

[Supreme Court of Pakistan]

Present: Umar Ata Bandial, C.J., Syed Mansoor Ali Shah and Ayesha A. Malik, JJ**The STATE through Deputy Director Law, Regional Directorate Anti-Narcotics Force, Punjab---****Petitioner****Versus****TASNIM JALAL GORAYA (DECEASED) through LRs.---Respondent**

Criminal Review Petition No. 5 of 2020, decided on 24th March, 2022.

(Against the judgment of this Court dated 15.01.2020 passed in Criminal Appeal No. 01-L of 2015)

(a) Control of Narcotic Substances Act (XXV of 1997)---

---S.37---Dangerous Drugs Act (II of 1930) [since repealed], S.35-C---Constitution of Pakistan, Arts. 12 & 188---Protection against retrospective punishment---Scope---Conviction and sentence recorded by a foreign court for possessing and distributing heroin---Forfeiture of property in Pakistan---By way of judgment under review, the Supreme Court declared the forfeiture of the properties of deceased-respondent (represented through his legal heirs) to be unlawful and hence set it aside---Plea on behalf of the Anti-Narcotics Force (ANF) was that the assets of the respondent could also have been forfeited under the provisions of Dangerous Drugs Act, 1930 ("1930 Act") [since repealed] and it did not matter that section 37 of the Control of Narcotic Substances Ordinance, 1995 ('the Ordinance') [since enacted as the Control of Narcotics Substances Act, 1997] was promulgated on 07.8.1995 after the conviction and sentence against the respondent in the USA in the year 1993--Validity---Said submission was absolutely misconceived---Section 35-C of the 1930 Act did not envisage foreign conviction, which was for the first time introduced in section 37 of the Ordinance in 1995, hence the offence committed in the USA in the year 1993 could not possibly attract section 37 of the Ordinance of 1995--Such aspect had been dealt with in the judgment under review in great detail and the petitioner (ANF) could not be allowed to re-argue the case in review jurisdiction---No ground was made out for the review of the impugned judgment.

(b) Supreme Court Rules, 1980---

---O. XVII, R. 12 & O. XXVIII, R. 3---Counsel misleading the Court---Misrepresentation---Costs, imposition of---Counsel for the review petitioner tried to mislead the Court not once but twice by claiming that present matter had earlier been decided by the Supreme Court in earlier round of litigation---Such claim was not only incorrect but amounted to misrepresentation before the court---Supreme Court dismissed the review petition, subject to costs in the sum of Rs.10,000/- imposed under Order XVII, Rule 12 and Order XXVIII, Rule 3 of the Supreme Court Rules, 1980---Supreme Court directed that the costs shall be deposited by the counsel for the petitioner with any approved, recognized and well-known Charitable Organization and receipt thereof be submitted with the Deputy Registrar (Judicial) of the Supreme Court within a fortnight from the release of the present order, and that in case of failure to deposit the said amount within the stipulated period, the file of the case shall be put up before the Bench, on the administrative side, for appropriate orders.

Zafar Iqbal Chohan, Advocate Supreme Court for Petitioner.

Waqar Hassan Mir, Advocate Supreme Court for Respondent.

Date of hearing: 24th March, 2022.

ORDER

SYED MANSOOR ALI SHAH, J.---The petitioner seeks review of our judgment dated 15.01.2020 passed in Criminal Appeal No.01-L of 2015. The main ground for review pressed by the learned counsel for the petitioner before us is that the instant matter stood dismissed by this Court vide order dated 24.08.2009 and thereafter Criminal Appeal No.01-L of 2015 could not have been decided through judgment under review dated 15.01.2020.

2. Taken aback by this submission, we perused the entire record of the case minutely. Examination of the record reveals that the High Court vide judgment dated 31.07.2002 confiscated the properties of Tasneem Jalal under section 37 of the Control of Narcotic Substances Ordinance, 1995 ("Ordinance") on the ground that he stood

convicted and sentenced by the District Court of New Jersey, USA on 26.09.1993 for the offence of possessing and distributing heroin.

3. Against the judgment of the High Court dated 31.07.2002, Criminal P. No.722-L/2002 was filed before this Court by Tasneem Jalal. During the pendency of the said petition, Tasneem Jalal was murdered in the year 2003. As a result the criminal petition stood abated vide order dated 22.06.2004.

4. On the other hand ANF approached the High Court in the light of the judgment dated 31.07.2002 for the possession of the forfeited properties of Tasneem Jalal, this petition was allowed vide judgment dated 15.03.2006. The legal heirs of Tasneem Jalal filed a Criminal Petition No. 288-L/2006 before this Court against the said judgment.

5. The legal heirs of Tasneem Jalal also filed a review petition (C.R.P. No. 6-L/2004) against order of abatement dated 22.06.2004. The review was allowed vide order dated 26.07.2006 and both the criminal petitions (722-L/2002 and 288-L/2006) were allowed to be fixed for hearing.

6. Both the criminal petitions were dismissed on 24.08.2009. Against the same review was filed (C.R.P. No. 41-L/2009) which was allowed on 10.6.2013 and the Criminal Petition No. 722-L/2002 was revived. It appears that review was not filed in Criminal Petition No. 288-L/2006, which arose from a subsequent order of the High Court dated 15.03.2006. As the legal heirs were duly represented in Criminal P. No.722-L/2002, hence non filing of the review in Criminal P. 288-L/2006 as agitated by the learned counsel is immaterial.

7. Criminal Petition No. 722-L/2002 came up for hearing on 26.01.2015 when leave was granted in the matter and thereafter the appeal (Appeal No. 1-L/2015) came up for hearing on 15.01.2020 when the judgment under review was passed, declaring the forfeiture of the properties of Tasneem Jalal (represented through his legal heirs) to be unlawful and hence set-aside.

8. In this background the contention of the petitioner that this matter had earlier been decided is not only incorrect but amounts to misrepresentation before the court. We are saddened by the fact that learned counsel for the petitioner repeatedly misled the Court; first, on 01.03.2022 when notices were issued to the respondents and for the second time, today.

9. Having failed to convince the Court on the factual front, learned counsel moved on to the legal argument by submitting that the assets of the respondents could also have been forfeited under the provisions of Dangerous Drugs Act, 1930 ("Act") and it did not matter that section 37 of the Ordinance was promulgated on 07.8.1995 after the conviction and sentence against Tasnim Jalal in the USA in the year 1993. This submission is absolutely misconceived. Section 35-C of the Act does not envisage foreign conviction, which was for the first time introduced in section 37 of the Ordinance in 1995, hence the offence committed in the USA in the year 1993 could not possibly attract section 37 of the Ordinance of 1995. This aspect has been dealt with in the judgment under review in great detail and the petitioner cannot be allowed to re-argue the case in review jurisdiction.

10. For the above reason, we see no merit in the instant petition. We also find with regret that the learned counsel for the petitioner tried to mislead the Court not once but twice. We find that there is no ground made out for the review of the impugned judgment, hence this petition is dismissed, subject to costs in the sum of Rs.10,000/-, imposed under Order XVII, Rule 12 and Order XXVIII, Rule 3 of the Supreme Court Rules, 1980. The costs shall be deposited by the learned counsel for the petitioner with any approved, recognized and well-known Charitable Organization and receipt thereof be submitted with the Deputy Registrar (Judicial) of this Court within a fortnight from the release of this order. In case of failure to deposit the aforesaid amount within the stipulated period, the file of the case shall be put up before the Bench, on the administrative side, for appropriate orders.

MWA/S-24/SC Petition dismissed.