

IN THE HIGH COURT OF SINDH AT KARACHI

Present:

Mr. Justice Omar Sial
Mr. Justice Shamsuddin Abbasi

Criminal Appeal No. 31 of 2025

[Rizwanullah vs. The State]

Rizwanullah : the Appellant through Mr. Mallag Assa Dashti, Merrukh Zehri & Palwasha Tareen, Advocates

The State : through Mr. Habib Ahmed, Special Prosecutor, ANF and Mr. Khalid Rajpar, Special Prosecutor, Customs

Date of Hearing : 01.04.2026

Date of Decision : 15.04.2026

J U D G M E N T

Omar Sial, J. On 28.08.2019, Inspector Wajid Hussain received intelligence via senior officers regarding an inter-provincial narcotics smuggling operation. The report indicated that Khalid Khan and Asghar Khan (both sons of Haji Janan and residents of Waziristan), along with an individual named Qadir, intended to smuggle a massive quantity of opium. The narcotics were hidden within a grease shipment in container No. TRHU-3195142, using the "E-Form" of Ittehad Enterprises through their agent, Rizwanullah (son of Saeedullah).

2. Per the directives of high-ranking officials, a task force was formed consisting of Inspector Wajid Hussain, ASI Sadaqat Ali, and several police officials (Ameer Hamza, Amir Khan, Shoukat Ali, and Toufiqul Hassan). Equipped with arms and following Daily Diary Entry No. 14 at 19:30 hours, the team departed for the SAPT, Karachi ANF Examination Area. Upon arrival at 2000 hours, the team coordinated with the on-duty staff led by Inspector Nisar Ahmed and proceeded to the container.

3. Two individuals were found standing by the container. While nearby civilians declined to act as witnesses, PC Toufiqul Hassan and PC Aamir Khan were appointed as official witnesses. The two men were identified as:

- I. **Khalil Muqtadir:** A clearing agent for Al-Muqtadir Service, Karachi.
- II. **Rizwanullah:** A resident of South Waziristan, who identified himself as the owner of the goods.

Rizwanullah produced export documents identifying the exporter as Muhammad Ashraf of Ahmed Ittehad Enterprises (Lahore) and the importer as Pak Global Textile Bedding (Ontario, Canada). The documents declared a cargo of 2,000 grease cartons.

4. After cutting the cargo and shipping line seals (No. 000060 and No. 7493682-H), the ANF team inspected the 2,000 cartons of "Safari MP-3" grease. Out of these, **658 boxes** across 55 cartons were found to be suspicious. Upon opening these boxes, round packets wrapped in yellow tape containing opium stored in plastic bags and cloth pouches were found.

5. The seized narcotics were weighed on an electronic scale, totaling **329 kg (gross)**. A 10-gram sample was taken from each of the 658 packets for chemical analysis, and they were labeled 1 to 658. The samples, remaining opium, and empty boxes were secured in nylon sacks and sealed according to protocol. The remaining 1,945 grease cartons contained no contraband and were resealed within the container. F.I.R. No. 62 of 2019 was registered under Sections 6/9(c), 14, and 15 of the CNSA-1997 at the ANF's Clifton police station.

6. The following people were accused in this case: (i) Rizwanullah, (ii) Abdul Rahim, (iii) Qadir Khan alias Sajan, (iv) Asghar Khan, (v) Khalid Khan, (vi) Unnamed Importer in Canada, and (vii) Muhammad Ashraf. Only two accused, i.e., Rizwanullah and Abdul Rahim, faced the trial, whereas (iii) to (vi) were declared proclaimed offenders and (vii) died during the proceedings.

7. Rizwanullah and Abdul Rahim both pleaded not guilty and claimed to be tried. At the trial, the prosecution examined **PW-1 Inspector Muhammad Hassan Khoharo** (maalkhana in charge); **PW-2 HC Majid Ali Khan** (courier); **PW-3 Inspector Wajid Hussain** (complainant and investigating officer); **PW-4 Khalil Muqtadir** (customs clearing agent); **PW-5 PC Amir Khan** (witness to the arrest and recovery); **PW-6 PC Adnan** (witness to the handing over certain documents by Mohammad Khan); **PW-7 Mohammad Khan** (Owner of Khan Lubricant).

