

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No. 731 of 2024

Appellant : The State (Through Prosecutor General Sindh)
through Mr. Neel Parkash Permar, Asst. P.G.
Sindh.

Respondent : Shahzad Ghulam Hussain
through Mr. Muhammad Ali Akbar, Advocate.

Date of hearing : 02.05.2025

Date of judgment : 07.05.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J. – The present appeal is directed against the impugned order dated 28.09.2024 passed by the learned Additional Sessions Judge-XI, Karachi South, whereby the accused Shehzad Ghulam Hussain was acquitted of the charges arising out of First Offence Report (FOR) No. 04/2024.

2. The facts giving rise to the appeal are that on 08.06.2024, Ashfaq Ali Memon, Field Officer, Wildlife Department Karachi (hereinafter referred to as “the complainant”), lodged the aforementioned FOR against the accused, alleging that a team of the Anti-Narcotics Force (ANF), headed by Inspector Zubair Soomro, recovered packets of Gughar Gum / Gughloo (Mukhul Myrrh) from Container No. CBIIU-380608-0, grey in color, located at the Karachi Gateway Terminal Limited (KGTL). The said container was being exported by the accused. It was further alleged that the gum had been illegally extracted from a plant species protected under the law.

3. Upon completion of investigation, the complainant submitted a charge sheet dated 08.08.2024 before the learned Sessions Court, Karachi South, alleging commission of offences under Sections 9(1)(a) & (c), 21(1) & (2), 49, and 53 read with Section 71 of the Sindh Wildlife Protection, Preservation, Conservation and Management Act, 2020 (hereinafter “the Act of 2020”), as well as Section 3(5) of the Pakistan Trade Control of Wild Fauna and Flora Act, 2012 (hereinafter “the Act of 2012”).

4. The matter was transferred to the Court of the learned Additional Sessions Judge-XI, Karachi South, for summary trial in terms of Section 60 of the Act of 2020, which adopts the procedure laid down in Chapter XXII of the Code of Criminal Procedure, 1898. Upon conclusion of the trial, the learned trial court, through the impugned order dated 28.09.2024,

acquitted the accused of all charges. Being aggrieved and dissatisfied with the said acquittal, the State has preferred the instant appeal through the Prosecutor General, Sindh.

5. Learned APG contended that the impugned order of acquittal is legally flawed as it fails to consider material facts recorded during investigation and overlooks the statutory principles governing fair trial under the Sindh Wildlife Protection, Preservation, Conservation and Management Act, 2020 (hereinafter “the Act of 2020”). He emphasized that the extraction process of Mukul Myrrh (*Commiphora wightii*), the subject matter of the proceedings, was carried out in a brutal manner, resulting in the destruction of over 7,000 wild *Commiphora* plants, which are protected species under the Fourth Schedule to the Act of 2020. Learned counsel argued that the statutory presumptions under Sections 38 and 39 of the Act of 2020 were wrongly disregarded by the trial court. These provisions shift the burden of proof upon the accused once unlawful possession or trade of wildlife products is established, and also deem such wildlife products to be the property of the Government, unless rebutted by lawful authority or permit. He submitted that under Section 2(xi) of the Act of 2020, the definition of wildlife includes vegetation, and that the trade, possession, or extraction of any species listed under the Fourth Schedule without due authorization is explicitly prohibited under Section 21 of the Act. The trial court, it was argued, failed to appreciate these statutory prohibitions and erred in acquitting the accused despite the recovery of a substantial consignment of Gughral resin being prepared for export. It was further submitted that the order of the trial court directing release of the seized consignment is legally unsustainable, as it contravenes the mandatory requirements for international export under the Pakistan Trade Control of Wild Fauna and Flora Act, 2012 as well as the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). The consignment was intercepted at Karachi Gateway Terminal Limited (KGTL) while in the process of illegal export, without obtaining the requisite CITES permit or No Objection Certificate (NOC) from the Ministry of Climate Change, which constitutes a clear violation of Pakistan’s international obligations and domestic wildlife legislation. Learned counsel concluded that the trial court failed to appreciate the seriousness of the offence, the ecological harm caused, and the implications for Pakistan’s global conservation commitments, particularly in the context of climate change and biodiversity protection. He prayed that the impugned order be set aside, and any other relief deemed just and proper may be granted in the interest of justice.

6. Conversely, learned counsel for the Respondent/Accused supported the impugned judgment and submitted that the subject product, i.e., Mukul Myrrh (*Commiphora wightii* resin), is not listed in any Appendix of the CITES Convention, and therefore, its export is not prohibited by the Federal Government under international trade controls. He further contended that the accused was not involved in the extraction of resin from any protected Gughral plant and was only engaged in exporting the resin, a commercially available herbal product widely used in pharmaceutical and cosmetic industries. It was submitted that the resin is naturally exuded by the plant, and its passive collection does not constitute unlawful extraction or destruction of vegetation.

