JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD,
JUDICIAL DEPARTMENT

Criminal Revision No. 85 / 2021

The Director, Intelligence & Investigation (Inland Revenue),
Islamabad
versus
The State and others

Petitioner by:	Malik Qamar Afzal, Advocate.
Respondents by:	Mr. Ghulam Qasim Bhatti, Advocate for respondent No.2 & 3.
Date of Decision:	13.11.2023

MOHSIN AKHTAR KAYANI, J: Through this Criminal Revision, the petitioner Director, Intelligence & Investigation (Inland Revenue), Islamabad, has assailed order dated 06.10.2021, passed by learned Judge Special Court (Customs, Taxation & Anti-Smuggling), Rawalpindi / ICT, whereby, respondent No.2 & 3 have been acquitted from criminal case FIR No.7/2015, dated 19.06.2015, under sections 2(37), 33(11), 33(13) of the Sale Tax Act, 1990, registered at Directorate of Intelligence & Investigation (Inland Revenue), Islamabad.

2. Learned counsel for the petitioner contends that the order of the trial court is not in accordance with the law, especially, when probability of conviction has to be seen on the basis of evidence which was not recorded; that the FIR has been lodged on the basis of documentary evidence against M/s Forte Associates, run by Fawad Ali and Muhammad Hashim Babar, who are partners and running the business under the name and style of *"Baahir Outdoor Products"* & *"Baahir"* respectively; that the accused firm is involved in taxable

activities which have been confirmed through different customers who have purchased taxable goods from the company and the payment made by them reflects huge loss to national exchequer, but the trial court acquitted the respondents rather discharged them based upon the judgment passed by Honorable Lahore High Court reported as **2017-PTD-1875 [Lahore]** ***(M/s FM Textile Mills and others Vs. Federal Board of Revenue and others)***, whereby, the SRO No.116/2015 was set-aside, though at this stage matter is pending with the supreme court of Pakistan to that extent.

3. Conversely, learned counsel for respondents has raised question of maintainability of instant criminal revision on the ground that no criminal revision is maintainable as specific appeal has been provided under the law.

4. Arguments heard, record perused.

5. Perusal of record reveals that respondent No.2 and 3 have been nominated as accused in case FIR No. 7/2015, dated 19.06.2015, under sections 2(37), 33(11), 33(13) of the Sale Tax Act, 1990, registered at Directorate of Intelligence & Investigation (Inland Revenue), Islamabad, on the allegation of concealment and evasion of the sales tax whereas, the entire charges have been based upon SRO No.116/2015, which has been assailed in Lahore High Court and the High Court through judgment reported as **2017-PTD-1875 [Lahore]** ***(M/s FM Textile Mills and others Vs. Federal Board of Revenue and others)***, has quashed the said SRO, even it has been acknowledged by the learned counsel for the petitioner that same was challenged in

Intra Court Appeal, but same has also been dismissed and matter is now pending with the Supreme Court of Pakistan, therefore, in this backdrop, it has to be observed as to whether there is any probability of conviction available to the trial court to proceed with the trial. The answer has to be seen in the light of judgment reported as ***1985 SCMR 257 (Munir Ahmad Vs. The State)***, ***1993 SCMR 523 (The State Vs. Ashiq Ali Bhutto)***, ***1998 SCMR 1840 (Zahoor-Ud-Din Vs. Khushi Muhammad)***, ***PLD 1997 SC 275 (Muhammad Khaild Mukhtar Vs. The State)***, ***PLD 2009 SC 102 (Ajmeel Khan Vs. Abdur Rahim)***, ***PLD 2004 SC 364 (Rasool Khan Vs. Haji Banaras Khan)***, where it was held that the trial Court i.e. Magistrate or the Court of Sessions has every power to acquit the accused under Section 249-A or 265-K Cr.P.C or as the case may be at any stage of the hearing if the Court considers the charge is groundless or there was no probability of conviction appears on record and further proceedings in the trial amounts to wastage of the precious time of the Court.

6. This Court has already taken guidance from the judgment reported as ***2021 PTD 1047 [Islamabad] (Director (I&I) Inland Revenue Islamabad and others Vs. Naeem Siddique),*** which relates to connected F.I.R No.08/2015, dated 10.09.2015, under Section 2(37), Sales Tax Act, 1990 read with sections 33(13) and 33 (7) *ibid* registered at Directorate of Intelligence and Investigation (Inland Revenue), Islamabad, whereby the criminal appeal has been dismissed with the following:

> *"Keeping in view the above background, when the original liability is yet to be determined by the adjudicating officer against the respondent accused, it could not be presumed that a tax fraud with reference, to Section 2(37) of the Sales Tax Act, 1990 was committed as alleged in the criminal case registered by the appellants against respondent, therefore, in my humble view, the order passed by the Special Judge Customs Taxation and Anti-Smuggling, Rawalpindi/ICT is in accordance with law and no illegality has been observed, however the appellants may agitate the matter afresh after conclusion of the liability of sales by the department in hierarchy provided under the Sales Tax Act, 1990."*

The above mentioned aspect further supports the contention of the respondents (acquitted accused) and affirms the view that there was no probability of conviction against the respondents.

7. It is settled proposition of law that when a specific remedy has been provided in statute the same has to be applied in case of passing of any adverse order. In the present case, the respondents have been acquitted by the trial Court in terms of Section 265-K Cr.P.C. which could only be challenged by way of appeal in terms of Section 417 Cr.P.C., but instead of filing appeal, the petitioner has preferred revision, which is not maintainable as held in **1995 PCRLJ [Karachi] 1369 *(Ahadul Majeed Vs. M/s H. Ghulam Muhammad & Brothers Ltd.)*, 2002 PCRLJ [Lahore] 513 *(Muhammad Bashir Vs. Fazal Hussain)*** and **2017 PCRLJ [Lahore] 1193 *(Anti-Narcotics Force Vs. Nasir Khan)*.** Similarly, I have also considered the earlier judgment of this Court in the related case i.e. **criminal appeals No.87 of 2017 *(Directorate General Intelligence & Investigation (IR), Islamabad,***

etc. Vs. Sheikh Muhammad Amin Owner M/s Grace Emporium, Islamabad), **91 of 2017** ***(State through Directorate General Intelligence & Investigation (IR), Islamabad, Vs. Haider Asad)*** and **169 of 2017** ***(Directorate General Intelligence & Investigation (IR), Islamabad, etc Vs. Sheikh Muhammad Yaqoob)***, whereby the claim of the petitioner has been declined, therefore, instant criminal revision is not maintainable and same is hereby **DISMISSED**.

(MOHSIN AKHTAR KAYANI)
JUDGE

A.Waheed.