IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Jail Appeal No.144 of 2019

Present: Mr. Justice Nazar Akbar
Mr. Justice Zulfiqar Ahmad Khan

-

Appellant: Abdul Rehman son of Deen Muhammad Zahri Baloch through Mr. Mallag Assa Dashti, Advocate.

Respondent: The State, through Mr. Ali Tahir, Special Counsel for Pakistan Coastguards, assisted by Ms. Rida Tahir.

Date of hearing : **02.12.2020**

J U D G M E N T

NAZAR AKBAR, J.--- Appellant Abdul Rehman son of Deen Muhammad was tried by learned Judge, Special Court-I (Control of Narcotic Substances) Karachi in Special Case No.84 of 2014, arising out of **FIR No.3205 of 2013** of P.S. Field Intelligence Unit, Coast Guard, Karachi, for offence under Section 6 of the Control of Narcotic Substances Act, 1997 (hereinafter the CNS Act). After full dressed trial, by judgment dated **09.02.2019**, the appellant was convicted and sentenced under Section 9(c) of the CNS Act to imprisonment for life and to pay fine of Rs.300,000/-, in default whereof to suffer S.I. for three years more. Benefit of Section 382-B Cr.PC was extended to appellant. Appellant has challenged his conviction and sentence through instant appeal.

2. Briefly stated the facts of the case as narrated in the FIR are that on **27.12.2013** in view of the current circumstances (**موجودہ حالات**), Commanding Officer, Field Intelligence Unit, Pakistan Coast Guard (hereinafter the **PCG**) Headquarters, Karachi, constituted two mobile teams including one headed by Naib Subedar Qadeer Ahmed (the complainant) who along with his team members at 1900 hours

reached at Superhighway Northern Bypass near Toll Plaza and started secret surveillance. At about 2045 hours, he noticed a Mazda Heno Truck bearing Registration No. TKV-654 coming from Super Highway Northern Bypass, they halted it. The complainant inquired name of the driver of the said Truck, who disclosed his name as Abdul Rehman. Instantly, Hawaldar Muhammad Shafique and Naik Muhammad Ali were appointed as mashirs. In their presence, notice under **Section 23** of the CNS Act was given to Abdul Rehman (driver). Thereafter, complainant conducted search of the said Truck and recovered 100 packets containing Charas, hidden under the carpet beneath and behind the driving and passenger seats, inside the driving cabin of the said Truck, he weighed the same at crime scene, which accumulated to 100 Kgs. Sample of 10 grams of Charas was extracted from each packet and sealed the same were sent for analysis of its chemical compositions. Thereafter, complainant served notice under **Section 22** of the CNS Act upon the driver Abdul Rehman, arrested him, seized the vehicle and sealed the remaining property as well. Prepared mashimama of arrest and recovery, inventory of seized narcotics and memo of recovery of personal search. Then accused and case property were brought at Headquarters of the **PCG**, Karachi where instant crime was registered. After usual investigation challan was submitted before the Special Court (CNS) against the appellant.

3. At trial, the prosecution examined three witnesses viz. **Naib Subedar** Qadeer Ahmed (PW.1), **Naik** Muhammad Ali (PW.2) and **Subedar** Ishaque (PW-3) (investigating officer) and closed side for evidence of prosecution. The appellant in his statement under **Section 342, Cr.PC** denied all the allegations of the prosecution and claimed to be innocent. He pleaded that on 25.12.2013 at 09:00 pm,

he was arrested from Sohrab Goth Bus Stand, when he alighted from a Bus arrived from Quetta to Karachi and due to political rivalry he has been implicated in the instant case, he is a social worker, nothing has been recovered from his possession. He neither examined himself on oath nor led any evidence.

4. The Special Court (CNS), Karachi after hearing learned counsel for either side and perusal of evidence and vetting the record, by judgment dated **09.02.2019** convicted the appellant under **Section 6/9(c)** of the CNS Act. The appellant being aggrieved has sent this appeal from jail. The appellant was initially not represented by any counsel, therefore, on **3rd July 2019** Mr. Abdul Razzak, Advocate was appointed as advocate for pauper appellant, however, subsequently Mr. Mallag Assa Dashti, advocate also filed his power on behalf of the appellant.

5. Learned counsel for the appellant has contended that prosecution has falsely implicated the appellant in this case. There is hardly any evidence supporting the arrest of appellant with contrabands from the Toll Plaza at Super Highway except a statement of the Complainant supported by only one of his subordinates. He contended that the contents of FIR do not show that Naib Subedar Qadeer Ahmed/Complainant had received any spy information or otherwise he had personal knowledge to develop any suspicion to start secret surveillance near Toll Plaza, Super Highway and stop a particular Truck. He further contended that there is no Roznamacha Entry of departure of complainant from Coast Guard Police Station and every document has been prepared in the police station where the appellant was brought from Sohrab Goath bus stop. Even statement of witnesses under Section 161 Cr.P.C and FIR were recorded by the complainant and the investigation officer are

computer generated, giving reasons to believe that all statements of PWs and *Mushirs* were prepared in the office of Coast Guard. This admitted fact confirms that nothing has been done by the Coast Guards at the alleged place of incident. Learned counsel for the appellant has also contended that three officers of Coast Guards claimed to have arrested the appellant on the Super Highway at Northern bypass near Toll Plaza at 2045 hours, however, no efforts were made to associate any private person or personnel of other government agencies who are generally available round the clock near the Toll Plaza, Super Highway to witness recovery and arrest. He further contended that at least Highway Police Officers and other security staff of Toll Plaza were very close to the alleged place of incident and Government officials who were on duty could not have refused to be associated as *Mushirs* of arrest and recovery and therefore it was a willful and patent illegal arrest and detention in violation of **Section 103 Cr.P.C**. He also contended that even local police was not informed before or after the alleged incident of recovery of narcotics and arrest of appellant, which shows that there is no independent evidence to connect the appellant with the offence.

6. Learned counsel for Respondents has contended that **Section 103 Cr.P.C**. is not applicable for search, seizure and arrest of culprits under the CNS Act. He has contended that the law makers while enacting special law to deal with the menace of narcotics in Pakistan under **Section 25** of the CNS Act have excluded provision of **103** of the Cr.P.C. He has also argued that official of Coast Guards are equally competent witnesses and their evidence cannot be discarded unless shaken in cross-examination, therefore it was not necessary for the prosecution to collect further corroborative evidence against the appellant. The contraband item was found from Hino

(Mazda) Truck in possession of the appellant as at the time of arrest he was driving the said conveyance.

7. We have heard learned counsel for the parties and perused the record and evidence. We have also heard both the counsel on the question of territorial jurisdiction of the PCG to arrest the appellant for an offence under the CNS Act from Super Highway. First we propose to examine the case of appellant on merit.

