considering the lack of merits in the present appeal, it is dismissed *in limine*.

**J U D G E**