8. In their respective section 342 Cr.P.C. statements, both the accused professed innocence and denied any wrongdoing. At the end of the trial, on 28.12.2024, the learned Special Court (CNS) No. 2 at Karachi acquitted Abdul Rahim but convicted Rizwanullah of an offense punishable under section 9(c) of the CNS Act, 1997, and sentenced him to life imprisonment and a fine of Rs. 800,000. If he did not pay the fine, he would have to remain in prison for 8 more months. It is this judgment that has been challenged through this appeal.

9. We asked the learned Special Prosecutor as to what nexus Rizwanullah had with the seized consignment. We were informed that Rizwanullah was the owner. This argument was strongly refuted by the appellant's counsel.

10. We have heard the appellant's learned counsel and the learned Special Prosecutor, ANF, and, with their assistance, have reappraised the evidence produced at the trial. Our observations and findings are as follows.

11. It is an admitted position that the documentary evidence produced at trial shows that the **exporter** of the consignment was **Mohammad Asraf of Ahmed Ettihad Enterprises, Lahore**, while the **importer** was **Pak Global Textile Bedding, Canada**. ANF's entire case is based on what Rizwanullah says during interrogation. This is clear from the testimony of PW-3 Inspector Wajid Hussain. Reading Inspector Wajid's testimony (in particular what he says at page 261 of the paperbook), it is abundantly clear that the

investigating officer completely failed in investigating the case properly.

12. It is alleged that when Rizwanullah was arrested, he told the ANF that the actual owner of the consignment was Khalid Khan, Qadir alias Sajin, and Abdul Rahim. Allegedly, Rizwan also disclosed that it was Abdul Rahim who had arranged a Form E and other necessary documents for the export, on the instructions of Khalid Khan, who had conveyed them to Abdul Rahim through Qadir alias Sajin. Abdul Rahim gave the export documents to a clearing agent named Khalil Muqtadir. Rizwanullah allegedly further told the investigators that the export documents show Muhammad Ashraf Ahmed as the exporter, but in reality, Ashraf had sold his Form E to Abdul Rahim, which was then used for the purpose of exporting the present consignment.

13. A bird's eye view of the players involved in this convoluted transaction, as alleged by the ANF, is as follows:

Name	Role	Status
Khalid Khan	Purchased the opium and wanted to smuggle it out of Pakistan	Absconder
Asghar Khan	Purchased the opium and wanted to smuggle it out of Pakistan	Absconder
Qadir alias Sajin	Assigned the task of arranging export documents to Abdul Rahim	Absconder
Abdul Rahim	Arranged the export documents	Acquitted by the trial court.
Khalil Muqtadir	Clearing agent to whom Abdul Rahim gave the export documents	Witness
Mohammad Ashraf	Exporter of the consignment. He does not deny it but says he sold his Form E to Abdul Rahim.	Witness
Rizwanullah	Arrested. Purchased the grease cans in two installments and delivered them to Khalid Khan.	Convicted
Mohammad Khan	The shopkeeper who sold the grease cans to Rizwanullah.	Witness

14. After hearing the learned Special Prosecutor, ANF at length, we have determined, with which determination, the learned Special Prosecutor, ANF agrees, that the evidence against Rizwanullah is as follows:

- (i) An extra-judicial confession made before the investigating officer.
- (ii) ANF's allegation that Rizwanullah is the owner of the goods.

Extra-judicial confession

15. PW-3 Inspector Wajid Khan's testimony at page 227 onwards of the paper book contains details of what Rizwanullah allegedly told his interrogators. It is well settled that an extra-judicial confession is not admissible in evidence under Article 39 and cannot be proved against the accused under Article 38 of the Qanun-e-Shahadat Order, 1984. Article 40 of the Order of 1984 remains inapplicable in the circumstances of the case. It is also pertinent to note that what Rizwanullah allegedly told his interrogators heavily incriminated Abdul Rahim, but the Court did not believe him, and Abdul Rahim was acquitted.