7. From perusal of material placed on the record, it transpired that learned trial Court, in the impugned order dated 28.09.2024, observed that the accused was charged under Section 3(5) of the Pakistan Trade Control of Wild Fauna and Flora Act, 2012 (hereinafter referred to as "the Act of 2012"), on the allegation that he attempted to export Mukul Myrrh (*Commiphora wightii* resin) without obtaining a valid CITES permit, as mandated by Section 5 of the Act of 2012 read with Rule 5 of the Pakistan Trade Control of Wild Fauna and Flora Rules, 2018 (hereinafter "the Rules of 2018"). The defense, however, asserted that the resin in question was not included in any of the Appendices to the CITES Convention, and that the extension of Rule 5 to regulate the trade of non-listed species was ultra vires the enabling provision of Section 3(1) of the Act of 2012. The Trial Court concurred with the defense plea, holding that the phrase "non-listed species" as introduced in Rule 5 of the Rules of 2018 exceeds the statutory mandate conferred under Section 3 of the parent statute, and that penal provisions must be construed strictly. In arriving at this conclusion, the Trial Court placed reliance on the judicial pronouncements in *Pakistan v. Aryan Petrochemical Industry (Pvt.) Ltd., Peshawar* (2003 SCMR 370); *Muhammad Uneeb Ahmed v. Federation of Pakistan* (2019 MLD 134 Lahore); and *State Bank of Pakistan v. SECP* (2018 CLD 177). Furthermore, the Trial Court observed that the prosecution failed to prove the origin of the Mukul Myrrh resin from any protected area or Government land, and that no cogent evidence was brought on record to establish illegal extraction, possession, or trade of the resin in violation of the Sindh Wildlife Protection, Preservation, Conservation and Management Act, 2020.

8. The prosecution sought the conduct of summary trial against the accused for offences alleged under Sections 9(1)(a) and (c), 21(1) and (2),

49, and 53 read with Section 71 of the Sindh Wildlife Protection, Preservation, Conservation and Management Act, 2020 (hereinafter referred to as "the Act of 2020"), as well as under Section 3(5) of the Pakistan Trade Control of Wild Fauna and Flora Act, 2012 (hereinafter referred to as "the Act of 2012").

9. The relevant statutory provisions are reproduced herein below for ready reference:

“9. (1) The actions which are prohibited in the protected area and any wildlife habitat including:

(a) hunting, shooting, killing, injuring, trapping, snaring and poisoning of wildlife found therein;

(b)....

(c) cutting, girdling, damaging, injuring or destroying floral resources or burning and collecting the plants or part thereof; (d)....

(e).....

(f)

(g).....

(h)

(i)

(2) Any person who contravenes or breaches any of the acts under sub-section (1) shall be dealt as mentioned in Third Schedule.

(3)The Department with the previous sanction of competent authority may, for scientific purpose, improvement of aesthetic, scenic beauty, and in the larger public interest, relax to undertake any of the acts prohibited under sub-section (1), particularly in wildlife protected areas, subject to fulfillment of the requirements provided in section-86;”

“49. No person shall be in possession of any wild animal or captive bred, dead or alive, trophy or meat, blood of wild animals unless he be in possession of a certificate of lawful possession granted in respect thereof by the officer not below the rank of Assistant Conservator Wildlife in this behalf:

Provided that the certificate of lawful possession is to be obtained for each wild animal or captive bred or part thereof to be kept in possession, on payment of prescribed fee for prescribed period and shall be renewed for further period.”

“53. No person shall trade in captive breed animals, wildlife trophies or meat, blood thereof, or process or manufacture goods or articles from trophies or meat, unless he be in possession of a valid license issued under the provisions of this Act.”

“71. Whosoever contravenes or attempts to contravene the provisions of this Act or the rules and regulations made thereunder shall be punishable as provided in Third Schedule.”

10. A bare reading of Section 9(1)(a) and (c) of the Sindh Wildlife Protection, Preservation, Conservation and Management Act, 2020

(hereinafter “the Act of 2020”) reveals that clause (a) prohibits the killing, injuring, poisoning, or harming of wildlife within protected areas or habitats, whereas clause (c) prohibits the cutting, damaging, or collecting of floral resources, including plants or any part thereof, in such designated zones.

11. If it is established that the resin of Mukul Myrrh (*Commiphora wightii*) was obtained through forced extraction methods, such as mechanical injury (tapping or "tukka") within a protected area or designated wildlife habitat, then such extraction would constitute an injury to a floral resource within the meaning of Section 9(1)(c). The term “floral resource,” as employed under the Act, encompasses plant species such as *Commiphora*, and the resin, being an organic secretion, would legally qualify as a “part thereof” of the plant. Consequently, its collection under injurious or unauthorized conditions would fall within the ambit of clause (c). In terms of Section 9(2), such prohibited acts attract penal consequences as prescribed under the Third Schedule to the Act, thereby giving rise to criminal liability. However, it is pertinent to note that certain resin-producing species, including *Commiphora*, also exude resin spontaneously under natural conditions, such as seasonal transitions, injury by animals or wind, or senescence. Such resin may be collected passively from the bark surface, ground, or dried branches, without inflicting harm upon the living plant. In addition, mechanical or traditional tapping, also known as controlled incision, involves the use of shallow, minimal cuts made on mature plants during specific climatic conditions. These incisions are often regulated by forestry authorities, carried out with precision, and designed to ensure sustainability and regrowth. This method is non-destructive, minimizes plant mortality, and allows for resin harvesting while preserving plant viability. Further, in some arid regions, resin can be harvested from naturally detached bark or fallen branches, which does not involve the destruction of live flora. In modern agroforestry practices, rotational tapping models have also emerged to balance economic utilization with conservation imperatives. Such methods are consistent with the principles of CITES and prevailing conservation law, which discourages destructive or extractive practices that may endanger protected flora.