8. The prosecution case as narrated in the FIR shows that on account of present situation (موجودہ حالات) Commanding Officer Field Intelligence Unit Coast Guards, Karachi constituted two teams for patrolling including the one headed by Naib Subedar Qadeer Ahmed/Complainant on **27.12.2013**. What was the "current situation" which compelled the Commanding Officer of Coast Guard to conduct secret surveillance more than 28 k.m. away from the coastal line on the Super Highway Northern bypass near Toll Plaza remains unanswered question and it surprises us since Super Highway is already under surveillance of the Highway Patrol Police, the local police and the Pakistan Rangers. A Naib Subedar, did stop a suspicious Heno Truck bearing Registration No.TKV-654 under **Section 23** of the CNS Act but he has not disclosed that how, when and why he suspected the particular Truck and instantly appointed two subordinates as **Mashirs** for search of the said Truck. According to the FIR he took about 2 hours in the registration of FIR which was registered at the **Field Intelligence Unit** Coast Guard, Karachi when they reached at the Unit after travelling about more than 28 Kilometers from the place of occurrence. The information in Column No. 4 of the FIR regarding place of occurrence, district and direction from the police station is vague and unidentified. Column 4 of FIR

shows place of occurrence is "**at a distance of about 28 Kilometers towards East**". It is not place of occurrence, it is only distance from the police station. It is not enough description of place of occurrence. Why the place of incident is **not** identified as Toll Plaza Super Highway etc. in this column? In the case in hand the Coast Guards have stopped a Truck near Toll Plaza on Super Highway and therefore, we can safely conclude that it was a case in which PCG "exercised the powers and performed the functions" under **Section 23** of the CNS Act which is reproduced below:-

> **23. Power to stop and search conveyance**. An officer referred to in Section 19, may, **if he has reason to suspect that any conveyance** is, or is about to be used for the transport of any narcotic drug, psychotropic substance or controlled substance **in respect of which he suspects that** any provision of this Act has been, or is being, or is about to be contravened at any time, stop such conveyance or, in the case of an aircraft, compel it to land and----
>
> (a) rummage and search the conveyance or part thereof,
>
> (b) examine and search any goods on or in the conveyance, or
>
> (c) if it becomes necessary to stop the conveyance, he may use all reasonable force for stopping it.

The provisions of Sections 21, 22 and 23 of the CNS ACT provide certain pre-requisites which the seizing officer/ complainant has to consider for taking action without fail, however, such facts are missing from the FIR. The Law through **Section 21** of the CNS Act ordains on the officer **to disclose** whether it was *"from his personal knowledge or from information given to him by any person (he) is of opinion that any narcotic drug, psychotropic, substance or control substance in respect of which an offence punishable under this Act has been committed"* whereas under **Section 22** the authorized officer has to show that he *"**has reasons to believe** that an offence punishable under this act has been committed"*, and in **Section 23** an

officer is required to divulge that he had *"**reasons to suspect that any conveyance is** or is about to be used for the transport of any narcotic drug etc. in respect of which **he** (the complainant) **suspects** that any provision of this act has been or is being or is about to be contravened at any time*." In the FIR we did not find any mention of the basis for having a suspicion to stop a particular Truck bearing registration No.TKV-654 as admittedly it was not during snap checking that the subject Truck was singled out. PW-2 Naik Muhammad Ali in cross-examination has confirmed that "***we did not check any other vehicle prior to checking the Heno Mazda Truck***".

9. The Seizing Officer PW-01, Naib Subedar Qadeer Ahmed is Complainant, but in the FIR he has not disclosed that whether on **27.12.2013** to form his opinion to suspect Truck No.TKV-654 to be stopped at 9 p.m, he had personal knowledge or someone had informed him about concealment of Charas in the said Truck, and that how he came to know that the said Truck would reach at Toll Plaza on the said date and time. Even it is not clear that the Truck was stopped near Toll Plaza before it crossed the Toll Plaza leading towards Hyderabad or after it had cross the Toll Plaza. Was it coming to Karachi or it was going out of Karachi? The place of occurrence was not properly identified by the complainant and *mushirs* and even the Investigation Officer, PW-3 Subedar Ishaque did not bother to draw a sketch of the place of incident. In his cross-examination PW-3 stated that "*I visited the place of incident at 11-30 P.M.* ***The complainant and mashirs were with me when I saw the place of incident. No any memo of seeing place of incident was prepared by me***. Why memo of inspection of place of incident was not prepared? Not explained. Be that as it may, near Toll Plaza does not

mean miles away from either side, it could be considered as at a walking distance to give a correct meaning of the word "near" used by the prosecution to notify the place of occurrence. Despite on Super Highway near Toll Plaza no explanation has been offered by the Complainant or the Investigation Officer except that they enjoyed benefit of **Section 25** of the CNS Act that why any private person or even other security agencies already available near Toll Plaza Super Highway could not be associated as witness when a very serious crime of trafficking of 100 k.g. of Charas was unearthed by magic.

10. In our humble view, the contentions of learned counsel for the prosecution that provision of **Section 103** Cr.P.C are not applicable in the cases of the CNS Act in view of **Section 25** of the CNS Act is not applicable at least in the facts of the case in hand. It is a well settled law that the provisions of **Section 103 Cr.P.C** have **not** been totally excluded from the CNS Act. In fact **Section 25** of the CNS Act only provides an exception and does not exclude it under all circumstances. **Section 25** of the CNS Act is reproduced as follows:-

> **25. Mode of making searches and arrests.** The provisions of Code of Criminal Procedure, 1898, **except those of Section 103**, shall, *mutatis mutandis*, apply to all searches and arrests insofar as they are not inconsistent with the provisions of Sections 20, 21, 22 and 23 to all warrants issued and arrests and searches made under these Sections.

