

IN THE COURT OF SPECIAL JUDGE (CUSTOMS & TAXATION)
KARACHI

Ex-13

Case No. 329 of 2013

BEFORE : Sadaf Asif
(Judge)

The Stateversus1.Rizwan Yousuf s/o Muhammad Yousuf
2. Muhammad Rizwan Ishaq s/o Muhammad Ishaq
3. Muhammad Rafiq Shahzad s/o M. Hashim
4. Idrees Khan s/o Gul Siddique
5. Qaiser Ali s/o Abdul Sattar
6. Satrah Khan s/o Khaloo Khan

Crime No.ASO-147/2013-Haqrs
U/S. 2(s) 32,121,128 & 178 of the Customs Act,
1969, punishable under Clauses 8,14,63,64,89,90,
of Section 156(1) ibid and sub para (iv) of para 11
of CGO 10/2012 dated 31-7-2012

Mr. Shaukat Hayat, Advocate for accused No. 1,2, 3 and 5
Mr. Nadeem Azhar, Advocate for accused No. 4
Mr. Noorin, Advocate for accused No.6
Mr. Ashiq Ali Anwar Rana, Special Prosecutor for the State

Judgment
28-01-2020

(1) Accused (1) Rizwan Yousuf son of Muhammad Yousuf, (2) Muhammad Rizwan Ishaq son of Muhammad Ishaq, (3) Muhammad Rafiq Shahzad son of Muhammad Hashim, (4) Idrees Khan son of Gul Siddique, (5) Qaiser Ali son of Abdul Sattar and (6) Satrah Khan son of Khaloo Khan were sent up to face trial for the offences above mentioned, registered by Model Customs Collectorate of Preventive Custom House, Karachi.

(2) Brief facts as alleged in the FIR are that a credible information was received that M/s. Water Link Pakistan (Pvt) Ltd, who is an authorized bonded carrier illegally engaged in breaking open the ISAF/NATO/US ARMY retrograde containers which were being exported from Afghanistan to USA through Port Qasim. In pursuance of the said information a raiding team was organized on the night intervening 6/7-12-2013 which maintained incognito surveillance on the main road leading to Port Qasim near the Fast Track. The raid was carried out at the Water Link Yard next to DHL Yard and it was found

that without touching the seal and by removing rivets from one of the doors of the container therein, taking out the goods, and re-riveting the containers. Door of a container No. LMSU-1400780, Seal No. PCCSS 3456188 loaded on trailer No. TLQ-857 was half opened and few people were busy inside the container. Two persons were immediately apprehended, and on cursory search, the container was found to contain 02 huge wooden pallets and a few parts of US APC scattered on the container's floor. Beside that, a generator, a gas welding torch and other tools like hammers, etc., were also found, all of which were seized. Further search of the yard yielded the recovery of two empty containers bearing Nos. USAU 2059417, Seal No. PCCSS 1264300 and MBIU 8260838, Seal No. PCCSS 1264301 one completely empty whereas, the other had identical broken wooden boxes and green bags containing sand and mud. The Customs seals of both these containers were intact and the containers were opened by removing the rivets. Certain other accused were found hiding stacked container inside the yard, were accordingly nabbed. Container No. LMSU-205941 and MBIU 8260838 were shifted on a hired trailer along-with accused persons and were brought to ASO Hqrs NMB Wharf in presence of mashirs. During process of examination of container No. LMSU1400780 all three containers, two trailers and goods therein have been seized. The notices were issued against the culprits. The FIR was lodged.

- (3) After usual investigation challan was submitted before this court against the accused (1) Rizwan Yousuf son of Muhammad Yousuf, (2) Muhammad Rizwan Ishaq son of Muhammad Ishaq, (3) Muhammad Rafiq Shahzad son of Muhammad Hashim, (4) Idrees Khan son of Gul Siddique, (5) Qaiser Ali son of Abdul Sattar and (6) Satrah Khan son of Khaloo Khan to face trial in the above case.

(4) Charge vide Ex-2 was framed against the accused persons to which they pleaded not guilty and claimed trial vide their pleas as Ex-2 A to Ex-2/F.

(5) In support of its case prosecution has examined Pw-1 Shabbir Ahmed (complainant) vide Ex-3, Pw-2 Javed Raza vide Ex-4, Pw-3 Javed Akhtar Mughal vide Ex-5, Pw-4 Faridullah vide Ex-6 and Pw-5 Shahid Ibrahim Dasti vide Ex-7 (Investigating Officer).

(6) Vide Ex-8 learned Special Prosecutor closed the side of the prosecution to lead further evidence.

(7) Statements of the accused persons under section 342 Cr.P.C. were recorded as Ex-9 to Ex-14 in which they denied the allegations of the prosecution and claimed themselves to be innocent. However, neither the accused persons examined themselves on oath nor produced any witness in their defence.

