

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.471 of 2024

(The State Vs. Shaikh Kaiser Waheed and another)

Date	Order with signature of Judge(s)
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Before:

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

Date of hearing and Judgment:- 05.12.2024

Mr. Mohsin Ali Khan, Special Prosecutor ANF

Ms. Uroosha Memon advocate for respondent No.1

Mr. Muhammad Nadeem Qureshi advocate for Respondent No.2

Along with Mr. Muhammad Salman advocate.

J U D G M E N T

Adnan-ul-Karim Memon, J:- The State appealed the trial court's judgment dated 22.04.2024, which allowed the accused's application to return 744 cartons of medicine and ordered the preparation of an inventory in the presence of the SPP, defense counsel. An excerpt of the order is reproduced as follows:-

" In the light of the above facts and circumstances, this application filed by the applicant/accused persons namely is allowed on furnishing solvent surety in the sum of Rs. 1000,000/- (Rupees one million only) and P.R bond in the like amount. The I/O is directed to return 744 cartons to the applicant/accused persons namely Sheikh Qaiser Waheed and Raheel Qaiser. Moreover, the Nazir of this Court is directed to prepare proper inventory in the presence of learned SPP, learned defense counsel, and I/O of this case."

2. The learned counsel for the appellant argues that the trial court's order is illegal, unlawful, and hasty. The respondents are not the real owners of the 744 cartons of medicine. The I.O. has collected documents indicating that Medisure Laboratories Pakistan Private Limited and Medisure Biotech were involved in the transaction. The learned SPP argued that a large quantity of prohibited tablets was recovered from the container and is liable for confiscation under Section 32 of the CNS Act, 1997. The learned SPP for the appellant requests the appeal's allowance.

3. The learned counsel for respondent No.1 argues that the respondents are reputable pharmaceutical manufacturers who have always followed rules and regulations. The ANF FIR alleges smuggling activities at the South Asia Pakistan Terminal (SAPT) and the seizure of 755 cartons, of which only 11 are relevant to the case. The remaining cartons contain perishable medicinal items. The learned counsel emphasized that the F.I.R. disclosed that the

bags containing the recovered narcotic tablets were sealed for analysis, while the remaining cartons were put back in the container and sealed, therefore he requested this court to order the release of these 744 cartons unrelated to the crime to prevent significant financial loss. The counsel for the respondents requests the appeal's dismissal.

4. We have heard the learned counsel for the parties and perused the record with their assistance.

5. The main question is whether the 744 cartons of medicines seized from container BMOU-4619084 are considered case property necessary for the trial. And whether these cartons fall under the purview of Sections 6,7,9(3)Sr. No. 9, 14/15 of the Control of Narcotics Act, justifying its detention by the ANF Police.

6. It appears from the record that on January 1, 2024, an FIR was lodged by ANF Clifton Police regarding the recovery of 755 cartons, including 11 cartons of prohibited tablets of Clonazepam, from container BMOU-4619084. A memo was prepared, and the case properties were brought to the police station. In the intervening period, the respondents applied for the release of 744 cartons of medicine. The trial court allowed the application, finding no incriminating articles in the 744 cartons, as disclosed by the Investigating officer, and ordered its release on a surety bond of Rs. 1 million.

7. Much emphasis has been laid on the point that a large quantity of prohibited tablets were recovered from the container including unrelated 744 cartons of medicine and are liable for confiscation under Section 32 of the CNS Act, 1997.

8. To understand the aforesaid proposition it is expedient to have a glance at Section 32 of the CNS Act, 1997. Sub-section (2) of Section 32 of the Control of Narcotic Substances Act, 1997, states that any narcotic drug, psychotropic substance, or controlled substance that is lawfully imported, transported, manufactured, possessed, or sold, along with or in addition to any narcotic drug, psychotropic substance, or controlled substance liable for confiscation under sub-section (1), and the receptacles, packages, vehicles, vessels, and other conveyances used in carrying such

drugs and substances, shall also be liable for confiscation. However, no vehicle, vessel, or other conveyance shall be liable for confiscation unless it is proven that the owner knew of the offense.

9. Sub-section (2) of Section 33 of the Control of Narcotic Substances Act, 1997, outlines the procedure for dealing with articles seized under the Act when the offender is unknown or cannot be found. In such cases, the Special Judge is empowered to inquire into the liability of the seized articles for confiscation and can order confiscation accordingly.