The exception, reason or ground for not following the requirement of **Section 103** Cr.P.C has been provided by the law makers in **Section 21** of the CNS Act in the following words:-

> .....
> .....*and a* ***warrant for arrest or search cannot be obtained against such person without affording him an opportunity for the concealment of evidence or facility for his escape.***

A bare perusal of **Section 25** of the CNS Act clearly demonstrates that while making search and arrest, the provisions of **Section 103** Cr.P.C can only be avoided by establishing that the circumstances were such that by the time "warrant" could be obtained there was a possibility of escape of the accused, or there was a possibility for the accused that in the meanwhile he could have concealed the evidence; making it difficult for the prosecution to unearth the said evidence against him. In our humble view, seizing officer has to first meet the condition specified by the law makers in **Section 21** of the CNS Act while riding on the "exception" for non-compliance of **Section 103** of the **Cr.P.C** by invoking the provision of **Section 25** of the CNS Act. But for this reason that the Hon'ble Supreme Court time and again has held that compliance of **Section 103** of the Cr.P.C has to be examined in each case in the light of its own facts and circumstances. In the case of Niaz Muhammad vs. State Hon'ble Supreme Court of AJK (**PLD 1983 SC (AJ&K) 211**) while considering the necessity of compliance of **Section 103** Cr.P.C has held that:

> *"the strict compliance of section 103, Cr.P.C. could not always be insisted upon.* ***Each case has to be examined in the light of its own facts and circumstances****. The place of occurrence in the present case is a mountainous area, with a scattered population. Few houses are built on different hilltops."*

In the case of Zardar vs. The State (**1991 SCMR 458**) the Hon'ble Supreme Court held that:

> "*It is not an absolute requirement that in every case witness of the public must necessarily be produced.* ***It depends upon the facts of each case****. In the case in hand the Police Officers were in the ordinary course of duty looking for the suspects and errant."*

Similar view was expressed by Hon'ble Supreme Court of Pakistan in the case of State vs. Muhammad Amin (**1999 SCMR 1367**) while holding that:

> "*The concept of a compact population like villages in Punjab would not be relevant in this part of Azad Kashmir. It is in evidence of P.Ws. that people of the area had gone to their residences on the mountain top.* ***There is nothing in the evidence to the effect that some other people were present on the scene or that they were available.*** *So, in these circumstances if the witnesses of recoveries were not from the neighborhood it would not render the recoveries invalid."*

Keeping in line with the consistent pronouncements of the Hon'ble Supreme Court in the above cited judgments, the Hon'ble Supreme Court again in 2011 in the case of Muhammad Aslam vs. The State (**2011 SCMR 820**) while allowing two days' time barred appeal of convicts under Section 9/C of the CNS Act, acquitted them, amongst other, on the following grounds:-

> "It is significant to note that as per prosecution's own case, this incident had occurred in a busy area (public place) of town where number of private persons were available, but no efforts were made by the Investigating Officer of the crime to arrange any witness of the locality, who might have seen the appellant in any manner linked with the ten sacks of narcotics lying near the road in open space."

Following the above dictum of Hon'ble Supreme Court this Court in the case of Haroon Rasheed vs. The State (**2020 P.Cr.L.J Note 172**) held that"

> *"No doubt application section 103, Cr.P.C. has been excluded under Section 25 of Control of Narcotics Substances Act, 1997,* ***yet necessity of employing private person as mashir cannot be overlooked for the reason that the place of incident was a busy place and people were present and it was a day time****."*

In the case of appellant, too, there was an unhindered and abundantly clear possibility to engage an independent person to witness the search and arrest of the appellant, which could not be availed by him for no just cause. PW-02 has conceded in cross-examination that "*it is correct to suggest that police of Super Highway patrolled on road. It is correct to suggest that if any vehicle become out*

of order or stop (on super high way) for any reason then Super High Way patrol police used to inquire from said persons". It means there was a deliberate avoidance of obtaining an independent mashir on the free ride of **Section 25** of the CNS Act. The complainant has not given any explanation that why he did not request any official of Highway patrol police to become witness to the search and arrest of appellant. In view of the observations of the Hon'ble Supreme Court discussed herein, we are of the considered view that the prosecution for protection of **Section 25** of the CNS Act has to give justified reasons, otherwise non-compliance of **Section 103** of the Cr.P.C would be fatal. In the case in hand the failure of prosecution to gather otherwise available independent witnesses is more than enough to create serious doubts in their case against the appellant.

11. Furthermore, the complainant after having taken action in accordance with **sub-section (1)** of **section 21** of the CNS Act has also utterly failed to follow the mandatory command of law for the seizing officer contained in **Sub-section (2)** of **Section 21** of the CNS Act. **Section 21** of the CNS Act as per the following:-

> **21 "Power of entry, search seizure and arrest without warrant**. – (1) **Where an officer**, not below the rank of sub-Inspector of Police or equivalent authorized in this behalf by the Federal Government or the Provincial Government, who **from his personal knowledge or from information given to him by any person is of opinion that any narcotic drug psychotropic substance or controlled substance** in respect of which an offence punishable under this Act has been committed is kept or concealed in any building, place, premises or conveyance, and a warrant for arrest or search cannot be obtained against such person without affording him an opportunity for the concealment of evidence or facility for his escape such officer may –
>
> a) .....
> b) .....
> c) .....
> d) .....
>
> (2) **Before or immediately after** taking any action under sub-section (1), **the officer** referred to in that sub-section

shall record the ground and basis of his information and proposed action and forthwith send a copy thereof to his immediate superior officer.

The Seizing Officer neither **before** nor **immediately after** taking action *"recorded the ground and basis of his information and proposed action"* Nor he sent a copy thereof to his immediate superior officer **forthwith**. The use of words/phrase "before or immediately" and "forthwith" by the law makers in this **sub-section** have made the provision of **Sub-section (2)** of **Section 21** of the CNS Act as compulsory and mandatory instructions to be followed by the seizing officer. The conduct of Complainant who is also the seizing officer was patently derogatory to both **Sub-sections** of **Section 21** of the CNS Act as well as **Section 23** of the CNS Act, because he has not disclosed "reason to suspect" Truck No.TKV-654 and has not reported action taken by him to his immediate superior in writing forthwith. In fact the requirement of complying with the mandatory provisions of **Section 21(2)** of the CNS Act becomes all the more necessary for the seizing officer who inspite of the availability of independent mushirs avoided to include them as witness of search and arrest on the pretext of **Section 25** of the CNS Act. The legal requirement of "**forthwith**" sending a copy the ground and basis of information and action taken by the officer to his immediate superior officer is a mandatory check placed by the legislature on possible manipulation by the seizing officer in the information received, if any, by him and seizure of narcotic drugs to favour or prejudice the case of an accused.

12. Another aspect of the prosecution case is that PW-1, Naib Subedar has not been able to prove even his departure from the Coast Guard police station to the Northern bypass at Super Highway near Toll Plaza to start "secret surveillance" leading to seizure of 100 kg. Charas. This fact has been admitted by the star witness of

prosecution **PW-1 Qadeer Ahmed** in his cross examination whilest deposing as:-

> "It is correct to suggest that in FIR, roznamcha entry number of our leaving P.S Coast Guard is not mentioned. It is correct to suggest that in column No.6 of FIR Ex-6-B, no date and time of leaving P.S, is mentioned. It is correct to suggest that name of officer Commanding Field Intelligence Unit Pakistan Coast Guard Karachi is not mentioned in FIR, mashirnama and 161 Cr.P.C statements on whose direction we left P.S. It is correct to suggest that in mashirnama of arrest and recovery and FIR the registration number of our mobiles are not mentioned. We in all eight persons were in official dress while four persons were in plane cloth. It is correct to suggest that in FIR and mashirnama of arrest and recovery the names of all party men who were with me except both mashirs are not mentioned".