(8) On the basis of evidence available on record the following points arise for determination:-

Points

1) Point No.1 "Whether the accused persons in connivance with each other involved in pilfering of ISAF /NATO/US ARMY retrograde Cargo/containers?"

2) Point No.2 "What offence, if any, the above named accused or any one of them did commit?"

(9) Mr. Ashiq Ali Anwar Rana, learned Special Prosecutor for the State has vehemently contended that the accused persons are caught red handed from the yard of Waterlink, the bonded carrier where the subject containers were illegally parked on the trawler. As per the learned
the accused persons are involved in removing of ISAF/NATO

USA Cargo from the container while exportation of the same. The evidence of all the prosecution witnesses are connecting the accused persons in the present crime as such the prosecution has succeeded in bringing the guilt of the accused persons at home and they may be punished in accordance with law.

(10) The learned counsel Mr. Shaukat Hayat for accused namely Rizwan Yousuf, Rizwan Ishaq, Rafiq Shahzad and Qaiser Ali has contended that the accused persons are innocent and have falsely been implicated in this case who are mere employees of M/s. Water Link Pakistan (Pvt.) Limited. As per the learned Counsel M/s. Waterlink had not dealt the said consignment or have any concern with the retrograde goods. As per the learned Counsel Ghulam Mustufa, the Director of the Waterlink Company was also nominated as an accused in this case but I.O. had illegally exonerated him from this case. The accused persons had not pilfered any goods as alleged in connivance with each other. He also argued that it is an admitted position on record that no Government taxes or revenue losses are involved in this case, therefore, neither section 2(s) nor section 32 or 32-A of the Customs Act, 1969 are applicable to the present case. As per the learned counsel there is a violation of section 103 Cr.P.C. as no private witness was associated at the time of raid and both the musheers are subordinates of the complainant. It has further been argued that no notice at the time of arrest was served nor any mushirnama was prepared of the recovered case property. As per the learned Counsel the accused himself lodged three F.I.Rs. for the said offences and they are not the main culprits. Learned counsel further argued that there is no violation of CGO 10/2012 and the owner/Director of the M/s. Water Link Company has been exonerated in this case by the I.O. As per the learned Counsel accused persons just reached the yard of the Waterlink Company on the information of mishandling with the said Cargo at Matiyari to check and see the situation when suddenly Customs team reached there

and by pick and choose implicated the present accused in this case. Lastly learned Counsel requested that the accused persons may be acquitted from the charge.

11. Mr. Shoukat Hayat, the learned counsel for violation of section 103 Cr. P.C relied upon a case of Moulvi Mushtaq vs. the State 1998 P.Cr.L.J 679. So far as non-production of case property the defence counsel has relied upon a case reported as Iqbal vs. The State PTCL 1985 (CL) 47 and Islamic Republic of Pakistan vs. Kenneth Marshall 2005 SCMR 594 and Nadir Khan vs. The State PTCL 1987 CL 383. As per the learned counsel to convict an accused strong and unimpeachable evidence is required and a single doubt in the prosecution's case must be resolved in favour of accused. In this connection the learned counsel relied upon a case of Azeem Khan vs. Mujahid Khan 2016 SCMR 274, M. Mansha vs. The State 2018 SCMR 772, Mst. Asia Bibi vs. The State PLD 2019 Supreme Court 64 and Salim Javed Durani vs. The State 2005 P.Cr. L.J 22.

(12) The learned counsel Mr. Nadeem Azhar for accused Idrees Khan has contended that the accused is innocent and has falsely been implicated in this case. He further argued that the accused is the labourer and have no concern with the alleged goods, therefore, accused may be acquitted from the charge.

(13) The learned counsel Ms. Norin for accused Sathra Khan has contended that the accused is innocent and has falsely been implicated in this case. She further argued that the accused is the driver and have no connection regarding this case. The accused is not the owner of vehicle which was confiscated by the customs authority, therefore, accused may be acquitted from the charge.

(14) I have considered the arguments advanced on behalf of the parties and have gone through the material available on record. It will be

appropriate to consider the respective contentions of the learned counsel for the parties in the perspective of the points framed here-in-above. My findings on the above points with reasons are therefore as under:

Point No.1 & 2.

(15) Since both these points are interlinked with each other and evidence is also common as such I propose to discuss both these points simultaneously.

