

IN THE HIGH COURT OF SINDH AT KARACHI

Crl. Appeal No.143 of 2017

Muhammad Shahid Appellant

Versus

The State Respondent

Crl. Appeal No.144 of 2017

Muhammad Akram Appellant

Versus

The State. Respondent

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Appellants In person

Respondent Through Malik Sadaqat Awan,
Special Prosecutor SSGC

Date of hearing 13.08.2024

Date of Judgment 19.08.2024

JUDGMENT

Omar Sial, J: Sui Southern Gas Company Limited alleged that on 30.03.2016, a washing/drying machine was operating through an unauthorized gas connection on business premises owned by the two appellants, Mohammad Akram and Mohammad Shahid. F.I.R. number 50 of 2016 was registered under sections 462-C and E and 34 P.P.C. at the SSGC police station in Karachi.

2. Both appellants had pleaded not guilty and claimed to be tried. At trial, the prosecution examined **PW-1 Asad Ghouri**

(complainant), **PW-2 Jagdesh Kumar**, and **PW-4 Ashfaq Ahmed**, who were SSGC employees. They saw the washing/drying machine running with a direct gas connection on 30.03.2016. **PW-3 A.S.I. Hamid Ali** registered the F.I.R. **PW-5 A.S.I. Abid Shah** was the investigating officer of the case. Both appellants pleaded innocence in their respective section 342 Cr.P.C. statements.

3. At the end of the trial, the learned 7th Additional Sessions Judge, Karachi Central, convicted the two appellants of an offense under section 462-C P.P.C. and sentenced them to a five-year prison term and a fine of Rs. 5,00,000/- each (or one more year in prison if the fine was not paid).

4. I have heard the appellants in person and the learned prosecutor for SSGC. My observations and findings are as follows.

5. The learned prosecutor very frankly submitted that the monetary loss caused to SSGC had been recovered, as the appellants had paid in full the demand made by SSGC. Given the foregoing, he submitted that he had no objection if the appellants were acquitted.

6. As mentioned above, the two appellants were charged with offences under sections 462-C and E P.P.C. However, both appellants were convicted and sentenced for an offence committed under section 462-C P.P.C. This was an error. The case was regarding gas theft, whereas the appellants were

convicted and sentenced for petroleum theft. Although the appellants do not seem to have been prejudiced by this mistake at the trial, there could be an argument that having tried the appellants for offences under section 462-C and E, P.P.C, them being convicted for an offence under section 462-C P.P.C. only would mean that they were acquitted for an offence under section 462-E. Considering the reasons detailed in this opinion and the fact that the appellants have undergone the rigors of trial for an eight-year period, I am not inclined to remand back the case and have proceeded on the premise that the trial judge had wanted to record a conviction under section 462-E P.P.C.

7. The seizure memo prepared by A.S.I. Hamid Ali, ostensibly at 1:00 p.m. on 30.03.2016, showed that he seized one 20 to 21-foot-long pipe in which there was a two-and-a-half-foot-foot iron pipe. PW-1 Asad Ghouri witnessed the seizure. Asad Ghouri, at trial, however, conceded that the pipe produced in court as case property was not 20 to 21 feet long. He further admitted that the 20- to 21-foot-long pipe was not mentioned in the challan, or in his own section 161 Cr.P.C. statement. The washing and drying machines to which the connection was made were left in an unsealed condition at the place of the incident, and the very place of the incident was also left open by A.S.I Hamid Ali. The other witness to the alleged recovery was PW-4 Ashfaq Ahmed. He testified that the investigating officer had taken his signatures on a blank piece

of paper. He further testified that “it is a fact that nothing was secured from the place of incident.” He also said that the property produced in court was sealed in front of him at the police station. Ashfaq Ahmed was also a witness to the inspection of the place where the incident occurred. In his testimony, he revealed that one Abdul Waheed Lakher prepared the memo on the spot. The record reflects that no person by such name had even accompanied A.S.I. Abid Shah to the place of the incident. While A.S.I. Hamid Ali stated that he had sealed the recovered pipes on the spot; the witness to the seizure, i.e., Asad Ghouri, said that no sealing took place in his presence.

8. A.S.I. Abid Shah conceded that while investigating the case, he had himself made no entries in the Daily Diary at the police station but that a person named Furqan, who was not even a police officer, had been called by him, who had then made the entries. The challan in the case had also been written by Furqan, allegedly at Abid Shah’s dictation. Abid Shah further conceded that he had wrongly mentioned the size of the sealed pipes in the challan. The memo of inspection of the place of incident shows that it was prepared by Abid Shah at 5:30 p.m. on 30.03.2016. Abid Shah, himself at trial, stated that he had gone to inspect the place of the incident at 12:45 p.m. on 30.03.2016, which, if correct, would mean that he was present at the spot when the incident occurred. None of the witnesses said that he was present then. Abid Shah further conceded that

he did not know the property owner where the machines were installed and that he had made no effort to even find out who the property owner was. While the witnesses acknowledged that the area where the seizure was made was a residential area, no evidence was produced that a factory operated on the premises. No reason was given for the police not to comply with the requirements of section 103 Cr.P.C. while entering the premises. No credence can be given to such a pathetic investigation carried out, let alone base a conviction on the same. The case is replete with contradictions between the witnesses. However, I am satisfied that the prosecution failed to prove its case beyond reasonable doubt based on the observations made above.

9. Given the above, the appellants are acquitted of the charge. They are on bail. Their bail bonds are cancelled, and sureties are discharged.

JUDGE