If in the above otherwise obvious situation, still some help is required from a case-law, one may refer to the judgment in the case of Abdul Sattar vs. The State (**2002 P.Cr.L.J 51**) and the case of Waris vs. the State (**2019 YLR 2381**). In these cases failure to produce entry of departure and arrival from police station has been declared a case of serious doubts in the prosecution story for which benefit has to go to the accused.

13. The prosecution's case on the question of safe custody and transmission of recovered Charas to the chemical examiner also appears to be very weak. The Seizing Officer in cross-examination about seizure of narcotics stated as under:-

> It is correct to suggest that in mashirnama Ex-6-A, it is not mentioned that remaining secured Charas was put in four bags and were sealed on the spot. It is correct to suggest that in FIR and in 161 Cr.P.C statements of PWs it is not specifically mentioned that the remaining property was sealed and brought at HQ Pakistan Coast Guard, Karachi. It is correct to suggest that in mashirnama, FIR, 161 Cr.P.C statements of P.Ws it is not specifically mentioned that all 100 sample parcels were put in five cloths bags and then five cloths bags were sealed. It is correct to suggest that no any date is mentioned on all five sealed samples bags present in the Court at viz; Article-E, F, G, H & I. It is correct to suggest that in four sealed bags containing remaining

> case property available in this Court at Article A to D no any date is mentioned.

Besides handling of the recovered narcotics drugs at the alleged spot in dubious manner as evident from the above evidence, the prosecution has also failed to explain the delay in sending the recovered narcotics to chemical examiner. The chemical examiner report available at page-151 shows that the recovered narcotics from **27.12.2013** to **30.12.2013** remained in the transit. It is clear from the chemical examination report that one Sepoy of Coast Guard Muhammad Ali on **28.12.2013** was directed to deliver the narcotics by hand in the office of chemical examiner and he took two days in reaching to the office of chemical examiner as he admittedly delivered the same on **30.12.2013** only. Where those samples remained during the period between **27.12.2013** to **30.12.2013** is a critical question. No evidence has been adduced to show safe custody of the Charas during this period. The Hon'ble Supreme Court in the case of Mst. Razia Sultana vs. The State (**2019 SCMR1300**) while relying on an earlier judgment of Hon'ble Supreme Court State vs. Imam Bux (**2018 SCMR 2039**) has been pleased to acquit the appellant by observing as follows:-

> 2. At the very outset, we have noticed that the sample of the narcotic drugs was dispatched to the Government Analyst for chemical examination on 27.2.2006 through one Imtiaz Hussain, an officer of ANF but the said officer was not produced to prove safe transmission of the drug from the Police to the chemical examiner. The chain of custody stands compromised as a result it would be unsafe to rely on the report of the chemical examiner. This Court has held time and again that in case the chain of custody is broken, the Report of the chemical examiner loses reliability making it unsafe to support conviction. Reliance is placed on State v. Imam Bakhsh 2018 SCMR 2039).

The other recent case law on the subject is Haji Nawaz vs. the State (**2020 SCMR 687**). Relevant observations of Hon'ble Supreme Court from page 689, side note “B” are reproduced below:-

> .....we have further observed that no evidence worth its name had been produced by the prosecution before the trial court establishing safe custody of the recovered substance at the local Police Station or safe transmission of the samples of the recovered substance from the Police Station to the office of the Chemical Examiner. This Court has already held in the cases of Amjad Ali v. The State (2012 SCMR 577) and Ikramullah and others v. The State (2015 SCMR 1002) that in the absence of any proof regarding safe custody or safe transmission of the recovered substance or the samples thereof a conviction cannot be recorded in a case of this nature.

In the case in hand, too, the situation is identical. The person who has been entrusted the task of taking the recovered Charas from police station to the chemical examiner has not been examined nor even he was mentioned in the list of witnesses in the challan sheet. His name as mentioned on chemical examiner report available at page-151 of paper book is Sepoy Mohammad Ali. Therefore, these cases squarely cover the case of the appellant for his acquittal.

14. Another aspect of the case is that PCG has recovered Charas from Hino (Mazda) Truck bearing No.TKV-654 which according to the prosecution case was driven by the appellant. The complainant in his evidence has disclosed name of the owner of said Hino Mazda Truck as Saad Muhammad son of Ali Muhammad though as per his own admission in cross-examination, ***No registration book was recovered by me at the time of incident in respect of Hino Truck (Mazda).*** Then surprisingly in examination-in-chief he also produced “photocopy of three toll tax payment receipts, one bill of additional duties, two orders of Assistant Collector Customs, MCCA-V in respect of used Hino Truck bearing Chassis No.FD3HJ-50568, Model 1993 in the name of Saad Muhammad S/O Ali Muhammad” as Article-O. In

cross-examination he stated that ***"It is correct to suggest that I have not included Saad Muhammad as accused in this case or even as PW."*** It is pertinent to note that the documents produced by complainant as Article-O in examination-in-chief were neither provided to the Investigating Officer nor mentioned by the I.O in the charge sheet. The Investigation Officer (PW-3) about the said Truck has stated in his examination-in-chief that *"I wrote letter to Excise and Taxation Department for giving details of ownership of vehicle bearing No.TKV-654..... I produce verification report of vehicle from Excise and Taxation department as Ex:10-C"*. According to the verification dated **31.12.2013** from the Excise and Taxation Department (Ex:10/C page 155 of paper book), the vehicle No.TKV-654 bearing Chassis No.FD3HLA-28475 and Engine No.H07DA-66285 is not Hino (Mazda) Truck and its model is 1992 and not 1993. The Ex:10/C has contradicted the statement of the complainant both as to the ownership of the vehicle as well as to the type of the vehicle seized by the complainant. The vehicle, according to record of Excise and Taxation Department, is Hino **Spraying Lorry** Truck and not Hino (Mazda) Truck. It is owned by one **Muhammad Riaz Khan** son of Ghulam Abbas Khan and not by **Saad Mohammad** son of Ali Muhammad. Moreover, in cross-examination the I.O also stated that ***"I did not cite owner of the vehicle recovered in this case as accused."*** No explanation has been offered by the Investigation Officer (PW-3) that under what circumstances and why he did not call either Saad Muhammad or Muhammad Riaz Khan or both to enquire and find out how and why their vehicle was found involved in an offence under **Section 6** of the CNS Act for carrying 100 Kg. Charas. The owner of "**conveyance**" used by the alleged accused to transport 100 Kg Charas should have been included at least in the inquiry and investigation since the Charas was allegedly recovered from a Truck

which was owned by either of them and the alleged driver, it at all driving the said Truck, was obviously appointed by either of them though he was not even having a driving license.