Rizwanullah is the owner of the goods

16. PW-3 Inspector Wajid Khan left no doubt in his testimony that none of the documents connected with the container's export showed Rizwanullah as the owner of the consignment and, in fact, showed no connection of Rizwanullah with the consignment. The learned Special Prosecutor also conceded as much. All the documentation showed Muhammad Ashraf as the owner and exporter of the consignment, and an Undertaking accompanying the documents was executed by Khalil Muqtadir. The investigating officer further conceded at the trial that "*It is correct that I had not produced any documentary proof in the investigation to show contact between the accused Rizwan with Khalil, Abdul Rahim, Ashraf, and the importer Pak Global.*"

17. It was alleged by ANF that Rizwanullah purchased the grease cans from Mohammad Khan and paid the purchase price into

Mohammad Khan's bank account. At trial, PW-3 Inspector Wajid Khan conceded that *"It is correct that I have not produced any document showing a transaction from the bank account of Rizwan to the bank account of Khan Lubricant."*

18. The learned Special Prosecutor has relied heavily on the testimony of PW-4 Khalil Muqtadir (the clearing agent of the consignment) at page 499 of the paper book to support the assertion that Rizwanullah was the owner of the consignment. In particular, he relies on the following statement made:

"I was available in my office, where two boys, Aziz and Mateen, also came to my office. I asked them to call the party. I also asked those two boys to bring the owner of the shipment. Thereafter I went to port. Afterwards said Abdul Aziz and Mateen came along with one Rizwan at port where Inspector Wajid had checked that container in question."

19. In light of absolutely no evidence collected in the investigation that Rizwan was the owner of the consignment, it is far-fetched to consider Rizwan the owner of the consignment just because Rizwan had accompanied Aziz and Mateen to the port. Perhaps this argument could have had some force if Aziz and Mateen had been examined; however, surprisingly, neither individual was even included in the calendar of witnesses. Aziz and Mateen were important witnesses as Khalil Muqtadir, in his cross-examination, admitted that *"It is fact that Abdul Mateen and Abdul Aziz had come to me for customs clearance. It is correct to suggest that both Mateen and Aziz had informed me that in the cartons, there will be grease, which is to be exported to Canada. It is correct to suggest that all payments (Rs.60,000/- for Form- E and Rs. 15,000/- clearing charges) were paid to me by Aziz and Mateen. It is a fact that Aziz and Mateen had taken responsibility of loading grease cartons in container and transporting the container from godown to port."* Aziz and Mateen, given a clean chit by ANF without assigning any reason, create doubt and lead to an Article 129 of the Order of 1984 presumption that had these two individuals been examined, they would not have supported the prosecution case.

20. Lastly, the learned Special Prosecutor, in his submissions to show that Rizwanullah was the owner of the grease cans, relied on the testimony of PW-7 Mohammad Khan. Khan was the owner of the shop from where the grease cans were purchased. He said that Rizwanullah had purchased the cans from his shop in two installments and that he paid Rs. 2.8 million for the cans. Khan's testimony cannot be relied upon as he conceded during the trial that he was not even present in the shop when Rizwanullah allegedly bought the cans. He was at home sick. He conceded that his son, Adnan, had issued the purchase receipts and that he (Khan) had seen Rizwan on the CCTV installed in his shop. He admitted that he had not handed over the footage to the investigating officer, nor had the investigating officer taken it from him, although the investigating officer had watched it. No explanation was given as to why the CCTV footage, if it had incriminating evidence against Rizwan, was not seized or produced as evidence at the trial. Asked for evidence about the payment allegedly made by Rizwanullah, Khan replied that *"I was not available at the shop at the relevant time... it is correct to suggest that I have not produced any bank receipt showing that I had deposited Rs. 2.8 million in my account on the relevant date. He further conceded that the cheque given to him had been issued by "Insaf Sanitary"*. Apart from the fact that no documentation was collected during the investigation to show the movement of the money, no nexus between Rizwanullah and Insaf Sanitary was established. Adnan was said to have dealt with Rizwan, taken the cheque from him, and issued him receipts, yet, for reasons best known to the prosecution, Adnan was not examined as a witness; instead, his father, who admittedly was not even at the shop, was examined. Yet again, an Article 129 of the Order of 1984 presumption arises that Adnan would not have supported the prosecution's case.

21. Given the above, we are of the opinion that the prosecution was unable to prove its case beyond a reasonable doubt. A weak investigation, coupled with unexplained absences of crucial witnesses, contributed to the prosecution's failure to establish a

satisfactory and convincing nexus between the appellant and the crime. The benefit of such doubt must go to the appellant in accordance with well-established principles.

