

JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
(JUDICIAL DEPARTMENT)

Criminal Revision No. No.31115 of 2021

Muhammad Shamoon etc. Vs. SHO , etc.

Criminal Revision No. No.27750 of 2021

Muhammad Asif etc. Vs. SHO , etc.

J U D G M E N T

Date of hearing	16.05.2024
Petitioners by	Mian Muhammad Naseem and Mr. Abdul Wahid Ayoub Mayo, Advocates.
Complainant by	Rana Irfan Ali, Assistant Attorney General with Nouman Hassan Baloch, Legal Advisor Pakistan Railway and Khaliq-uz-Zaman, Inspector Legal. Faisal Hayat Inspector Legal and Ali Hassan ASI Railway Police.

=====

MUHAMMAD AMJAD RAFIQ, J: This single judgment shall dispose of Criminal Revision No.31115 of 2021 filed by Muhammad Shamoon and Ajmal Ali alias Aju petitioners and Criminal Revision No.27750 of 2021 filed by Muhammad Asif, Fayyaz Ahmad, Shoukat Ali Malik and Babar Ali petitioners as both the above stated matters have arisen out of the same order dated 27.03.2021 passed by learned Special Judge (Central), Lahore, declining the request of petitioners for return of their legal money (Rs.9,50,000/- of petitioner No. 1 and Rs.4,50,000/- of petitioner No. 2 of Criminal Revision No.31115 of 2021) and (Rs.3,00,000/- of petitioner No. 1, Rs.2,00,000/- of petitioner No.2, Rs.50,000/- of petitioner No.3 and Rs.10,000/- of petitioner No.4 of Criminal Revision No.27750 of 2021) allegedly recovered by respondent No. 2/Railway Police from them as an embezzled amount in relation to a case FIR No. 40 dated 05.05.2009 under sections 420, 467, 468, 471, 472, 109 PPC read with 5(2) 47

Prevention of Corruption Act, 1947, Railway Police station, District Kasur.

2. Learned counsel (s) for the petitioners contends that the petitioners were convicted by the learned trial Court in above said case, however on appeal, they were acquitted by this Court on 02.03.2016. Respondent No.2/Railway Police assailed such judgment of acquittal by filing leave to appeal before the Supreme Court of Pakistan and during interregnum, petitions were filed for return of amount before the learned Special Judge (Central), Lahore, but were withdrawn with intent to refile at an appropriate stage. Petitioner No. 1 also a filed writ petition bearing No. 38451 of 2017 in this respect but it was also dismissed by this Court vide order dated 30.10.2017 as not maintainable because the matter was pending before the Supreme Court of Pakistan. Finally, when the Supreme Court of Pakistan declined leave to appeal to the department, petitioners again filed applications of the same nature before the learned Special Judge (Central), Lahore but it met the same fate and dismissed on 27.03.2021, hence this revision petition.

3. Learned counsel (s) for the petitioners contends that petitioners have finally been acquitted, and amount cited above did not remain case property any more, therefore being belongings of the petitioners must be returned to them. Further stated that as per section 517 of the Cr.P.C. after the decision of case, only trial Court was competent to decide the question of case property but such applications were dismissed on the ground that judgment of conviction dated 25.11.2010 stood merged into judgment of acquittal dated 02.03.2016 passed by High Court, therefore, trial Court lacks jurisdiction. Further states that now this Court in revisional jurisdiction is also competent to allow return of amount to the petitioners.

4. On the other hand, learned counsel for respondent No.2/Railway Police stated that amount in question recovered as

case property was ordered to be confiscated in favour of Railway Department by the trial Court, therefore on reversal of judgment, it is the prerogative only of learned trial Court under section 517 of the Cr.P.C to determine the entitlement of the petitioners over the disputed/recovered amount, particularly when the petitioners in their statement under section 342 Cr.P.C. did not own such amount. Similar was the say of learned Assistant Attorney General.

5. Arguments. Record perused.

6. In order to determine the entitlement or otherwise of the petitioners to amount in question, it essential to first see what section 517 Cr.P.C. says in this context which is as under;

517. Order for disposal of property regarding which offence committed. (1) When an inquiry or a trial in any Criminal Court is concluded, the Court may make such order as it thinks fit for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document produced before it or in its custody or regarding which any offence appears to have been committed or which has been used for the commission of any offence.

(2) When a High Court or Court of Sessions makes such order and cannot through its own officers conveniently deliver the property to the person entitled thereto, such Court may direct that the order be carried effect by the [District Officer (Revenue)].

(3) When an order is made under this section such order shall not, except where the property is livestock or subject to speedy and natural decay, and save as provided by subsection (4), be carried out for one month, or, when an appeal is presented, until such appeal has been disposed of.

(4) Nothing in this section shall be deemed to prohibit any Court from delivering any property under the provisions of sub-section (1) to any person claiming to be entitled to the possession thereof, on his executing a bond with or without sureties to the satisfaction of the Court; engaging to restore such property to the Court if the order made under this section is modified or set aside on appeal.

Above section clearly mentions that when an inquiry or trial is concluded, Court concerned may pass order for the disposal by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise of any property or document. Conclusion of trial includes decision of case in appeal

when no order with respect to case property has been made by the appellate Court.

