

**IN THE COURT OF SPECIAL JUDGE
(CUSTOMS, TAXATION & ANTI-SMUGGLING-I) KARACHI**

CASE NO. 153 of 2023

The State

... V/s ...

1. Amjad Hussain Rajpar son of Raheem Baksh Rajpar
2. Tariq Hussain son of Irshad Ali
3. Ubedullah son of Ahmed Ali Laghari.....Applicants/Accused

Crime No. 19/2023

*U/s 5(2) PCA 1947, r/w Section 15(8) and
(89) of the Customs Act, 1969, r/w Section 109
PPC*

P.S. F.I.A. ACC, Karachi

Mr. Malaag Asa Dashti, Mr. Jamsher Ali and Mr. Meerukh Zehri, learned counsels for applicants/accused persons

Mr. Sarmad Ali, learned Assistant Director for the state alongwith I.O. Abdul Jabbar Mandhro,

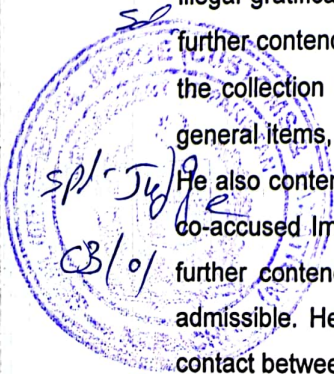
ORDER

08.11.2024

By this order, I intend to dispose of two separate applications under Section 265-K Cr.P.C. filed by learned counsel for applicants/accused persons for acquittal of above named applicants/accused persons.

2. Heard learned counsel for applicants/accused persons and learned Assistant Director Legal, FIA for State and perused the record.

3. Learned counsels for applicants/accused persons contended that the names of present accused persons are not transpired in FIR infact there are 6/7 names of other accused persons available in the contents of FIR. He further contended that an interim challan of dated 31.07.2023 the names of present accused persons also not reflected. He further contended that the allegation available in such interim challan in its para 17 is transpired against present accused persons, but the list of accused persons who were sent up for trial having no name of these accused persons. He also contended that the allegations upon these accused persons were leveled by main accused Tariq Mehmood (Superintendent ASO) that through Preventive Officer Ubedullah, the illegal gratification amount was disbursed to the present accused persons. He further contended that in final challan in its page 18 at Sr. No. 8 & 9 of the table the collection of illegal gratification by the present accused persons in lieu of general items, whereas, the Para No.17 such allegations are about betel nuts. He also contended that names of these accused persons also not disclosed by co-accused Imran Noorani in his statement under Section 164 of Cr. P.C. He further contended that statement of accused persons in interrogation is not admissible. He also contended that no CDR of Ubedullah on record to build contact between the accused persons. He also contended that first notice dated

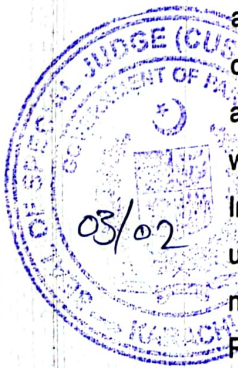


(2)

05.09.2023 was received by the applicants/accused Amjad Hussain Rajpar through focal person to join investigation, which shows that he was so efficient and within 02 months of his posting, he show his efficiency and even appeared before first I.O. Ammara Qureshi, she also not made him accused. He further contended that the departmental inquiry held against main accused Tariq Mehmood and not disclosed the name of present accused and shows that he was abducted by some agency. He further argued that during posting of accused Amjad Hussain Rajper and Tariq Hussain several FIRs were lodged and on page 44 performance report is also available, whereas in final challan it is mentioned that they failed to point out single case, in which they apprehend the culprits. He also contended that PWs also not disclosed their names. He lastly contended that he prayed for grant of application in hand and acquit the applicant/accused.

