

*Judgment Sheet*

**IN THE PESHAWAR HIGH  
COURT, PESHAWAR**  
(Judicial Department)

**Cr. A.No.561-P/2022**

**Rizwan Ullah Vs the State.**


Date of hearing: 19.08.2022

Mr. Abdul Rauf Afridi, Advocate for the  
appellant.

Mr. Mujahid Ali Khan, AAG for the State.

**JUDGMENT**

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 **SHAHID KHAN, J.** The instant appeal is directed against the judgment and order dated 21.09.2021, whereby the learned Additional Sessions Judge-II/ Judge, Special Court, Khyber, confiscated the vehicle, Motorcar Mehran (white in color) bearing registration No.AHY-746-ICT, having Chassis No.SB308PK01258661, to the State which was involved in case FIR No.252 dated 21.10.2020, u/s 9(D) CNSA, 170/171 PPC, Police Station, Jamrud.

2. Facts in short are that the police patrolling party under the command of Yar Jan SI with Watan HC, Mohib HC, Ajmal FC, Gohar FC & Hazrat FC was on the routine

patrolling duty, received an information regarding trafficking of narcotics as heroin through vehicle, Mehran bearing registration No AHY-746-ICT. It was intercepted, whereas, it's driver in a police uniform and its search led to the recovery of 14 packets heroin each weighing 1000 grams (Net weighing 14 kg).

3. After registration of the event and completion of investigation, challan was drafted and sent for trial.

4. During the trial prosecution placed reliance on the account/testimony of 03 PWs, whereof, the defence through an application u/s 265-K Cr.P.C sought acquittal of the accused.

5. The learned trial Court after hearing learned defence counsel and learned Prosecutor, arrived at the conclusion that there is no chance and probability of the conviction of the accused, as such, exercising jurisdiction u/s 265-K Cr.P.C, recorded acquittal of the accused vide judgment dated 21.09.2021.

6. Rizwan Ullah, the appellant approached this Court to the subject appeal u/s

24 of the CNSA, 2019 against the judgment of the learned trial Court to the extent of confiscation of the vehicle/ Motorcar Mehran (white in color) bearing registration No.AHY-746-ICT, Chassis No.SB308PK01258661.

7. Learned counsel for the appellant argued that his client is the bonafide owner by purchase of the subject vehicle and was not in knowledge at all regarding the use of the vehicle in question by the accused in the commission of offence. During the investigation, an iota of evidence has not been collected to be produced before the Court to substantiate a remote nexus of the petitioner in the commission of offence. The order of confiscation of the subject vehicle by the learned trial Court is against the law on subject on the ground that fair chance and opportunity has not been provided to the actual owner/claimant/appellant regarding his bonafide and to have no concerned whatsoever with the subject bid. Concluded, on acceptance of the appeal in hand the impugned judgment of the learned trial Court to the extent of confiscation of the vehicle in question may



please be set aside and return of the subject vehicle to the appellant shall meet the ends of justice.

فہرست

8. Learned AAG rebutted the stance & contention of the appellant with due vehemence that after deep slumber, the appellant realized to ask return of the subject vehicle. No effort whatsoever has been attempted at the first stage i.e. investigation to approach the investigation officer with the relevant documents of the subject vehicle so that his stance could have been highlighted in the investigation notes. Added, the appellant had not taken the pain to in time approach the then learned trial Court for appropriate remedy in accordance with law. Concluded, the afterthought of the appellant is against the law and needs to be regretted accordingly.

9. Close perusal of the record would transpire that 14 packets of heroin (net weighing 14 kg) has been secured & recovered from the trunk of the vehicle under the command & control of accused Akram Khan. The Court is confronted only with the request of the appellant for the return of the subject

vehicle, therefore, it would be appropriate to focus only on the subject request.

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10. There is no denial at all that notice under section 33 (proviso) CNSA, 1997 is mandatory to the claimant of the vehicle used in the commission of offence but in shall not skip the attention of the Court that neither at the earliest stage, pre investigation & investigation, the appellant has never ever floated his claim regarding ownership of the vehicle in question before the quarter concerned. Likewise, no claim in this regard has been furnished during the trial before the Court of competent jurisdiction. However, Section 32 Sub section (2) of the Act speak loud & clear of the confiscation of the vehicle used in the commission of offence, however, it is proved that it's ostensible owner was well in knowledge, directly or indirectly, of the bid pertaining to the transportation & smuggling of narcotics also permits the confiscation of the vehicle, however, conscious knowledge of the owner regarding the use of the subject vehicle in the commission of offence is pre-requisite. The alleged bonafide owner of the vehicle has

to be put on notice followed by giving a fair chance of audience to him. The subject preposition has been highlighted in the case of “Muhammad Amin Vs the State reported in PLD-2004-Karachi-482” and in an unreported judgment of this Court in OP No.32 of 2006 titled State through Director ANF, Peshawar Vs Abdul Qadeer Paracha decided on 27.03.2008.

11. Admittedly, no notice as envisaged under the Act ibid was given to appellant by the learned Trial Court thus the order of confiscation of the vehicle is to be struck down on this sole ground.

12. Moreover, Trial Court is bound to look for the mens-rea on the part of appellant or any contribution made by him. Record is silent as to whether any query or probe is made by raiding party or Investigation Officer to trace out that appellant had any knowledge of transporting the narcotics. Provisions of sections 32 & 33 of the CNSA, 1997 is beneficial enactment to safeguard the right of innocent owner. To penalize a person in

absence of mens-rea would be unjust and confiscation of the vehicle would be harsh.

13. In view of the facts and circumstances of the case the appeal in hand is allowed, the impugned judgment of learned trial Court dated 21.09.2021 is set aside to the extent of confiscation of the vehicle in question only and remand back the case to the learned Trial Court with the directions to proceed with the claim of the appellant regarding the bonafide ownership of the vehicle in question coupled with his direct or indirect, active or dormant, involvement of the appellant/claimant in the commission of offence followed by an appropriate order within the meaning section 32 read with section 33 of CNSA, 1997.

**Announced**  
**19.08.2022**

  
**JUSTICE**