(16) In order to prove the case Pw-1 Shabbir Ahmed vide Ex-3 deposed in his evidence that in between 6th and 7th December he was posted at ASO as Preventive Officer. Credible information was received by Wasif Malik, Assistant Collector constituted a team comprising Javed Mughal, Najam Hameed, Javed Raza, Sepoy Abdul Jabbar, complainant and other officials. They reached at Water Link Yard next to DHL Yard near to Fast Track at Port Qasim, Karachi. M/s. Waterlink Pakistan Limited is authorized bonded carrier. The above referred team entered into the yard the container was lying there found one door of a container No. LMSU 1400780 loaded on trailer No. TLQ-857 was half opened and few people were busy inside the container. They arrested two persons namely Rizwan Yousuf and Qaiser Ali on the spot. The container was found to contain huge wooden pallets and few parts of US APC's scattered on the containers floor, i.e. generator, a gas welding torch, other tools like hammers etc, empty wooden crate/pallets, earth/Mud filled bags wooden pallets, Cardboard pallets empty, Drill/Grinder machine, Grip pliers, and rivets. On further search of the yard the recovery of two empty containers, one completely empty whereas the other were containing sand, mud and green bags in wooden boxes. After recoveries were made musheernama was produced which he produced as Ex-3/A, thereafter they reached at their office and prepared inventory which he

produced as Ex-3/B where they prepared inventory from 8.00 am to 4.00 dated 7-12-2013 at ASO Headquarters. They reached at ASO headquarter and prepared musheernama the container was examined bearing No. LMSU-1400780 the goods were recovered they already mentioned in detail in the musheernama which he produced as Ex-3/C. Thereafter he served notice under Section 171 of the Customs Act, 1969 upon (1) accused Rizwan Yousuf, (2) Muhammad Rizwan Ishaq, (3) Muhammad Rafiq Shahzad, (4) Idrees Khan, (5) Qaiser Ali and (6) Satrah Khan which he produced as Ex-3/D. Thereafter he lodged the FIR which he produced as Ex-3/E it bears his signature. He identified the accused persons present in court as same.

(17) During cross examination of Pw-1 Mr. Shabbir Ahmed, the complainant he fully supported the prosecution's case and categorically deposed that when the raiding party reached M/s. Water Link Yard they found one container bearing No. CMSU 1400780 loaded on a trawler No. TLQ-857 the doors which were opened and accused Riazwan Yousuf and Qaiser Ali were present inside the container. The complainant/raiding party found parts of APC's scattered on the containers floor, i.e. generator, a gas welding torch, other tools like hammers etc, empty wooden crate/pallets, earth/Mud filled bags wooden pallets, Cardboard pallets empty, Drill/Grinder machine, Grip pliers, and rivets, inside the container. The Defence did not challenge the above specific deposition/evidence of the complainant and as such admitted the recovery of certain items from inside the container and involvement of the above named two accused persons.

(18) Pw-2 Javed Raza vide Ex-4 has deposed in his evidence that on 6-12-2013 he was posted at ASO Customs Karachi as IPS. At about 10.30 p.m. they reached at Port Qasim he along-with ACP Wasif Malik, SPS

Najam Hameed, SPS Javed Mughal, SPO Sardar Yousuf, IPS Umar Shah, Jamadar Abdul Jabbar, at M/s. Water link Yard near DHL. One container was half opened and other items were lying Sentry Cabin Mobile security booth, Generator, Hammer, Grip pliers. The seal was intact and the rivets were removed of the container and some parts also laying in the container. Mr. Shabbir Ahmed seizing officer arrested accused Rizwan Yousuf and Qaiser Ali on the spot. Another container was searched and found wooden pallets, empty cardboard pallets, filled with earth/mud bags were lying. Another container was also searched found wooden pallets filled with earth/mud bags. All three containers' seals were intact and rivets were removed. Thereafter, Seizing Officer prepared inventory and mashirnama.

(19) In cross examination Pw-2 Javed Raza also fully supported the evidence of the complainant on all material aspects.

(20) Pw-3 Javed Akhtar Mughal vide Ex-5 deposed in his evidence that during the month of December 2013 he was posted as In-charge Investigation and Prosecution Branch of the Custom House, Karachi. A credible information was received to the effect that M/s. Water Link (Pvt.) Limited a bonded carrier is indulging in pilferage of retrograde goods which were being transshipped from Afghanistan to USA. **It was further disclosed in the information that the act of pilferage is being carried out very skillfully by the management of M/s. Water Link.** The modus operandi evolved was that the goods were removed from the container without touching the seals and by removing the rivets of the door of the containers. He was asked to accompany the raiding party as such they reached the premises of M/s. Water Link situated on Port Qasim Road next to Fast Company. Incognito surveillance was maintained around the area and certain suspicious movement was

