

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

CASE NO. 153 of 2023

The State

... V/s ...

Tariq Mehmood and others Accused

1. Tasleem Akhtar Son of Jamshaid Ali

2. Muhammad Danish Kaleem S/o Muhammad Sadiq Khan

3. Shahbaz Ahmed..... Applicants/ accused

FIR No.19/2023

*U/s 5(2) of the PCA 1947, read with Section
156 (8) (89) of the Customs Act, 1969 and
Section 109 of the Pakistan Penal Code
(PPC).*

PS: FIA, ACC, Karachi.

Mr. Amir Mansoob Qureshi learned counsel for applicants/ accused Tasleem Akhtar, Muhammad Danish Kaleem and Shahbaz Ahmed.

Mr. Sarmad Ali, learned SPP for the State is present alongwith I/O Abdul Jabbar Mendhro.

ORDER
08-11-2024

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

2. Heard learned counsels for applicants/ accused and learned SPP for the State and perused the record.

3. Learned counsel for applicants/accused contended that accused Tasleem Akhtar is not nominated in FIR nor in Interim challan. He further contended that on the basis of statement under Section 164 of Cr.P.C co-accused Imran Noorani named present accused with the allegation that he collected illegal bribe from betel nuts companies from November, 2021 to January, 2022 in collusion with accused Mohammed Saqib Saeed through Customs Officer Saeed Farooqi. He further contended that accused Tasleem Akhtar was never posted with Saqib Saeed and his notifications are available on record. He further contended that the name of accused Tasleem Akhtar is available on page 4 of statement under Section 164 Cr.P.C of accused Imran Noorani that Rana Tasleem, who was additional Director there after become Director. He further contended that in such Statement under Section 164 Cr.P.C co-accused Imran Noorani not implicated present accused about collection of



bribe or illegal gratification. He further contended that accused Danish Kaleem is also not nominated in FIR nor in Interim challan only in Para 87 of final challan disclosed that his name was disclosed by main accused Tariq Mehmood in his interrogation statement. He further contended that the name of accused Shahbaz Ahmed available in Para 81 of final challan, as he was implicated by co-accused Imran Noorani in statement under Section 164 of Cr. PC as well as co-accused Tariq Mehmood in his statement of interrogation with the allegation of collection of bribe of betel nuts, who facilitated the smugglers. He further contended that the recovery of names of alleged smugglers from the mobile phones of accused Shahbaz Ahmed cannot be relied upon as how it is to be ascertained the numbers of persons or of smugglers. He also contended that it is also available in such para that the co-accused Imran Noorani also save numbers of those persons in his phone. He also contended that so called forensic report is not of any use, as it was the data of co-accused Imran Noorani without having the specific date, which cannot be corroborated through any independent evidence or witness. He further contended that statement of accused in interrogation is not admissible. He further contended that accused Imran Noorani was on interim bail and after obtaining interim bail appeared before the concerned judicial magistrate for recording of his 164 Cr. P.C statement. He further contended that Statement under Section 164 Cr. P.C in which manner recorded cannot be said as his confessional statement nor a statement of P.W. neither statement of accomplice. He further contended that no set of questions which are mandatory to ask by the concerned judicial magistrate before recording statement U/S. 164 Cr. P.C. were complied with. He further contended that such Statement under Section 164 Cr. P.C having no evidentiary value at all .He lastly prayed that application in hand be allowed and applicants/accused persons may kindly be acquitted.

4. Whereas, On the other hand learned SPP for the state while opposing to the applications in hand contended that accused persons are nominated in final challan with their specific roles. He also contended that the accused Tasleem Akhtar and Danish Kaleem were implicated by co-accused Imran Noorani as well as main accused Tariq Mehmood. He further contended that in Statement under Section 164 Cr.P.C accused Imran Noorani implicated present accused persons for collection of bribe/illegal gratification from the illegal betel nuts companies. He further contended that accused Imran Durrani after obtaining interim bail appeared before Judicial Magistrate XI, Karachi (South) on 24.10.2024 and recorded his Statement under Section 164 Cr.P.C. He further contended that the name of accused Danish Kaleem was disclosed by accused Tariq Mehmood in his interrogation for facilitation in smuggling of betel nuts. He further contended that the name of accused Shahbaz Ahmed was surfaced during the interrogation of co-accused Tariq Mehmood as well as in statement under Section 164


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(3)

of Cr. PC of co-accused Imran Noorani. He further contended that another co-accused Muhammad Atif also disclosed the name of this accused. He also contended that the laptop was recovered from the accused Imran Noorani from which the name of accused Imran Noorani was surfaced as he was demanding and receiving illegal gratification more than 100 million from co-accused in the year of 2023. He lastly prayed that applications in hand may kindly be dismissed accordingly.