15. The failure of prosecution to raise basic question of inquiry and obtain answer from the relevant persons in their reach and restricting his inquiry to the appellant only creates serious doubts in the case of prosecution that the appellant who does not even have a driving license was actually arrested, or from the driving seat of the vehicle. The complainant, who had arrested the appellant, has admitted in cross examination that, ***"It is correct to suggest that no driving license was recovered from possession of accused at the time of his arrest."*** The Investigation Officer was under statutory duty to discover the actual facts of the case and arrest the real offender(s). Such duty is ordained on an Investigation Officer under **Rule 25.2(3)** of the Police Rules, 1934. It is reproduced below:-

> **25.2. Powers of investigating officers**.—(1) .....
> .....
>
> (2) .....
> .....
>
> (3) It is duty of an investigating officer to find out the truth of the matter under investigation. **His object shall be to discover the actual facts of the case and to arrest the real offender or offenders.** He shall not commit himself prematurely to any view of the facts for or against any reason.

Admittedly the alleged Charas was not recovered from the accused in his body search nor on his pointation rather it was recovered from one Hino (Mazda) Truck as alleged and the Truck which was owned by Saad Mohammad according to the complainant or by Mohammad Riaz Khan according to the Investigation Officer. The complainant to a straight suggestion in cross-examination has stated that *"It is correct to suggest that accused has not pointed the Charas to me and I*

myself have recovered the Charas from the Hino Truck (Mazda)..... .....It is correct to suggest that the documents and chits recovered in this case did not show the name of accused as owner of secured Charas or recovered Heno Truck (Mazda). In these circumstances that PCG had no material evidence to connect the accused with the alleged Charas claiming to have been recovered from a "conveyance" not even owned by the appellant nor he was driving it since he has no driving license. It means it was at most a case of mere presence of appellant in the alleged Truck and there was no evidence to show that it was in the knowledge of the appellant that Charas was also lying in the said Truck. In similar circumstances, the Hon'ble Supreme Court in the case of Muhammad Noor and others vs. the State reported in **2010 SCMR 927** has set aside the conviction by observing as under:-

> 10. .....
> .....If there is no evidence led by the prosecution to indicate that such persons knew that Charas or narcotic substance was concealed in secret cavities or had knowledge of the said place so as to attract the provisions of Article 122 of the Qanun-e-Shahadat Order, 1984 (hereinafter referred to as `the Order'). Nevertheless, if the property was lying open within the view of said persons or they knew the placement of property then the situation would be quite different. In such a situation, they are required to explain their position in terms of Article 122 of the Order, without such explanation their involvement in the case would be proved.
>
> 11. In the present case to the extent of the appellants Noor Muhammad, Bismillah and Abdul Sattar, the above mentioned facts have not been proved through any evidence either oral or documentary, therefore, they are not required to explain anything. The prosecution has simply proved their presence in the vehicle. Thus mere presence of the appellants in the vehicle would not involve them in the case unless conspiracy or abatement of the offence is shown and proved. Therefore, the prosecution has failed to prove the case against the appellants. In the case of Qaisarullah v. State 2009 SCMR 579, a similar question has been examined and it has been observed as under:---

> "The prosecution failed to prove through convincing evidence that Abdul Wall had exclusive knowledge of the concealment of narcotics in the car which neither belonged nor was being driven by him."

16. In view of the above facts and faulty inquiry coupled with lack of corroborative evidence to connect the appellant with the Charas allegedly recovered from the Truck and other several legal flaws noted in the above discussion, the conviction of appellant could not be maintained. Consequently, by short order dated **02.12.2020** this appeal was allowed and conviction and sentence recorded by the trial Court by judgment dated **09.02.2019** was set aside and appellant was acquitted of the charge. These are the reasons for our short order.

17. Now before parting with this judgment we must dilate upon the question of jurisdiction and other jurisdictional flaws in exercise of powers and functions under the CNS Act by the PCG in the case in hand. Our first question to learned counsel for Coast Guards was about jurisdiction and powers of PCG for inquiry and investigation while performing functions under **Sections 21**, **22** and **23** of the CNS Act. Learned counsel for the Coast Guards for territorial jurisdiction insisted to rely on the provisions of **Section 2(II)** read with First Schedule of Pakistan Coast Guards Act, 1973 and also contended that PCG offices have been notified as police stations. After the conclusion of arguments and short order, we, through the able assistance of Research Section of High Court also obtained a Notification about police station of PCG issued by provincial Government in the year 1973. **Section 2(II)** of the PCG, Act, 1973 and relevant Notification about police stations of PCG are reproduced below:-

First Schedule [Section 2(1)]

> "Southern strip of the Province of Baluchistan **along and astride the existing road emanating from the Pak-Iran** border connecting the towns of MAN-TRRB – HOSHAB – BAZDAR BELA – UTHA to HUB RIVER (BUNDAT-MURAD) and also the southern area of the Province of Sindh along **and astride the line and road from HUB RIVER** (BUND MURAD) – GADAP – SARI SING – THANO BULAKHAN – BANO – MIRPUR BATARO – JATTI **to the Arabian Sea** but excluding the limits of any port in those areas."

GOVERNMENT OF SIND
HOME DEPARTMENT

N O T I F I C A T I O N

The 2nd April, 1973.

> No.9/31(HDO)721:- In pursuance of the provisions contained in **clause (S) of sub-section (1) of section 4** of the Code of Criminal Procedure, 1898 (Act No.V of 1989), the Government of Sind are pleased to declare the Headquarters and every Quarter Guard of the Pakistan Coast Guards and every Battalion Headquarter and Battalion Quarter Guard to be a Police Station **for the purpose of detaining persons taken in custody by the Pakistan Coast Guard Force and registering cases against such persons.**

Sd/-
Junejo Mohammad Khan, PCS,
Secretary to the Govt of Sind,
Home Department.

Learned counsel for the PCG has also contended that powers of the Pakistan Coast Guards are further supplemented by **Section 14(2)** of the Pakistan Coast Guards Act, 1973:

> "In addition to the powers conferred under sub-section (1), the officers and junior commissioned officers of the force shall exercise all the powers conferred on the officer in charge of a police station under the Police Act, 1861 (V of 1861), and under the Code of Criminal Procedure, 1898".