witnessed within the premises of M/s. Water link. The raiding party raided the yard and found a container which was opened and was in the process of being pilfered by two persons inside the container namely Rizwan Yousuf and Qaiser Ali. We also found certain tools like the welding machine, hammer, generator, gas welding torch, etc., lying scattered on the floor of the container and on the ground. In the container there are two huge wooden boxes and a sentry post. The wooden boxes contained parts of different sorts which were later on found to be that of Armored Personnel Carrier (APC). Both the accused above named were nabbed. Two similar containers were also found in the same yard which contained nothing except an empty wooden box as explained above and bags of mud and sand. Other container had bags mud and sand. **The search of the yard yielded the presence of four other persons who were hiding in between and around the stacks and roof of the containers. All of them namely Rizwan Yousuf, Rizwan, Ishaq, Qaiser Ali, Idrees, Sattara Khan, Muhammad Rafiq Shahzad were arrested accordingly.** The containers were removed to the ASO headquarters for further legal proceedings under escorts of SPO Mr. Javed Raza and Jabbar PWs/mashir. The process of examination was carried out at the ASO Headquarter NMB Wharf which took considerable long time and subsequently the inventory of the goods were prepared and the FIR of the case was lodged. Notice under Section under Section 171 of the Customs Act, 1969 were served upon them by the complainant. The case was sent for investigation to I&P Branch and he assigned that case to Mr. Faridullah Khan. Mr. Faridullah Khan was asked to carry out the entire investigation, leaving the part of the investigation which dealt with FBI, US Consulate, SECP , ODRP and NLC, etc., to him. The investigation was initiated and (late) Mr. Ghulam Mustafa, owner of M/s. Water Link obtained pre-arrest bail from Hon'ble High Court and

He was interrogated at length and was asked to

produce certain vital documents which he promised to produce but unfortunately have not been produced as yet. He exchanged emails with FBI who were also carrying out the same investigation, he also wrote letter to SECP in order to find out the ownership of M/s. Water Link, he also wrote letter to M/s. NLC to find out if the containers were stopped en-route or not as per CGO 10. He produced some of the emails/letter exchanged between witness and FBI as Ex-5/A/1 to Ex-5/A/3. He also produced letters addressed to Commanding Officer of NLC and reply thereof wherein he has categorically stated that no container stopped en-route from either Torkhum or Chamman as Ex-5/B/1 to Ex-5/B/3. He produced letter of SECP as Ex-5/C/1. Thereafter the investigation was taken away from Preventive Collectorate to facilitate/favour the accused persons. He also produce documents (computer copies) of US Department of justice FBI wherein they have alleged 7 million dollars worth of pilferage on the part of M/s. Water link as Ex-5/D. He also produced an email address to Mr. Furqan Ali Mustafa owner of M/s. Water Link wherein they have categorically held M/s. Water Link responsible for pilfering US goods worth US \$ 6998209.04 approx 7. Million this is so far the amount of 10 containers only whereas they suspected 23 containers to be pilfered by M/s. Water Link. The investigation at the US end is still continuing.

(21) Pw-4 Faridullah vide Ex-6 deposed in his evidence that investigation of this case was assigned to him on 9-12-2013 and he was posted at I & P Branch Custom House, Karachi SPO. Six accused persons namely Rizwan Yousuf, Rizwan Ishaque, Muhammad Rafiq Shahzad, Qaiser Ali, Muhammad Idrees and Sathara Khan were present in custody. He interrogated them thereafter he recorded the statement of Pws- Shabbir Ahmed, Javed Raza, Javed Mughal, Wasif Malik and Abdul Jabbar. During investigation M/s. Waterlink (Pvt) Limited the original

transit documents containing, original GD form-A and US Consulate letter of truck bearing registration No. TLQ-857 and TLC-514 which he produced as Ex-6A/1 to Ex-6A/9 and Ex-6B/1 to Ex-6B/15. Investigation of this case was supervised by In-charge I&P branch Mr. Javed A. Mughal, he was part and parcel of the investigation conducted by him, beside this the witness himself conducting investigation from US ODRP, FBI, US Consulate, SECP and NLC. He submitted interim challan in this Court on 23-12-2013. He identified six accused persons namely Rizwan Yousuf, Rizwan Ishaque, Muhammad Rafiq Shahzad, Qaiser Ali, Muhammad Idrees and Sathara Khan present in Court are same.

(22) During cross examination of Pw-4 Faridullah Khan who was the first investigating officer and recorded the statements of witnesses stated that Mr. Javed Ahmed Mughal supervised the investigation. This witness also supported the evidence of the complainant as well as Javed Ahmed Mughal on all material aspects. Nothing could be brought on record to shatter the prosecution's case, during cross examination by the defence and his evidence remained unchallenged on material particular. This witness in cross examination also clearly implicated accused Sathara Khan being owner of the truck No. TLQ 857 and stated that he was present when the raid was conducted at Water Link and this accused diverted this truck to that yard by deviating from the route. In cross examination the witness further stated that this truck was supplied to M/s. Water Link by transporter Urdru Gul in Afghanistan who is the real uncle of accused Idrees Khan. In view of this specific deposition which has not been challenged as false, of this witness, this accused is also fully found involved in crime being link & interested with the cargo & his presence is not surprising.