7. There is no cavil to the proposition that under section 520 of Cr.P.C. this Court is also authorized to pass an appropriate order in case learned trial Court fails to exercise power under section 517 Cr.P.C. Learned counsel for the petitioners could not controvert the fact that petitioners/accused have not claimed such amount as their own during the trial rather in their statements under section 342 Cr.P.C alleged that said amount was foisted upon them. Order passed by the learned trial Court clearly speaks that the petitions were not decided on merits but on technical ground that learned trial Court lacks jurisdiction due to acquittal order passed by this Court. In a case reported as “MANZOOR HUSSAIN JATOI Versus THE STATE” (1997 P Cr. L J 500) Federal Shariat Court has held as under;

“Unless the Appellate Court exempts a particular relief in express terms, the order of acquittal should entail all the consequential effects thereof. A separate order for each and every consequence of the acquittal is not necessary. Therefore, the trial Court, acting on the basis of the order of acquittal recorded by the Honourable Supreme Court could have released the property.

Section 520, Cr.PC referred to by the trial Court gives jurisdiction to the superior Court to interfere with an order passed by a lower Court under section 517, 518 and 519, but it does in no way restrict a lower Court from passing an order consequent to, and in compliance with, the order of a superior Court.”

(Emphasize supplied)

When in a case, an accused stood discharged, this Court in a case reported as “JALAL KHAN alias JALLEY KHAN versus THE STATE AND ANOTHER” (PLD 1975 Lahore 45) has held as under:-

“The learned Judge who decided the case was of the opinion that section 517, gives jurisdiction to the Court to pass necessary orders for the disposal of property either at the time of the conclusion of the trial or at a later date: It was further observed that section 517, cast

a duty on the Court to make some order regarding the disposal of the property which was in its custody and this duty continued until the property was disposed of in some way or other, either by destruction or by passing out of the hands of the Court”

In a case reported as “ABDUL LATIF Versus ABDUL RAZAQ AND 2 OTHERS” (1976 P Cr. L J 116) it has been held as under:-

“It is also not necessary that the order for disposal of property must be passed simultaneously with the judgment in the main case and it would not be illegal to pass such an order subsequently”

8. In this case trial Court has ordered confiscation of case property through a judgment of conviction and said decision has been reversed, therefore, principle of merger shall not apply, which attracts only if the appellate Court upholds the decision of trial Court or modify it in substance or relief but in the present case this Court has not upheld or modified the judgment of trial Court, rather quashed it, therefore, by all means, the situation has been reversed to the stage when during investigation amount was shown recovered from the petitioners, then accused, while opening an avenue for the petitioners to once again file the petitions on the analogy of section 516-A or 523 of Cr.P.C. but under section 517 of Cr.P.C. No doubt this Court under section 520 Cr.P.C. can pass an appropriate order, but only when petition under section 517 Cr.P.C. is decided by the trial Court on merits, which has not been done by the trial Court. Railway Department is contesting the claim on the basis of facts and contentions cited above, record of trial Court is also not before this Court and counter claims of the parties require a factual inquiry based on recording of evidence, if necessary, by the learned trial Court/Special Judge (Central) Lahore to determine entitlement of petitioners to alleged amount which function cannot be under taken by this Court while exercising revisional jurisdiction. Therefore, learned Special Judge (Central) Lahore/trial Court would better examine the entire record

while assessing the entitlement of the portioners for the amount claimed.

9. Section 517 of Cr.P.C. is not an exhaustive section, Court after conclusion of trial can also refer the matter to Magistrate for disposal of property as mentioned in section 518 of Cr.P.C. which is reproduced here for reference;

518. Order may take form of reference in lieu of itself passing an order under Section 517: The Court may direct the property to be delivered to [a Magistrate of the First Class] who shall in such cases deal with it as if it had been seized by the police and the Seizure had been reported to him in the manner hereinafter mentioned.

10. Though section 104 of Cr.P.C. authorizes the Court to impound any document or thing yet during the trial and after conclusion it can decide the fate of such property including destruction, confiscation and delivery to person entitled. When the accused, during the trial claims the property as his own, then on acquittal he is entitled to receive it back straightaway by the order of trial Court but when the situation is otherwise then Court must decide the question again by providing opportunity to prove the entitlement and also reason for disowning of such property during the trial and Court can presume any fact while deciding application for claim. Section 517 of Cr.P.C. in that case provides jurisdiction to Court to decide all questions arising out of acquittal order. This section is somewhat like section 47 of CPC which says that all questions arising between the parties to the suit in which the decree was passed and relating to the execution, discharge or satisfaction of the decree shall be decided by the Court executing the decree and not by a separate suit. Similarly, as sections 379, 425 and 442 of Cr.P.C., say that all orders passed by Court of Reference, Appeal and Revision shall be certified to the lower Court which shall pass orders confirmable to the judgment and order of the High Court and if necessary, record shall be amended in accordance with law. Thus, in this way lower Court becomes an executing Court like one under section 47 of CPC, therefore, can

decide all ancillary question relating to case property in accordance with law.

11. With these observation, present revision petitions are allowed, impugned order dated 27.03.2021 is *set aside*, matter is remanded to learned Special Judge (Central) Lahore to decide the application of the petitioners again within two months positively after perusal of record and by providing opportunity of hearing to both the parties.

(MUHAMMAD AMJAD RAFIQ)
JUDGE

Approved for Reporting

Judge

Signed on 05.06.2024
*Irfan**