

**THE HIGH COURT OF SINDH, CIRCUIT COURT AT
LARKANA**

Criminal Appeal No.S-51 of 2020

(Naimatullah Jessar v. The State)

Appellant: Naimatullah Jessar through Mr. Safdar Ali Ghouri, Advocate.

Complainant: Ali Akbar Pirzado through Mr. Abid Hussain Qadri, Advocate.

Respondent: The State through Mr. Aitbar Ali Bullo, D.P.G. Sindh.

Mr. Riaz Hussain Khoso, Deputy Prosecutor General for Pakistan.

Date of hearing: 21.09.2026.

Date of Judgment: 12.10.2026.

J U D G M E N T

RIAZAT ALI SAHAR, J. Through this criminal appeal, the appellant has called in question the judgment dated 05.08.2020, passed by the learned Sessions Judge/Special Judge for Gas Utility Court, Larkana, in Special Case No.19 of 2019, arising out of Crime No.60 of 2019, registered at Police Station Allahbad for the offence under sections 17, 24 of Gas Theft Control & Recovery Act, 2016, whereby the appellant was convicted under section 17 of the Gas Theft Control & Recovery Act, 2016 and sentenced to pay a fine of Rs.15,00,000/-, and in default thereof to suffer six months' simple imprisonment, with benefit of section 382-B Cr.P.C.

2. The prosecution case, as set up in the FIR, is that on 17.07.2019 at about 11:30 a.m., complainant Ali Akbar Pirzado, Assistant Manager, SSGC, accompanied by Mumtaz Ali Hakro, Deputy Manager, Mehboob Ali Brohi, Superintendent and the technical team, visited Bismillah Ice Factory, Mumtaz Colony, Larkana, for checking commercial meters. Commercial meter No.W-741288, customer No.7745574464, standing in the name of

Ghulam Muhammad Abro, was allegedly found running dead slow. The prosecution alleged that the factory was being run/looked after by the appellant and that, upon technical inspection, the meter was found tampered. It was consequently removed, sealed and sent for laboratory examination, which subsequently reported the meter to be tampered. After obtaining permission from the competent authorities, the FIR was lodged by Ali Akbar Pirzado on 29.07.2019.

3. After completion of investigation all requisite formalities, the learned trial Court examined complainant Ali Akbar Pirzado (PW-1), Mumtaz Ali Hakro (PW-2) and Taj Mohammad (PW-3), ASIP/SIO. Ali Akbar Pirzado produced the document relating to removal of the meter, photographs, the laboratory report, the letter for registration of the FIR and the FIR. Mumtaz Ali Hakro produced the mashirnama of site inspection, while Taj Mohammad produced the relevant daily diary entry. After recording the prosecution evidence, the appellant was examined under section 342 Cr.P.C. and thereafter also examined himself on oath under section 340 (2) Cr.P.C. In his defence, the appellant maintained that the factory belonged to his uncle Ghulam Muhammad and that he had no concern with its business. He claimed that SSGC had disconnected the meter on 16.07.2019 and that on the following day he was called to the factory by the labour, where he signed the document under protest. He further stated that on 17.07.2019 he was performing his duties at his office from 9:00 a.m. to 5:00 p.m. and that the theft claim was subsequently raised against his uncle, who paid the amount to SSGC.

4. Learned counsel for the appellant contended that the prosecution failed to establish the appellant's responsibility for the alleged tampering beyond reasonable doubt. He contended that the meter and connection stood in the name of Ghulam Muhammad Abro and the demand was also raised against him, whereas the appellant was neither the consumer nor the owner of the factory. He further relied upon the twelve-day delay in registration of the FIR, non-production of the meter, non-

examination of the technical team and Mehboob Ali Brohi, absence of an independent witness and alleged defects in the documentary evidence. According to learned counsel, these circumstances cumulatively created reasonable doubt which ought to have been resolved in favour of the appellant.