(23) Pw-5 Shahid Ibrahim Dashti vide Ex-7 deposed in his evidence that on 2-10-2014 this case was assigned to him for investigation. He produced copy of the order wherein he was appointed as Investigating Officer as Ex-7/A. MCC Preventive upon information so received conducted a raid on a yard owned by M/s. Water Link (Pvt) Limited Pakistan situated at Port Qasim with regard to pilferage so took place from three retrograde containers meant for USA as reverse cargo. As per FIR lodged by M/s. MCC Preventive at the time of raid they found one container of which one door was opened and two persons were inside the containers however the contents of the containers were found to be two wooden boxes and few parts of US APC, Generator and Gas welding torch and some tools. The raiding team also found two more containers at yard M/s. Water Link out of which one container was found completely empty and the remaining one was found with mud and sand. Since all three containers were exist from Chamman and Thorkhum while declaring generators and other parts/goods relating to US Forces at Afghanistan. MCC Preventive after investigation so carried out on account of pilferage took place filed interim challan on 23-12-2013 which was finally treated as final challan by this Court. Thereafter M/s. Water Link approached to the FBR, Islamabad and requested for transfer of investigation subsequently the Board were pleased to entrust the investigation to MCC Appraisement (West) on 24-1-2014. He produced FBR letter as Ex-7/B. In order to probe further in the case in the light of above board order a team was constituted vide a letter of MCC Appraisement West dated 9-6-2014 comprising Deputy Collector, AIB and PA AIB. He produced Office Order dated 9-6-2014 as Ex-7/C. Since he was designated Investigating Officer in the case on 2-10-2014. He investigated the case and submitted supplementary report on 2-1-2015 which was also a conclusion of the committee dully approved. During investigation it was revealed that MCC Preventive in their FIR and

submitted challan did not endorse anything in terms of recovery at the time of raid as per declaration. It is pertinent to mention that M/s. Water Link had also lodged FIR with the Police Station Port Qasim alleging therein that the pilferage from the containers was carried with the connivance and involvement of one ex-employee Naeem Tariq and others associates with him nearby Matyari Hyderabad. In this regard the accused Naeem Tariq who was confined in jail custody was investigated and asked to provide incriminated documents/evidences to the effect that M/s. Water Link Pakistan (Pvt.) Limited is being involved in the crime of pilferage from the containers, who replied that since he is in jail custody and presently unable to provide any evidence as required. He further added that the requisite evidences may be provided very soon. However, the same has not so far been provided. With regard to ascertain the role of the Managing Director of M/s. Water Link Pakistan (Pvt) Limited it is stated that there is no evidence was gathered substantiating his involvement except one of the nephew (Rizwan Ishaque) of the Managing Director namely Capt. Ghulam Mustafa was found at the yard of M/s. Water Link at the time of raid so conducted. It is further added that the Police Station Port Qasim arrested few persons involved in the crime who are in jail custody however they are so far failed to report with regard to any recovery as per declaration so made in the goods declaration.

(24) This witness i.e. Pw-5 Mr. Shahid Dashti, is the second Investigating Officer who was assigned the investigation under the orders of FBR and submitted supplementary challan. In examination in chief he supported the prosecution's version to the extent of raid at M/s. Water Link Yard and recovery of incriminating goods were made from container. For some hidden purpose the investigation was transferred to him MCC Appraisement (West) on 24-01-2014. This fact is himself deposed by PW. Shahid Dashti in his examination-in-chief. Such fact of

fishy transfer is also deposed by Pw-Javed Akhtar Mughal. The evidence of PW- Shahid Dashti, reflects the image of the reason of transfer of investigation. He deposed nearly all grounds of defence pleas. In his examination in chief this witness stated that M/s. Water Link lodged the FIR at P.S. Port Muhammad Bin Qasim alleging therein that the pilferage from the container was made at Matiari Hyderabad with connivance and involvement of one ex-employee of M/s. Water Link, namely, Naeem Tariq & others & then supported by saying the FIR lodged by the Management of M/s. Water Link is afterthought. In cross- examination this witness had taken a U turn and tried to support the version/plea of the defence that pilferage was done by ex-employee Naeem Tariq at Matiari Hyderabad and tried to absolve the present accused persons from the crime. The defence did not deny the pilferage from the container but their plea is that pilferage is made at Matiari Hyderabad. It is surprising that why the management of M/s. Water Link did not report the matter at P.S. Matiari Hyderabad where the incident took place, whereas documentary evidence shows consignment crossed Hyderabad without unusual stay. The lodging of report with P.S. Steel Town under the facts and circumstances of the case appears to be managed by M/s. Water Link/accused persons. The P.S. Port Muhammad Bin Qasim how assumed jurisdiction to register the crime which was not committed within its territorial jurisdiction is also questionable.