10. It appears from the record that the Investigating Officer was specifically asked by the trial court whether any incriminating articles were recovered from 744 cartons of medicines, and he replied in negative. If this is the position of the case to keep the medicines in the container if the final disposal of the case the same medicine can perish and it is appropriate to release the 744 cartons of medicine on superdari however the trial court can direct the production of the medicine by preparing proper inventory if the subject medicine are believed to be case property, which seems to be not the case of the prosecution.

11. Coming to the rule position of the case, Rule 22.16 of the Police Rules, 1934, outlines the procedures for handling case property, Police must seize relevant items and mark them with details of the case and the person from whom they were seized. Seized items must be stored securely until further legal action. Items connected with cases sent for trial or suspicious/unclaimed items ordered by a Magistrate must be submitted to headquarters or outposts. Detained material must be presented to a Magistrate for early disposal or release on security. The Police Rules require that case property be stored in the Malkhana and recorded in Register No. XIX. The police and prosecution are responsible for ensuring the safe custody of the property, including its secure transportation to laboratories for analysis. This procedure guarantees the integrity of the case property until it is presented in court.

12. Section 516-A of the Code of Criminal Procedure (CrPC) outlines the court's authority to order the custody and disposal of

property involved in a crime. The court can order the safekeeping of the property during the inquiry or trial. If the property is perishable, the court can order its sale or disposal after recording necessary evidence if the same is case property. The court can order the preparation of samples of drugs for safekeeping and destruction of the remaining portion.

13. With regard to the case law on the subject, it is to be noted that in the case of Qamar Zaman v. Waseem Iqbal and 5 others (2004 SCMR 1209), the Supreme Court held that the gold articles said to be the belonging of the deceased were neither got identified under law nor exhibited in the trial, and as such, reliance on the same and awarding capital punishment would not at all be justified. In the case of State of Islamic Republic of Pakistan through Deputy Attorney: General for Pakistan v. Kenneth Marshal and 2 others (2005 SCMR 594) it was held that the prosecution miserably failed to produce and exhibit the case property though many opportunities were afforded by the trial Court; in such circumstances, it was rightly held by the High Court that there was no possibility of the accused being convicted and continuation of trial against them would be an abuse of the process of the Court. In the case of Gul Dast Khan v. the State (2009 SCMR 431), it was held that it would not be out of place to mention that the case property in that case has neither been exhibited nor produced at the trial, causing a dent in the prosecution's case. In the case of Amjad Ali v. State (2012 SCMR 577) it was held that admittedly the case property, the stepney of the car was never produced during trial to verify as to whether it could contain such a huge quantity of the narcotics in question; the referred elements of doubt surrounding the prosecution case have led us to hold that the prosecution has failed to prove its case beyond reasonable doubt to sustain conviction.

14. The aforesaid case laws highlight the importance of producing and exhibiting case property in criminal trials. In these cases, the failure to produce or identify case property led to acquittal or reversal of convictions. This court emphasized that the absence of crucial evidence, such as case property, can weaken the prosecution's case and raise reasonable doubt.

15. Further, the case property is always relevant for the decision of the case because if the narcotics are recovered from any accused, the same should have been shown in court, and then the report of the laboratory would be helpful to the prosecution. Likewise, in narcotics cases, the conviction and sentence are based on the possession of the narcotics or on aiding, abetting, or associating with the narcotics offenses. In that eventuality, it is incumbent upon the prosecution to produce the case property before the court to show that this is the narcotics/case property that was recovered from the accused's possession. The defense counsel may then request the court to de-seal and weigh the case property. However, in the present case Investigating officer has prima facie opined that 744 cartons of medicine are not incriminating articles however the Special Prosecutor ANF insists that these 744 cartons of medicine can be said to be the case property though not narcotic substance, we do not agree with him on the aforesaid proposition for the simple reason that if these 7344 cartons of medicine are not prohibited medicine the same can not be kept in a container to perish however the trial court has taken care of this aspect of the case by its releasing to the applicant/accused persons namely Shakih Qaiser Wahee and Raheel Qaiser by directing the Nazir to prepare proper inventory. This order seems to be reasonable and does not justify our interference.

16. We do not find any infirmity in the impugned order and call for interference. This Criminal Appeal is misconceived and is hereby dismissed.

17. These are the reasons for our short order dated 05.12.2024 when the Criminal Appeal was dismissed.

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For the reasons to be recorded later on, this Criminal Appeal is
dismissed.

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