5. Learned D.A.G. for Pakistan supported the impugned judgment and submitted that the evidence of Ali Akbar Pirzado (PW-1) and Mumtaz Ali Hakro (PW-2) is consistent on the material aspects of inspection and detection of tampering. He contended that the laboratory report furnished technical corroboration and that the discrepancies pointed out by the defence did not affect the core of the prosecution case.

6. Learned D.P.G. Sindh contended that the appellant's presence at the premises and his admitted signature concerning the meter are established from the record. He further relied upon the appellant's admitted previous dealings with SSGC in relation to the same factory and meter and contended that the learned trial Court had rightly appreciated the cumulative effect of the evidence.

7. Learned counsel for the complainant/SSGC supported the impugned judgment and contended that Ali Akbar Pirzado (PW-1) had proved the inspection, removal and dispatch of the meter for laboratory examination, whereas Mumtaz Ali Hakro (PW-2) independently supported the material occurrence. He contended that the positive laboratory report corroborated the ocular account and that the appellant's own admissions regarding his presence, signature and previous dealings with the same meter materially strengthened the prosecution case. He, therefore, prayed for dismissal of the appeal and maintenance of the conviction and sentence.

8. I have heard learned counsel for the parties and examined the record.

9. The principal question is whether the evidence available on record establishes, beyond reasonable doubt, the

appellant's involvement in the offence for which he was convicted. Ali Akbar Pirzado (PW-1) stated that on 17.07.2019 he proceeded with Mumtaz Ali Hakro (PW-2), Mehboob Ali Brohi and the technical team for inspection of commercial meters and reached Bismillah Ice Factory at about 11:30 a.m. According to Ali Akbar Pirzado (PW-1), the commercial meter installed outside the factory was running dead slow; the technical team checked it and found it tampered; the meter was consequently uninstalled and sealed for laboratory examination. He further stated that the document concerning its removal was signed by the appellant and that the meter was thereafter sent to Sukkur Laboratory. The relevant portion of the testimony of Ali Akbar Pirzado (PW-1) is material: *"The technical team also checked the same and disclosed that it was tampered, therefore, we uninstalled and sealed the same for sending to the laboratory... The sealed meter was sent to Sukkur Lab for testing... I received positive report from Sukkur Lab."* Thus, the evidence of Ali Akbar Pirzado (PW-1) establishes the initial detection, removal and dispatch of the meter for technical examination.

10. Mumtaz Ali Hakro (PW-2) materially corroborated the occurrence. He stated that upon reaching the factory they heard the noise of a heavy generator and, on checking the commercial meter, found that it was running slowly in comparison with the consumption. He stated that the appellant was called, the meter was disconnected in his presence and sealed and thereafter sent to the Sukkur Laboratory. He further stated that the laboratory report showed tampering.

11. The evidence of Taj Mohammad (PW-3), ASIP/SIO, is confined to the subsequent investigation. He stated that after receiving the FIR he proceeded to the place of occurrence with the complainant, inspected the site on the complainant's pointation and prepared the mashirnama in the presence of Mumtaz Ali and Mehboob Ali. He also recorded the statements of the relevant prosecution witnesses and submitted the challan after completion of investigation.

12. The evidence thus presents three distinct stages: Ali Akbar Pirzado (PW-1) and Mumtaz Ali Hakro (PW-2) establish the inspection and detection of the suspected tampering; the laboratory report supplies the technical finding of tampering; and Taj Mohammad (PW-3) establishes the subsequent investigation. These pieces of evidence support one another on the material aspects and cannot be discarded merely because every person who happened to be present at the spot was not examined.

13. The appellant's own statement provides further relevant circumstances. He admitted that he had previously dealt with SSGC regarding the meter and that, in 2017, when the meter of the factory was damaged due to rain, it was removed by SSGC and documents were prepared which he signed at Sukkur. He further admitted that in 2016 the subject meter had been removed on suspicion of theft, the theft claim was paid and he had executed an affidavit in that regard. Most importantly, he admitted that he signed the document concerning the tempered/sealed meter on 17.07.2019, although he attempted to explain that the signature was made at 7:00 p.m. and under protest. The explanation regarding the signature has been considered. It is correct that the appellant stated that he signed under protest. Nevertheless, the fact remains that his signature on the document is admitted. His explanation may be relevant to the purpose for which the document was signed, but it does not negate the independent evidence of Ali Akbar Pirzado (PW-1) and Mumtaz Ali Hakro (PW-2) regarding his presence at the premises and the proceedings concerning the meter.