22. Before parting with the judgment, we would like to make an observation for the consideration of the ANF and the Pakistan Customs. The State Bank of Pakistan requires each exporter of cargo to complete and sign Form "E". This is a declaration to be furnished by exporters pursuant to section 12(1) of the Foreign Exchange Regulation Act, 1947, read with government notifications No. 1(6)-ECS/48 and No. 1 (7)-ECS/48, both dated the 1st July, 1948. To facilitate reference, the undertakings/representations that the exporter makes by executing the Form E are as follows:

"Documents covering the goods in the Form-E, including a full set of bills of lading, railway receipts, and/or other documents of title to the goods, must be passed through an Authorized Dealer in Foreign Exchange. In no case may they be dispatched directly without prior special/general authority in writing of the State Bank of Pakistan.

UNDERTAKING/DECLARATION BY EXPORTER

An incorrect declaration on this form constitutes an offence under Foreign Exchange Regulation Act, 1947 (VII of 1947).

I/We, hereby declare that I/We am/are the sellers /consignors /exporters of the goods described herein in respect of which this declaration is made out and that the particulars given in this Form-E are true and that the invoice value declared in the Form-E in case of firm contracts is full value as contracted with the buyers/in case of consignment sale is a fair value of goods which are being shipped on consignment sale. I/We undertake that I/we shall deliver to the bank mentioned above the foreign exchange proceeds resulting from the export of these goods on the due date for payment or within six months from the date of shipment/dispatch whichever is earlier. In the event of consignment sale we undertake to furnish to the above bank a fully documented account sale certified by the consignees /Chamber of Commerce of the country of import or any other documents required by the State Bank of Pakistan. I/We declare that nothing material or relevant to the information given in this Form has been omitted or suppressed and whatever is stated herein is true to my/our knowledge and belief. I/We

undertake to submit to the Authorized Dealer whose name appears in the Form-E within fourteen days of shipment the documents for negotiation/for sending on collection.

CERTIFICATE OF AUTHORISED DEALER

*Certified that the above exporter(s) is/are known to us, that he/they is/are bonafide businessman/businessmen in Pakistan and that he/ they has/have made arrangements with us for the realization of the export proceeds, of the goods declared on this form, on the due date for payment or within six months from the date of shipment/posting, whichever is earlier, in accordance with the State Bank's Notification No. FE 3/2001-SB dated the 28th September, 2001, and that we are satisfied with said arrangements. We have also satisfied ourselves about the bona fides of the importers/consignees abroad and their credentials, etc. *We undertake to ensure that export proceeds against shipment on a firm contract shall be received by us on the due date for payment or within six months from the date of shipment/posting, whichever is earlier, in accordance with the State Bank's Notification No.FE 3/2001-SB dated the 28th September, 2001. In the event of non-compliance due to reasons beyond our control, we shall furnish the State Bank of Pakistan with a full explanation of the reasons and circumstances resulting in our inability to comply.*

**We undertake that in the event of non-realization of export proceeds against shipment on consignment sale within the stipulated period of six months, we shall obtain from the exporter(s) and furnish to the State Bank of Pakistan a full explanation as to the circumstances resulting in non-realization. We further undertake that in the event of short realization, we shall obtain from the exporter(s) and furnish to the State Bank of Pakistan a fully documented account sale certified by the consignees/Chamber of Commerce of the country of import.”*

23. We have repeatedly observed in cases similar to the current one that, inevitably, the exporter who has furnished the Form E claims he had “sold” it to someone else and thus escapes liability for the export consignment. This practice must end, as it creates massive difficulties for law enforcement agencies in similar cases. The Form-E should be non-transferable so that the exporter who uses the Form-E is made entirely liable for the contents of his consignment. It is reasonably presumed that the exporter would be

more cautious to ensure that no contraband is loaded onto his container. We also suggest that Pakistan Customs, at each step of export, when a container is handed over from one person to another, e.g., from the exporter to the clearing and forwarding agent, requires that person/entity to also execute a declaration saying that they will be liable in addition to the exporter, if any contraband is discovered in the container. Perhaps such steps will ease the burden on law enforcement in establishing liability for the cargo in the containers.

24. The appeal is allowed, and the appellant is acquitted of the charge. He may be released if not required in any other custody case. A copy of this judgment should be sent to the Force Commander, Sindh, ANF, as well as the head of the Pakistan Customs in Sindh, to facilitate the two gentlemen to note the observations made in the preceding paragraph.

JUDGE

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