Learned counsel for the PCG, Barrister Ali Tahir by referring to the above provision of Pakistan Coast Guard Act, 1973 contended that the Pakistan Coast Guards have been empowered to exercise powers under the Control of Narcotics Substances Act, 1997, vide notification **SRO 787(1)/2004** dated September 17, 2004, which is still in the field. He has filed a copy of the said notification with his

above contentions in writing. The said notification is reproduced below:-

MINISTRY OF NARCOTIC CONTROL

NOTIFICATION

Islamabad, the 16th September, 2004

> **S.R.O. 787(I)/2004.---** In exercise of the powers conferred by **sub-section (1) of section 21** of Control of Narcotic Substances Act 1997 (XXV of 1997), and in suppression of its Notification No. S.R.O.656(I)/2004 dated 2nd August, 2004, the Federal Government is pleased to authorize the members not below the rank of Sub-Inspector or equivalent of the Anti Narcotics Force, Provincial Excise and Police Departments, Inspector or equivalent of the Customs Department and Subedar in the Frontier Corps in the Provinces of Balochistan and the North-West Frontier, Sub-Inspector or equivalent of Pakistan Rangers (Sind), Sub-Inspector or equivalent of Pakistan Rangers (Punjab), **Naib Subedar or equivalent of Pakistan Coast Guards** and to the Officers of Maritime Security Agency not below the rank of Chief Petty Officer to **exercise the powers and perform the functions under the aforesaid section and sections 22, 23, 37 (2) and 38 of the said Act within the areas of their respective jurisdiction**.

18. Before commenting on the legitimacy of the actions taken by the PCG under the afore-quoted notification by Ministry of Narcotic Control, let us examine whether the functions performed by the PCG were, otherwise, in accordance with law or not. The perusal of provincial Government notification under **Section 4(1)(s)** dated **2nd April, 1973** shows that it is not in accordance with the provisions of **Section 4(1)(s)** of the Cr.P.C. The police station under **Section 4(1)(s)** of the Cr.P.C is defined as under:-

> *(S) "Police-station".* "Police-station" means any post or place declared, generally or specially, by the [19][Provincial Government] to be a police-station, and **includes any local area specified by the** [19][Provincial Government] **in this behalf**:

The aforesaid notification does not specify **any local area**. It is defective in as much as it even does not show the exact location of any of the police station. Irrespective of the fact that the so-called

defective notification declaring police stations *"for the purpose of detaining persons taken into custody by the Pakistan Coast Guard Force and registering cases against said persons"* it does not include any **Field Intelligence Unit** of PCG to be treated as police station. Additionally, the **FIR No.3205 of 2013** is not registered in any "book" required to be kept in the police station in terms of **Section 154** of the Cr.P.C. It is admitted by the complainant in cross-examination when he stated that, "***I do not operate the computer. It is correct to suggest that FIR and 161 Cr.P.C statements of P.Ws are computerized. Hawaldar Amjad is Computer Operator Clerk at P.S Coast Guard, who has typed FIR and 161 Cr.P.C statements. It is correct to suggest that said Hawaldar Amjad is not shown as witness in this case in challan sheet."*** The FIR does not disclose that the author of the FIR has sent its carbon copies to the concerned officers referred to and mentioned in **Section 157** of the Cr.P.C read with **Rule 25.4** of the Police Rules, 1934. **Rule 24.5** of the Police Rules, 1934 is reproduced below:-

> **24.5. First Information Report Register.** (1) The First Information Report Register shall be **printed book in Form 24.5.(1) consisting of 200 pages and shall be completely filled before a new one is commenced cases shall bear an annual serial number in each police station for each calendar year**. Every four pages of the register shall be numbered with the same number and shall be written at the same time by **means of the carbon copying process**.
>
> The original copy shall be **preserved in the Police Station for a period of sixty years**. The other three copies shall be submitted as follows:-
>
> **(a)** One to the Superintendent of Police or other gazette officer nominated by him.
> **(b)** One to the Magistrate empowered to take cognizable of the offence as is required by **Section 157**, Criminal Procedure Code.
> **(c)** One to the complainant unless a written report in Form 24.2(1) has been received in which case the check receipt prescribed will be sent.

> (3) In the case of the railway police.....
> .....
>
> (4) **All information required by the form shall be filled in, and thereafter the serial number of each case diary submitted shall be noted on the reverse of the original copy which is to remain at the police station.**
>
> (5) On the conclusion of the case the particulars contained in the charge sheet slip shall be filled in on the reverse of the original copy and the slip returned to the Superintendent office.

A computer in the Coast Guards' Field Intelligence Unit cannot be treated as a "**printed book in Form 24.5(1) consisting 200 pages**" nor anything typed on the computer "shall be written at the same time by means of the **carbon copying process**" to be "**preserved for sixty years**". The very fact that the number of FIR is **3205** also confirms that the FIR is neither on printed book nor it contains any **annual serial number**. How can anything subsequently required to be "**noted on the reverse of the original copy** (of FIR) according to **Sub-rule (4) of Rule 24.5** of the Police Rules, 1934 can be noted **which is to remain at the police station**. Therefore, the action taken by the PCG against the appellant by no means was in accordance with law. These grave mistakes of law in handling the case of appellant render the entire proceedings against the appellant as illegal, void ab-initio and without jurisdiction.

19. Now coming back to the legitimacy of the action taken by the PCG on the basis of S.R.O. 787(I)/2004. The CNS Act is a special law enacted by the Parliament pursuant to Article 3 of the UN Drug Convention, 1988 ratified by Pakistan on **25.10.1997** and **Section 76** of the CNS Act clearly declares that, ***"The provisions of this Act shall have effect notwithstanding anything contained in any other law for the time being in force"***. The said notification itself is limited to the functions prescribed under **Sections 21**, **22** and **23** of

the CNS Act. **Section 21** of the CNS Act does not confer powers of inquiry and investigation on PCG or for that matter on any other agency mentioned in the said notification namely, Customs Department, Frontier Corps, Pakistan Rangers (Sind), Pakistan Rangers (Punjab), Pakistan Coast Guards and Maritime Security Agency. The agencies mentioned in the notification bearing SRO No.787(I)/2004 are bound to respect the non-obstinate clause in **Section 76** of the CNS Act and should not act in derogation to the expressed provision of the CNS Act "notwithstanding anything contained in the law" under which the said agencies are constituted. Therefore, in presence of non-obstinate clause in the CNS Act, anything done or purportedly to have been done by the PCG in the name of the powers already available to them under the Pakistan Coast Guard Act 1973 while performing functions under **Section 21(1)** of the CNS Act was in excess of the powers under the said notification. Even otherwise, the heading of provision of **Section 21** of the CNS Act is ***"power of entry, search, seizure and arrest without warrant"*** and the heading of **Section 27** of the CNS Act reads "**disposal of persons arrested and article seized**" under Section 20 or 21 of the CNS Act. **Section 27** of the CNS Act suggests how to deal with the person and article once arrested and seized by any Government agency under **Section 21(1)** of the CNS Act. Section 27 of the CNS Act is reproduced below:-

> **27. Disposal of persons arrested and articles seized:**
>
> (1) Every person arrested and article seized under a warrant issued under Section 20 shall be forwarded without delay to the authority by whom the warrant was issued; **and every person arrested and article seized under** section 20 or **section 21 shall be forwarded without delay to**--
>
> (a) The officer-in-charge of the **nearest police** station;
>
> (b) The Special Court having jurisdiction.