14. The defence has placed considerable reliance upon the fact that the meter was registered in the name of Ghulam Muhammad Abro. This circumstance is not disputed. However, registration of the connection in another person's name is not by itself decisive of the criminal liability arising from the occurrence. The prosecution evidence was that the appellant was running or looking after the factory and was present when the meter was dealt with. The appellant's own admissions regarding his earlier

dealings with SSGC concerning the same factory and meter provide additional context to that evidence.

15. It was also argued that the demand note was issued to the owner and that the owner paid the penalty. Ali Akbar Pirzado (PW-1) admitted during cross-examination that the demand note was issued in favour of the allottee and that the owner of the meter had paid the penalty. Mumtaz Ali Hakro (PW-2) likewise stated that the meter stood in the name of Ghulam Muhammad Abro and that the demand note was issued against the owner. The said circumstance, however, does not necessarily contradict the prosecution case. The fact that the registered consumer was called upon by the utility to discharge the financial demand is one matter; the question whether the appellant was connected with the actual occurrence of tampering is another. Payment of the demand by the registered consumer, therefore, cannot by itself furnish a ground for discarding the evidence against the appellant. The objection concerning non-production of the physical meter has also been considered. Mumtaz Ali Hakro (PW-2) admitted that the meter was not produced before the trial Court and explained that, according to their practice, the tampered meter was kept in the laboratory. This omission may be regarded as a deficiency in the manner in which the prosecution presented its case, but it does not by itself discredit the positive laboratory report when the prosecution witnesses consistently described the removal and dispatch of the same meter for examination.

16. As to non-examination of Mehboob Ali Brohi and the members of the technical team is concerned, suffice to say that the question, however, is not whether the prosecution could have produced more witnesses; rather, it is whether the witnesses actually examined furnished reliable evidence sufficient to establish the charge. The evidence of Ali Akbar Pirzado (PW-1) and Mumtaz Ali Hakro (PW-2) is consistent on the material particulars and the laboratory report supplies technical corroboration to their account. The absence of an independent mashir also does not render the official witnesses incompetent or their evidence

inherently unreliable. Ali Akbar Pirzado (PW-1) stated that some persons were asked to act as mashirs but declined, while Mumtaz Ali Hakro (PW-2) stated that members of the public present at the site likewise refused. Taj Mohammad (PW-3) also stated that he attempted to record statements of persons around the place of occurrence but could not do so. As regards the twelve-day delay in registration of the FIR, the incident occurred on 17.07.2019 and the FIR was registered on 29.07.2019. The prosecution explanation is that the meter was sent for laboratory examination and, after receipt of the report and obtaining permission from the competent authorities, the FIR was lodged. The delay, therefore, requires caution but cannot, in isolation, outweigh the substantive evidence available on record, particularly where the technical examination was itself relied upon as the basis for proceeding further. Furthermore, the appellant's plea that he was on duty in his office from 9:00 a.m. to 5:00 p.m. also does not conclusively establish his absence from the factory. Indeed, the appellant himself admits having gone to the factory and having signed the document relating to the meter. His dispute is essentially with regard to the circumstances and time of his arrival. Consequently, the plea does not displace the evidence of Ali Akbar Pirzado (PW-1) and Mumtaz Ali Hakro (PW-2) regarding his presence.