12. In light of the existence of both prohibited and permissible methods of resin collection, the prosecution bears the burden to affirmatively establish the following elements:

1. *That the Commiphora plant(s) in question were located within a protected habitat or government-owned land;*
2. *That the resin was extracted through unauthorized or injurious methods, as opposed to natural or permissible collection practices; and*
3. *That the accused was directly or constructively involved in such injurious extraction activity.*

In absence of proof of these essential elements, penal liability under Section 9(1)(c) cannot be sustained.

13. Section 38 of Act of 2020 embodies a statutory presumption that shifts the burden of proof onto the accused in cases where the offence occurs in secrecy or without eyewitnesses: "When any offence takes place at a time and a place that nobody could have witnessed, the onus of proof of not committing such an offence shall lie on the accused." This is an exception to the general rule of criminal law, where the burden lies on the prosecution to prove guilt beyond reasonable doubt. Section 38 reverses this burden in specific factual situations. In offences under the Act of 2020 direct evidence is not expected, as Section 38 permits the court to presume that the offence was committed, unless the accused can rebut the presumption and prove lawful conduct. In case of possession the accused must affirmatively prove that the resin was lawfully sourced by showing: it was naturally exuded or not artificially tapped; it was harvested from cultivated plants on private or non-protected land; it was not obtained by injury or chemical means. Section 38 applies squarely where: the alleged injury to protected flora occurred in wilderness or remote locations; the accused is found with the product derived from such injury (resin); and the act was not or could not have been witnessed by any person. These parameters do not squarely attract the case of prosecution as prosecution case is silent about damage to protected flora to connect the accused with it through the presumption under section 38, which could warrant rebuttal and discharge of onus of proof on the part of the accused.

14. The rigors of Sections 49 and 53 of the Act of 2020 are not absolute and must be read subject to recognized legal and constitutional exceptions. These include, inter alia, situations where the wildlife product in question, such as resin, is derived from non-protected, cultivated, or domesticated sources outside the scope of the Fourth Schedule or specific notifications; where possession or trade is incidental, traditional, or de minimis in nature; where the item is so processed that it no longer retains its biological identity; where the accused lacks the requisite mens rea or is merely an innocent carrier; where valid authorizations or export permits

have been obtained under competent Federal statutes such as those administered by the concerned Ministry; where there exists a void or vagueness in the applicable notification or licensing framework; and where application of the penal provisions, in absence of clear and proximate illegality, would contravene Article 10-A of the Constitution and settled principles of strict statutory construction, particularly in relation to subordinate legislation that seeks to impermissibly expand the scope of the parent Act. In the absence of sufficient evidence to establish the violations under the Act of 2020, the charges under sections 9(1)(a) & (c), 49 and 53 do not reflect peculiar facts of the prosecution case in hand.

15. The view of the Trial Court regarding rule 5 of the Pakistan Trade Control of Wild Fauna and Flora Rules 2018 is based on principles settled by the superior courts of the country. In the case of *Pakistan v Aryan Petrochemical Industry Pvt. Ltd. Peshawar* (2003 SCMR 370), a full bench of the Supreme Court held, *"it is a settled principle that a statutory rule cannot enlarge the scope of the section under which it is framed, and if a rule goes beyond what the section contemplate, the rule must yield to the statute"* In the case of *Muhammad Uneeb Ahmed v Federation of Pakistan* (2019 MLD 134 Lahore), it was held, *"It is settled that power is controlled and regulated by the parent statute, and the rule-making authority cannot extend it beyond the delegated legislative power granted by the parent statute"*. In the case of *State Bank of Pakistan v SECP* (2018 CLID 177), Supreme Court held, *"It is well established that a penal statutory provision must be strictly construed, and if such a provision is open to two or more interpretations, the interpretation that does not extend the penalty/liability should be preferred over one that does."*, therefore, it does not require any interference. Moreover the Honorable Supreme Court of Pakistan in the case of *Muhammad Imran v. The State* (2020 SCMR 857), was pleased to hold, *"It is by now well settled that the benefit of a single circumstance, deducible from the record, intriguing upon the integrity of prosecution case, is to be extended to the accused without reservation."*

16. Given the above, I have come to the conclusion that the impugned order do not reflect illegality, whatsoever hence it does not require interference through this acquittal appeal, therefore it is maintained. The acquittal appeal in hand is dismissed accordingly.

J U D G E