> (2) The authority or officer to whom any person or article is forwarded under this section shall, with all convenient dispatch, take such measures as may be necessary under the law for the disposal of such person or article.

The use of words "**nearest** police station" in clause (a) means a police station under the local police or a police station established under the Anti-Narcotic Force Act, 1997 constituted with specific **"purpose of inquiring into, and investigating offence relating to narcotics and Narcotic Trafficking and for matters connected therewith as incidental thereto"**. It does not mean a police station under the control of PCG for the purpose of **Section 3** of the PCG Act, 1973. Therefore, on completion of an action taken by the PCG under **Section 21** of the CNS Act, the concerned officer of PCG was required to "**dispose of the person arrested and articles seized**" in terms of **Section 27** of the CNS Act. It is an admitted position that personnel of PCG while performing functions under **Sub-section 1** of **Section 21** of the CNS Act has arrested the appellant for committing an offence under **Section 6, 7 and 8** of the CNS Act 1997 and not for any offence under **Section 3(a) to (d)** of the PCG Act, 1973, therefore, the appellant should have immediately been forwarded to the officer-in-charge of the **nearest** police station alongwith seized Charas in obedience of the provisions of **Section 27** of the CNS Act, 1997.

20. In our humble view whenever policing powers are conferred on any agency constituted under a special law, such power can be exercised by the concerned agency only in relation to the functions assigned to them under the said special law. One special law cannot be merged into another special law by any notification for any purpose whatsoever, particularly when one of the two enactments carrying an overriding effect on any other law for the time being in force. It is claimed by the complainant in the FIR itself that, "*as per*

order of higher officers, investigation/case was handed over to CGJO No.1237 Naib Subedar Ishaque for further investigation." These very words in the FIR are out of the purview of the powers conferred on the PCG under the notification bearing S.R.O. No.787(I)/2004 and it is violation of several other provisions of the CNS Act, including the provisions of **Section 27** of the CNS Act. Power and functions of officers of PCG under **Section 14(2)** of the PCG Act, 1973 are not available to the officers of PCG while performing functions under the CNS Act. In view of the non-obstinate clause in **Section 76** of the CNS Act and limited power of arrest and seizure envisaged under **Section 21(1)** read with **Section 27** of the CNS Act, the Investigating Officer PW-03, Subedar Ishaque also was not competent to hold any inquiry and investigation since the notification bearing SRO No.787(1)/2004 did not confer powers of inquiry and investigation under the CNS Act on the personnel of PCG. The I.O was not authorized/notified by the Federal Government to inquire and investigate the offences under the CNS Act and, therefore, he, too, has assumed the jurisdiction not vested in him under the CNS Act. S.R.O. No.787(I)/2004 does not authorize PCG to usurp the power of Anti-Narcotics Force. In the present case as alleged by the PCG the place of incident was Northern Bypass Super Highway near Toll Plaza and therefore, for the purpose of inquiry and investigation, the nearest police station for the disposal of arrested person (the appellant herein) and article seized by the PCG was ANF Police Station in Gulshan-e-Iqbal, Karachi for the areas of district West and Central including area of P.S Gulzar-e-Hijri and Gadap of Malir district already notified by the Government of Pakistan, **Narcotic Control Division** vide notification dated **12.6.2002**. And the officer-in-charge of Police Station ANF on receiving the arrested person and articles was required to take steps under **Sub-section (2) of Section**

27 of the CNS Act read with other enabling provisions of ANF Act, 1997. Otherwise the nearest police station was Gadap police station in whose territorial jurisdiction the place of incident falls. In any case a **Field Intelligence Unit** of PCG about 28 kilometers away from the place of incident under the control of PCG cannot be considered as the **nearest** police station mentioned in **clause (a)** of **Section 27(1)** of the CNS Act. As per record of the case in hand, the personnel of PCG were supposed to dispose of the appellant and articles seized viz the Charas and the Truck by handing over the same to the SHO, ANF, P.S Gulshan-e-Iqbal, Karachi.

21. In view of the limited powers conferred on Pakistan Coast Guards under the Notification bearing SRO No.787(1)/2004 as discussed above, the Investigation conducted and challan submitted by an officer of Pakistan Coast Guards before a Special Court constituted under **Section 45** of the CNS Act was illegal, void and contrary to the requirements of the CNS Act. Likewise even lawyers representing Pakistan Coast Guards before the **Special Courts** for trial of offences under the CNS Act were, otherwise, not competent to conduct proceedings under the CNS Act before a Special Court unless they were appointed as Special Public Prosecutor as required under **Section 50** of the CNS Act which is reproduced below:-

> **50. Special Prosecutor:** (1) The Federal Government may appoint a person who is an advocate for a High Court to be a Special Prosecutor on such terms and conditions as may be determined by it and any person so appointed shall be competent to conduct proceedings under this Act before a Special Court and, if so directed by the Federal Government, to withdraw such proceedings.

22. In view of the above discussion the action taken by the Pakistan Coast Guard against the appellant after his arrest and seizure of the Charas in performing function under Section 21(1) of

the CNS Act including even the trial conducted through a prosecutor nominated by the PCG in violation of **Section 50** of the CNS Act was illegal, void ab-initio, without any lawful authority and, therefore, the entire trial has been vitiated on account of being corum-non-judice. All the legal anomalies discussed herein in prosecution cases under the CNS Act by the Pakistan Coast Guard is an illegal practice which seems to have not been noticed by the Special Court constituted under CNS Act. However, for coming to the conclusion that all the actions taken by the PCG in respect of the appellant were outside the purview of **Section 21** of the CNS Act was an illegal practice and it cannot be allowed to perpetuate, we find ourselves fortified by the Judgment of the Hon'ble Supreme Court in the case of the State through Advocate General, Sindh vs. Bashir and others (**PLD 1997 SC 408**). In the said case before the Hon'ble Supreme Court, one of the issues with reference to the powers of CIA personnel to investigate any cognizable offence and submit challan appears to be analogues to the question of powers of Pakistan Cost Guards to investigate any offence under the CNS Act and submit challan before a Special Court in exercise of limited powers and functions under **Section 21(1)** of the CNS Act. The similar question from the said judgment at page-416 of the citation is reproduced below:-

> **(vi)** that C.I.A. personnel have no power under section 156(1) of the Code of Criminal Procedure, 1898, hereinafter referred to as Cr.P.C., to investigate any cognizable offence and to submit a challan in respect thereof and, therefore, the entire trial vitiated on account of coram non judice.