17. Having examined the evidence in its entirety, I am of the considered view that the prosecution case must be assessed not merely on the basis of the detection of a tampered gas meter, but also with reference to the appellant's alleged connection with the commission of the offence. The distinction is significant because proof of tampering with a meter and proof of criminal responsibility for such tampering are not necessarily synonymous. In the present case, however, the prosecution has relied upon the combined effect of the testimony of Ali Akbar Pirzado (PW-1) and Mumtaz Ali Hakro (PW-2), the laboratory report, the circumstances surrounding the removal and sealing of the meter, and the admissions made by the appellant during his examination on oath under Section 340(2), Cr.P.C. The evidentiary value of

these circumstances must be determined collectively, without treating any isolated admission as conclusive proof of guilt.

18. It is pertinent to observe that the mere fact that the commercial gas connection stood in the name of Ghulam Muhammad Abro does not necessarily exclude the possibility of criminal liability on the part of another person, provided that his involvement in the commission of the offence is established through legally admissible and reliable evidence. Equally, the appellant's admitted signature upon the meter-removal document cannot, by itself, be construed as an admission that he had tampered with the meter or dishonestly abstracted gas. Nevertheless, the learned trial Court was entitled to consider the said circumstance in conjunction with the prosecution evidence regarding his alleged role in looking after the factory. His previous dealings with SSGC concerning the same meter may be relevant to his familiarity with the connection and the premises, but cannot be treated as evidence of criminal propensity or as independent proof of the present charge.

19. The objections concerning non-production of the meter, non-examination of the laboratory expert and other members of the technical team, absence of independent witnesses and delay in registration of the FIR have also been examined. Such omissions cannot be brushed aside merely by describing them as technical irregularities. Their effect must be assessed in the context of the nature of the charge, the manner in which the meter was removed and examined, the proof and reliability of the laboratory report, and the opportunity available to the defence to challenge the prosecution evidence. The controlling consideration remains whether the evidence, viewed as a whole, establishes the statutory ingredients of the offence beyond reasonable doubt. The prosecution cannot derive any advantage from the weakness of the defence, nor can the appellant be required to establish his innocence.

20. Upon cumulative assessment of the evidence, and subject to the statutory requirements of Section 17 of the Act, I

find that the learned trial Court's conclusion regarding the appellant's involvement is supported by the testimony of the prosecution witnesses concerning his connection with the factory and the proceedings relating to the meter, read with the technical evidence of tampering and the relevant admissions made by him. The discrepancies and omissions highlighted by the defence, though requiring careful consideration, do not, on the appreciation adopted by the learned trial Court, materially undermine the prosecution case. Accordingly, I find no sufficient justification for interference with the findings recorded in the impugned judgment.

21. For the foregoing reasons, the instant **criminal appeal is dismissed** and the judgment dated 05.08.2020, passed by the learned Sessions Judge/Special Judge for Gas Utility Court, Larkana, in Special Case No.19 of 2019, arising out of Crime No.60 of 2019, registered at Police Station Allahabad, whereby appellant Naimatullah Jessar was convicted under Section 17 of the Gas (Theft Control and Recovery) Act, 2016, and sentenced to pay a fine of Rs.15,00,000/- (Rupees Fifteen Lac), and in default thereof to undergo simple imprisonment for six months, is hereby maintained.

22. Since the appellant is stated to be present on bail, he shall be required to satisfy the sentence of fine in accordance with law. In the event of non-payment of the fine, the sentence of imprisonment awarded in default shall be enforced in accordance with the applicable provisions of law, subject to any benefit legally admissible to him. His bail bond stands cancelled and the surety is discharged, subject to any outstanding liability arising from breach of the bond.

23. Let the record and proceedings be returned to the learned trial Court along with a copy of this judgment for information and necessary compliance.

Note: In the event of the appellant, Naimatullah Jessar, remaining absent at the time of pronouncement of this judgment, appropriate coercive process, including a non-bailable warrant of

arrest, shall be issued in accordance with law for securing his presence and enforcement of the sentence. The concerned SHO shall execute the warrant and submit a compliance report. Notice shall also be issued to the surety for proceedings in accordance with the relevant provisions of the Cr.P.C. Upon arrest, the appellant shall be dealt with in accordance with the sentence maintained by this Court and the applicable law.

J U D G E

Approved for reporting