(25) All the Pws remained consistent on main issue of recovery of Truck along-with containers from yard of M/s. Water Link Pakistan (Pvt.) limited and presence of the accused persons. The place of occurrence i.e. yard of M/s. Water Link has not been challenged as false during the course of cross-examination which is, in fact an admitted fact and arrest of the accused from the place of incident. No malice or ill motive is apparent or present to falsely implicate the present accused

persons in this case. The learned defence counsel only to one pw Javed Akhtar Mughal put the suggestion that "It is incorrect to suggest that I have malice against Malik Ex-Inspector Income Tax/ Director FIA and his brother Mr. Javed Akber SSP South due to personal grudge." A single suggestion to only one witness without any proof or relevancy does not show any enmity, grudge or ill motive on the part of the pws to falsely implicate accused persons in this case and is not worth any consideration.

(26) The very first argument of the defence's side is that there was no duty chargeable on such consignment, thus there is no loss to the government exchequer as also admitted by the pws. As per the learned counsel, the case falls neither under the definition of smuggling nor for fiscal fraud or mis-declaration causing no loss to the national exchequer. In this context provision of section 2(s) of the Act, 1969 defines smuggling is reproduced hereunder:-

2. (s) "Smuggle" means to bring into or take out of Pakistan, in breach of any prohibition or restriction for the time being in force, or en-route pilferage of transit goods, or evading payment of customs-duties or taxes leviable thereon.

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(27) Thus the argument to the extent of non-application of offence of smuggling to the present case is not correct. Not only offence of smuggling is rightly charged in this case but the matter also falls under section 129 punishable under section 156(64) of the Act, 1969.

128. Transport of certain classes of goods subject to prescribed conditions. Any goods may be transported from one part of Pakistan to another through any foreign territory, subject to such conditions as to their due arrival at the destination as may be prescribed by rules.

129. Transit of goods across Pakistan to a foreign territory- Where any goods are entered for transit across Pakistan to a destination outside Pakistan, the appropriate officer may, subject to the provisions of the rules, allow the goods to be so transited without payment of the duties which would otherwise be chargeable on such goods

Provided that the Federal Government may, by notification in the official Gazette, prohibit the bringing into Pakistan by sea, land or air in transit to a foreign territory any goods or class of goods.

64. *If any person contravenes any rules or conditions relatable to section 128 or section 129. [such person including the custodian and inland carrier shall be liable to a penalty up to twice the value of the goods and upon conviction by a Special Judge to further liable to imprisonment for a term not exceeding five years, and the goods in respect of which such offence has been committed shall also be liable to confiscation].*

(28) Before to proceed further, I would first like to discuss the FIR No. 193/2013 which M/s. Waterlink lodged with P.S. Bin Qasim. This FIR is in fact to a great extent an admission of the happening of this incident on the same date with the same consignment. Since this FIR has also been come on record by the defence side when accused's statement under Section 342 Cr.P.C was recorded by this Court therefore available to discuss and elucidate the evidence. This F.I.R, was lodged by the Manager of M/s. Waterlink Pakistan (Pvt.) Limited thus a complete and unequivocal admission that M/s. Waterlink Pakistan (Pvt.) Ltd., was entrusted for transportation as bonded carrier of the pilferage consignment.

(29) Such transit is regulated by **CGO 10/2012** dated 31-7-2012. According to sub para (ix), (x) and (xi) of **CGO 10/2012** the bonded carrier/M/s Water link (Pvt.) Limited were responsible for safe transportation of US Military Cargo which are reproduced as under:-

(ix) Transportation of the cargo from the port of entry to the port of exit in a safe and secure manner shall be the responsibility of the concerned authorized carrier.