23. The same was our question to the learned counsel for the Pakistan Coast Guard that what was the jurisdiction and to what extent it has been exercised by the Pakistan Coast Guards personnel on the basis of notification SRO No.787(1)/2004 issued by the

Ministry of Narcotic Control. The Hon'ble Supreme Court in para-13, 14, 15 and 18 of the citation has answered this question as under:-

> 13. Adverting to the last submission, namely, that C.I.A. personnel have no power under section 156(1) of Cr.P.C. to investigate any cognizable offence and to submit a challan in respect thereof and, therefore, the entire trial vitiated on account of coram non judice, it may be observed that under subsection (1) of section 156, Cr.P.C. the power to investigate a cognizable offence under the above provision has been conferred on any office incharge of the **Police Station having jurisdiction over the local area within the limits of such Police Station**, whereas clause (p) of section 4, Cr.P.C. defines "officer incharge" of a police station as under:--
>
> "(p) officer-in-charge of a police-station' includes, when the officer-in-charge of the police station is absent from. the station house or unable from illness or other cause to perform his duties, the police officer present at the station house who is next in rank to such officer and is above the rank of constable or when the Provincial Government so directs, any other police officer so present:"
>
> A perusal of the above provision indicates that only an officer in-charge of the police station having jurisdiction over the local area within the limits of a police station can investigate a cognizable offence or any other person covered by the definition of the officer-in-charge of a police station given in above clause (p) of section 4, Cr.P.C. which in the absence of officer incharge of a police station includes officer-in-charge present at the station house who, is next to the officer incharge of the police station and is above the rank of the constable or when the Provincial Government so directs, any other police officer so present.
>
> The above provision does not include C.I.A. personnel, therefore, they have no power to investigate a cognizable offence. Since this was a question of public importance as it is not uncommon that C.I.A. personnel have been investigating and submitting challans in respect of cognizable offences, inter alia in Sindh including Karachi, we had passed the following order on 15-2-1997:--
>
> > "In this case one of the pleas raised by the defence is that the.C.I.A. personnel had arrested the accused and had, investigated the case and submitted challan. According to learned counsel for the defence, this was in violation of section 156(1) of the Criminal Procedure Code which authorises an officer-in-charge of the Police Station of the area concerned. We had issued notice to the learned Advocate-General, Sindh to assist the Court on the above question for today and in response to the above notice Shaikh Mir Muhammad, the learned

> Advocate-General, Sindh, has appeared and submitted that factually C.I.A. personnel have no power to register the case and investigate unless authorised by the superior officers in terms of the Criminal Procedure Code. He has, however, contended that the unauthorised registration or investigation of the case would not vitiate the trial if it was held case by a competent Court. The practice that the C.I.A. has been arresting,. investigating and submitting challan without authorisation is prevalent inter alia Karachi, we would issue notice to the I.-G. Police, Sindh, to appear in person on 17-2-1997 to bring the relevant record if any, authorising C.I.A. personnel to investigate cases in the absence of the authorisation by the superior officers. A copy of this order may be given to the learned Advocate-General who will contact the I.-G. and D.I.-G. to ensure their appearance.

14. In response to the above order, Mr. Mir Muhammad Sheikh, learned Advocate-General Sindh, alongwith Mr. Mohib Asad, I.-G. Police, Sindh, Mr. Asad Jehangir, D.I.-G. Police, Karachi Range, and Mr. Allah Bux, A.I.-G. Legal had appeared. Mr. Mir Muhammad Sheikh, learned Advocate-General, Sindh as well as Mr. Mohib Asad, I.-G. Police, Sindh, candidly submitted that there is no law or valid order under which the C.I.A. personnel have been generally authorised to take cognizance of a cognizable offence udder section 156(1), Cr.P.C.

15. However, Mr. Allah Bux, A.I.-G. Legal has submitted that **since for the last several decades the C.I.A. personnel have been taking cognizance of cognizable offences, investigating the same and submitting the challans in respect thereof, inasmuch as even a Special C.I.A. Court was established at Karachi for trial, the same constitutes according of recognition by the Courts to the C.I.A.'s power to take cognizance of cognizable offences, to investigate and to submit challans to the Court concerned.**

The above submission seems to be fallacious. **Any alleged illegal practice cannot negate an express provision of a statute**. It is unfortunate that a Government functionary which is entrusted with the enforcement of law should be guilty of breach of a provision of law. **It is high time that efforts should be made to establish the supremacy of law instead of relying upon an illegal practice.**

16. .....
.....

17. .....
.....

18. As regards the question, as to whether the above illegality/irregularity if already committed by the C.I.A. personnel would vitiate the trial, it may be observed that

> subsection (2) of section 156, Cr.P.C. expressly provides that: ' No proceeding of a police officer in any such case shall at any stage be called in question on the ground that the case was one which such officer was not empowered under this section to investigate". It is an admitted position that the C.I.A. is part of the Police Force. It is in fact a special branch carved out from the police force for special purpose. The violation of section 156(1) of the Cr.P.C. may not vitiate trial if no serious prejudice has been caused to the accused person concerned resulting in miscarriage of justice in view of above subsection (2) of section 156, Cr.P.C., but **it does not mean that the C.I.A. personnel should knowingly violate the above provision of the Cr.P.C. On the contrary, they are legally duty bound to ensure the supremacy of law.**

24. Like CIA personnel, the PCG personnel also seems to have been wittingly or unwittingly guilty of exercising powers of investigating the offence under **Section 6, 7 and 8** of the CNS Act and submitting challans before a Special Court constituted under the CNS Act without any express provision of the CNS Act authorizing them to perform these functions under the CNS Act. Therefore, in view of above cited judgment while we hold that Pakistan Coast Guards have no powers to prosecute a person guilty of offences under the CNS Act, the office is directed to send copy of this Judgment to all the Special Courts established in Sindh under **Section 45** of the CNS Act for trial of cases under CNS Act with direction to strictly follow the provisions of the CNS Act in the light of our findings from para-17 onwards. Copy of this Judgment may also be sent to (i) Director General, Pakistan Coast Guards, (ii) Director General, Anti-Narcotic Force and Inspector General of Police, Sindh to ensure that the illegality committed by the Pakistan Coast Guards in prosecution of the cases under the CNS Act should be stopped forthwith and investigation and prosecution of all the pending cases registered by the Pakistan Coast Guards in exercise of powers and functions under **Section 21(1)** of the CNS Act may be assumed/transferred to the other agencies authorized to deal with the menace of narcotics and

its trafficking etc. strictly in accordance with the CNS Act whatever administrative steps are to be taken by the D.G, Pakistan Coast Guards, D.G Anti-Narcotic Force and the I.G. Police, Sindh pursuant to this Judgment may be intimated to this Court in writing through the office of MIT-II for perusal in Chamber within thirty (30) days of receipt of this Judgment.

J U D G E

J U D G E

Karachi, dated
February 13, 2021

Ayaz Gul