5. I have heard learned counsels of respective parties and perused the record. No doubt the name of accused Tasleem Akhter is disclosed by co-accused Imran Noorani in his statement under Section 164 Cr. P.C. Furthermore, the name of this accused was not available in FIR neither in Interim challan, this Court have gone through such Statement under Section 164 Cr.P.C, which not shows that in what capacity such statement of co-accused Imran Noorani was recorded, as the same cannot be turned as confessional statement as no question prior to recording of such statement is available, whether any reflection time was given to such accused and whether the concerned Judicial Magistrate asked to accused that such statement can be used against him as well. It is also not clear from such statement that whether such statement is given as a P.W, which cast shadow of doubt upon such statement. This Court have gone through final challan and its Para 78, in which allegation about accused Rana Tasleem for collection of illegal bribe from betal nuts companies in collusion of co-accused Mohammad Saqif and Saeed Farooqi. Now with regard to posting of accused Rana Tasleem Akhtar alongwith co-accused persons Saqib Saeed and Saeed Farooqi, learned counsel for accused Rana Taslim Akhtar placed on record several notifications of their postings, the Notification of dated 26. 11.2021, 22.11.2021 (list of officers transferred/posted) of accused Tasleem Akhter, learned Counsel also placed on record notifications of Saqib Saeed of dated 01.12.2021 and 19.11.2021 (list of officers transferred/posted), he also placed on record Notification of co-accused Saeed Farooqi of dated 29.20.2021. Minute perusal of these notifications show that accused the Rana Tasleem was posted at Karachi, whereas Saqib Saeed was posted at Islamabad and Saeed Farooqi were also posted at Islamabad. Therefore, this Court is agreed with the contention of learned counsel for accused that accused Rana Aslam Athter never posted along with these two accused persons. Now with regard of Statement under Section 164 Cr.P.C and this Court not found any such reference which is given in the Para 78 of final challan. It is available in Such statement under Section 164 Cr.P.C that one Sohail Shoka of Custom Intelligence was receiving illegal gratification from March, 2018 to September, 2021 through Saeed Farooqi and at that time Additional Director was Rana



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Tasleem and than one Saqib Saeed become Director, such statement is not of any use as no allegation of collection or receiving illegal gratification for illegal betel nuts upon the direction of accused Tasleem Akhtar is surfaced. Therefore, such statement 164 of Cr.P.C is not of any use for these applicants/accused. Furthermore, a statement of co-accused cannot be used against another accused, which is settled principle of law. The role of accused Danish Kaleem is shown in final challan Para number 87, which is based upon the statement of interrogation of co-accused Tariq Mehmood, which is a weaker type of evidence as cannot sustain under article 38 of Qanoon-e-Shahdat Order. Furthermore, the role of accused Shahbaz Ahmed is shown in Para 87 of final challan, as he was implicated in the case in hand by co-accused Imran Noorani, as he was demanding/collecting illegal gratification of more than 100 Million from co-accused Imran Noorani in the year of 2023. Furthermore his name was also disclosed during interrogation by co-accused Tariq Mehmood. It was also the arguments of learned A.D. Legal for state that the name of accused Shahbaz Ahmed was also surfaced from the laptop of co-accused Imran Noorani and its prints were taken out by forensic department. This Court is not agreed as the name of accused surfaced from the laptop of the co-accused who was not arrested by the prosecution, but he himself appeared to join the investigation and thereafter he handed over such laptop to the prosecution for forensic, from which a ledger was maintained by co-accused Imran Noorani and there is no any other witness of such computer ledger on record, who can verify/corroborate the same. Furthermore, such ledger in the matter in hand is not of any use. Furthermore, such forensic report was also not obtained through any memo, therefore, the same having no evidentiary value in respect of this case. 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.



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6. In view of the above discussions, there is no probability of conviction of applicants/accused persons, therefore, the applications under Section 265-K Cr.P.C are thus allowed. Consequently, applicants/accused (i) Tasleem Akhtar, (ii) Muhammad Danish Tasleem and (iii) Shahbaz Ahmed are hereby 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