(x) In case of any accident, emergency or sabotage on the cargo or transport until enroute to the port of exit, the authorized carrier shall immediately report the incident to the nearest Collectorate of Customs under intimation to Collector of port of entry of exit, and shall remain to be the custodian of such goods till the transfer of the custody under para-

(iv) *If the goods are found missing, stolen or remove due to any reason penal action shall be taken against the concerned persons including the carrier, authorized agent and focal person along-with recovery of the duty and taxed involved in accordance with the provisions of Customs Act, 1969.*

(30) Ex.5-B/1 produced on record is a very important document regarding tracking and monitoring record and scanned images of subject three containers. **It shows that vehicle TLQ-857 left Khair Terminal Jamrud after completion of necessary custom formalities i.e. issuance of TAT, affixing for NLC seal, scanning etc., on 9-11-2013, reached TMS Jahangira on 9-11-2013, TMS Babar Loei on 12-11-2013 and TMS Hyderabad on 13-12-2013. Vehicle reached terminal of CLBC (M/s. Water Link Pakistan (Pvt) Limited) without any unusual stoppage/prolong stay enroute but did not report to NLC scanner at Port Muhammad Bin Qasim for necessary formalities. Similarly vehicle No. TLC-514 left Chaman on 04-11-2013 and reached TMS Babar Loei on 6th November, TMS Babar Loei on 9th November and TMS Hyderabad on 10th November, 2013 vehicle reached CLBC (M/s. Water Link (Pvt) limited without any unusual stoppage/prolonged stay en-route but did not report to NLC scanner at Port Qasim for necessary formalities.**

(31) The GDs. of these three consignments produced at exhibit No. 6-A/2 till 6-A/5 show that the container US military cargo dated 10-10-2013 **undertaking by Water links.**

(32) Ex-6A/7 is a letter dated 7-10-2013 from General Services Officer, Consulate General of USA to Collector of MCC Peshawar. This is a request for clearance of US Cargo in Transit from Afghanistan **authorizing M/s. Water Link Pakistan (Pvt) Limited to transport.**

(33) Ex-6A/8 is a letter dated 7-10-2013 from General Services Officer, Consulate General of USA to Deputy Director of Custom Torkhum Border with a same request

(34) Ex-B/4 is a form-A showing name of carrier as M/s. Water Link Pakistan (Pvt.) Limited, TP application No. 749.

(35). Beside theses GDs, an Exhibit No. 6-B/6 letter dated 30-9-2013 from General Services Officer, Consulate General of USA to Deputy Director of Customs Chaman regarding submission of cargo manifest for US Cargo in transit showing the name of M/s. Water Link Pakistan (Pvt) Limited authorized to transport the said cargo.

(36) Exhibit 6-B/10 is a letter dated 4-12-2013 from M/s. Water Link Pakistan (Pvt.) Limited addressed to Additional Collector of Customs Peshawar Afghan Transit Trade, Custom House Peshawar, requesting for extension of period for additional 15 days for on board.

(37) The Exhibit 6-B-11 is a letter dated 16-12-2013 from Additional Director, Directorate of Transit Trade, Custom house Peshawar addressed to M/s. Water Link Pakistan (Pvt.) Limited in reply to the letter (above mentioned) showing the cargo reached at Karachi Port well within the stipulated time period of 15 days but could not be deported due to delay arrival of vessel. Delay condonation was granted as per Rule 11 (VIII) of CGO 10/12.

(38) These overwhelming documentary evidence corroborated by the prosecution's witnesses duly proves prosecution's case.

(39) There was no reason with the accused persons to remain present at Waterlink Pakistan (Pvt.) Limited along-with subject three containers meant for exportation to U.S.A. Accused Rizwan Yousuf, Manager Operation of M/s. Water Link (Pvt) Limited, Muhammad Rizwan Ishaq, Manager of M/s. Water Link (Pvt) Limited, Accused Qaiser Ali and Muhammad Rafiq being Supervisor & Transport Assistant, Idress Khan, broker and Sathara Khan being owner/ driver of the truck No. TLQ-587, their presence on a weekend night 6/7 12-12-2013 with generator, drilling

equipment, etc., showing at the time of raid clearly prove their involvement in the commission of offence

(40) It is also not out of place to mention that one Zahid Hussain, Manager of M/s. Waterlink, the complainant of F.I.R. 193/2013 has lodged three F.I.Rs for the same incident with the same Police Station, prima facie an attempt to make the incident complicated, suspicious and complex in order to save themselves from this case. There cannot be three F.I.Rs. for the same offence and very astonishingly by the same person with the same police station. Safe transportation of US Military Cargo from Afghanistan to Port Mohammad Bin Qasim was the prime responsibility of the accused persons. The lodging of F.I.R. against some persons does not absolve the bonded carrier from its prime duty to safely transport the cargo to its destination.

(41) So far as argument in respect of not producing case property before the court is concerned this court found such ground only technical and rigid in nature when admittedly main goods have been removed and not recovered & otherwise recovery of containers & trawlers are somewhat an admitted position and producing such containers before the court would highly be inconvenient.

(42) Another contention of the learned defence counsel in respect of not producing case property is repelled by a case law referred by the Special Prosecutor for the State i.e. The State vs. BANDA GUL reported as 1993 SCMR 311.