4. Whereas, on the other hand, learned A.D. Legal for the State while vehemently opposing this application contended that applicants/accused. He further contended that the applicants/accused persons very much nominated in final challan with specific role. He further contended that these applicants/accused persons were collected the illegal bribe from the local betel nuts companies and thereafter, distributed the same. He further contended that the names of each accused ere also transpired by co-accused Tariq Mehmood as well as co-accused Imran Noorani in their statement of interrogation and statement under Section 164 of Cr. P.C. respectively. He further contended that there are numbers of PWs in this case and their evidence is yet to be recorded. Therefore, in such circumstances, the applications in hand may be dismissed.

5. I have heard learned counsels of respective parties and perused the record. No doubt the name of accused Amjad Hussain Rajpar is not available in the contents of FIR neither in interim challan, whereas upon receiving the first notice of dated 05.09.2023, he joined the investigation and appeared before the first Investigation Officer of the case Ammara Qureshi, she not made him as accused in interim challan though she remained Investigation Officer of the case for two months. Furthermore, in the final challan on the basis of allegations leveled by main accused Tariq Mehmood (Superintendent ASO), which were disclosed by him during his interrogation, whereas co-accused Imran Noorani not took the names of present accused persons in his statement under Section 164 of Cr. P.C. and even 42 other PWs also not disclosed the names of these accused persons in their statement under Section 164 of Cr. P.C. which is not denied by the prosecution. Furthermore, on page 18 of final challan, a table is available in which its item No.8 & 9, the accused Amjad Hussain Rajpar was shown to receive monthly illegal amount for general items



(3)

through co-accused Ubaidullah, whereas in Para 17 which is available at page 10 of the final challan, the allegations upon the accused persons is to receive and distributed monthly illegal amount of betel nuts, which are contrary of each other. Furthermore, it is a settled principle of law that application of accused in interrogation is not admissible. Here I would like to rely upon case law reported in 2016 MLD 129 as under:-

"(c). Penal Code (XLV of 1860)

---Ss.302(b) & 377---Qanun-e-Shahadat (10 of 1984), Art.38---Criminal Procedure Code (V of 1898), S.417---Qatl-i-amd and sodomy---Appreciation of evidence---Appeal against acquittal---Statement of co-accused---Scope---Trial Court acquitted the accused as only evidence against him was statement of his co-accused---Validity---Not a single witness had deposed against accused and the only piece of evidence against him was the words of co-accused, who during interrogation stated that accused had given money to him for committing murder of deceased boy---such piece of evidence was not sufficient to convict accused and Trial Court had rightly acquitted him of the charge---

I would like to further rely upon case law reported in 2005 SCMR 277.

"(c). Penal Code (XLV of 1860)

---Ss.302/34---Appreciation of evidence---Extra-Judicial confession---Principle---Extra-judicial confession is a very weak type of evidence and no conviction on it can be awarded without its strong corroboration on the record.

Furthermore, during the posting of accused Amjad Hussain Rajpar and Tariq Hussain they raided on the factory of betel nuts and lodged several FIRs and such performance report is annexed with the application under Section 265-K Cr. PC of accused Amjad Hussain Rajpar, which was also not objected by the prosecution side, which also falsify the contents of final challan, in which is mentioned that the accused persons failed to point out the single case, in which they arrested culprits involved in the case of betel nuts. Furthermore, the case against the present accused persons are of hearsay nature, which is not a reliable evidence.

6. In view of the above discussions, the applications under Section 265-K Cr.P.C are thus allowed. Consequently, applicants/accused persons namely Amjad Hussain Rajpar son of Raheem Baksh Rajpar, (2) Tariq Hussain son of Irshad Ali and (3) Ubedullah son of Ahmed Ali Laghari are acquitted. They are present on bail. Their bail bond stands cancelled and sureties are discharged.

Announced in open Court.

Given under my hand and seal of this Court, this 8th day of November, 2024.

(SOHAIL JABBAR MALIK)

Special Judge
(Customs, Taxation & Anti-Smuggling-I)
Karachi