(43) The relevant portion is reproduced hereunder:-

"It is not in every case that the non-production of the case property is fatal to the prosecution's case. The object of production of the seized goods in the Court was to establish that these were of foreign origin, but this purpose could well be achieved through other evidence mustered by the prosecution. The High Court has not adverted to this aspect of the case. The view taken by it, therefore, cannot be upheld"

(44) One another very interesting document has come on record is the "Plea of Innocence" filed by accused Rizwan Yousuf. This written plea is again an admission that at the time of raid he along with others were present in the compound of M/s Waterlink when the customs team raided the compound. Although this plea of innocence speaks about the pilferage in some other tone but the recovery of the subject containers of NATO/ISAF from the compound of M/s. Waterlink and in presence of the accused and their arrest are an admitted positions.

(45) The learned Defence Counsel argued that Director/owner of M/s. Waterlink Pakistan (Pvt.) has been exonerated by the I.O. therefore present four accused persons who are only employees of the Company are entitled to be acquitted from this case. It has further been argued that Naeem Tariq, an ex-employee was the main culprit who committed the crime and called the present persons at the compound of the company has been let off by the I.O. This is not understandable if I.O. had wrongfully exonerated the Director (who later on also passed away), why the accused persons let it be done & why had not challenged this act of the I.O. before the Hon'ble High Court when duly represented by the legal practitioner. Not only this if some Naeem Tariq was the real culprit, an ex-employee the Company, why the accused persons had not moved an application for summoning Naeem Tariq in the Court as an accused and requesting the court to implicate him in this case.

(46) It is also interesting to note that M/s. Waterlink Pakistan (Pvt.) limited on the one hand registering the three F.I.Rs. for pilferage of the subject container, monitoring its movement, requesting the transit Collectrorate for extension of time for transportation of the subject consignment, brought it to the yard of Waterlink and on the other hand denied its role of as a bonded carrier. The question also arises if they were not bonded carrier then under what capacity they had been performing these admitted acts for said cargo. En-route to the Yard of

(49) The role of accused Satarah Khan during the cross examination of Faridullah and Shahid Ibrahim Dasti is more emphasized. Pw- Faridullah during cross examination specifically deposed that "Satarah Khan is the owner of truck bearing registration No. TLQ 857 and he was present when the raid was conducted at M/s. Water Link Yard when he diverted his truck to that yard and committed to route deviation". To this specific allegation of driving the vehicle TLQ 857 and caused route deviation to the Water Link Yard not a single suggestion put to this witness nor such fact is denied. Thus amounts to be admitted. Not only this, the bail application of accused Satarh Khan himself stated that "That the applicant/accused being truck owner is not responsible for any delay if the containers are not arrived on time."

(50) So far as violation of Section 103 Cr.P.C is concerned it has repeatedly been held by apex court that in absence of malice or intention to falsely implicate the accused the official witnesses are as good witnesses as other private witnesses. In this case also no reason is available to falsely implicate the accused by the Pws.

(51) The prosecution witnesses remained consistent on all material particulars and duly corroborated present case. These accused persons are nominated in the F.I.R. as duly present at the place of occurrence without any reason when pilferage from subject containers was in done. Except Pw-5 Shahid Ibrahim Dasti vide Ex-7 all have duly corroborated the prosecution's case for whom separate observations are made in para-23. For going reasons point No. 1 & 2 answered accordingly.

(52) Although presence of Muhammad Rafiq Shahzad **office boy** has also been proved but his status & position in M/s. Water Link (Pvt) limited admittedly is of office boy only his feeble and undominating

status may be subjected to directions of Managers, etc, which cannot be ruled out, therefore, by giving benefit of doubt he is exonerated from the charge.

(53) Section 2(s) is punishable under Section 156(1) (8) of the Customs Act, 1969 which provides that upon conviction by a Special Judge he shall further be liable to imprisonment for a term not exceeding fourteen years and to fine not exceeding ten times the value of such goods. I therefore , convict accused (1) Rizwan Yousuf son of Muhammad Yousuf, (2) Muhammad Rizwan Ishaq son of Muhammad Ishaq, (3) Idrees Khan son of Gul Siddique (4) Qaiser Ali son of Abdul Sattar and (5) Satrah Khan son of Khaloo Khan under Section 156(1) (8) & (63) of the Customs Act, 1969 and sentenced them for a period of three years rigorous imprisonment with benefit of Section 382-B of Cr.P.C and imposed fine of Rs. 10,00,000/- each. If the fine amount is not paid the accused persons shall suffer S.I. for six months more. The accused persons present on bail. Their bail bonds stand cancelled and sureties discharged.

Announced in open court.

Given under my hand and seal of this Court, this 28th day of January, 2020.

SPECIAL JUDGE
SPECIAL JUDGE (CUSTOM & TAXATION)
KARACHI