

IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN
GILGIT
Cr.Misc.No.07/2010

Before: Mr. Justice Muhammad Nawaz Abbasi, Chief Judge.
Mr. Justice Muhammad Yaqoob, Judge.

Assistant Collector Custom Sust Gojal

Petitioner

Versus

Syed Muhammad Riaz s/o Syed Own Ali, r/o Khomer Near
Army Public School Gilgit.

Respondent.

PETITION FOR LEAVE TO APPEAL AGAINST
ORDER DATED 22.04.2010 PASSED BY CHIEF COURT
GILGIT-BALTISTAN.

Haji Mirza Ali, Advocate for the Petitioner.
Mr. Johar Ali Advocate for the Respondent.

Date of hearing: 08.07.2010

JUDGEMENT

Justice Muhammad Nawaz Abbasi: CJ. This petition by leave of the Court has been directed against the order dated 22.04.2010 passed by the learned Chief Judge of Chief Court Gilgit-Baltistan in a petition under section 561-A Cr.PC, whereby the custody of alleged smuggled Pak. Currency amounting to Rs.8899500/- seized by the Custom mobile squad on KKH Road at some distance from Sust Gojal Check Post has been given to respondent under section 516-A Cr.PC for providing Bank Guarantee of equal amount.

The Assistant Collector Sust Gojal has filed this petition, challenging the legality of the impugned order and exercise of Jurisdiction by the Chief Court in the Matter under section 561-ACr.PC.

The short facts in the background leading to this petition are that on 16.10.2008 a Custom Mobile Squad during the routine checking of vehicles on silk road near Sust Gojal Check Post intercepted truck No. GLT- 1554 of NATCO which was coming from China border side and on search of the truck recovered Pakistani Currency of Rs.8899500/- from driver cabin of truck. Mr. Qasim the driver of truck on query disclosed that Pakistani Currency was handed over to him by one Haji Anwar at Kashgar China to deliver the same to one Nadir Hussain atr Gilgit. The truck driver with Currency Notes was taken into custody and a case under section 156 (1) (8) (89) Custom Act 1969 read-with Section 8 of Foreign Exchange Regulation Act 1947 was registered Vide FIR No.14/2008 at Police Station Gulmit Gojal. The investigation and Prosecution branch of the Custom department on completion of investigation and legal formalities submitted final report under section Custom Act 1969 in the Court of Session Judge Gilgit, with the impression that Sessions Judge Gilgit was exercising the power of Special Judge Custom in Gilgit-Baltistan, whereas Sessions Judge Gilgit having no such power to act as Special Judge Custom could not take cognizance of the cases under Custom Act 1969, therefore notwithstanding the submission of final report in the Court of Sessions Judge Gilgit, for trial the case would deemed to be still pending with the investigation and proreuction branch of the Custom department.

The Custom Authorities on the other hand initiated adjudication proceeding and Additional Collector Custom (Head Quarter) Northern Areas vide order dated 04.02.2009

confiscated the alleged smuggled Pak Currency. The confiscation order having been not challenged by any person before any higher Departmental Authority or Judicial forum attained finality. Syed Muhammad Riaz respondent herein without joining the adjudication proceeding before the departmental authorities, while claiming himself the real Owner of seized Pak. Currency, filed direct petition under Section 561-A Cr.PC for release of Currency under Section 516-A Cr.PC before the Chief Court Gilgit and learned Chief Judge without ascertaining the question relating to the Forum of trial Court, by entertaining the direct petition in Original Jurisdiction directed the Custom Authorities, vide order dated 22.04.2010 to hand over Currency notes to the respondent subject to his furnishing Bank Guarantee of a Schedule Bank equal to the value of seized Currency Notes with two reliable sureties in the like amount to the satisfaction of the Registrar of the Chief Court.

The learned counsel for the petitioner placing reliance on PLD 1969 SC 446 Adnan Vs Collector Custom Karachi, has contended that neither learned Session Judge Gilgit nor any other Court of general jurisdiction was competent to take cognizance of the case, registered under Custom Act 1969, therefore, the Chief Court was not supposed to entertain a petition under section 561-A Cr.PC in the matter at this stage. The learned counsel added that confiscation order passed by the Additional Collector Custom in adjudication proceeding having been not challenged before any departmental or judicial authority in proper manner would not be questionable in the collateral proceeding under section 516-A Cr.PC before any Criminal Court or before the Chief Court under Section 561-A Cr.PC.

The learned counsel for the respondent on the other hand has opposed this petition with assertion that during the course of investigation, the fact relating to the respondent of seized Pakistan Currency was brought on record, therefore, in absence of forum of trial Court of Chief Court in exercise of inherent power could competently entertain a direct petition under section 561-A Cr.PC for proper custody of case property in the interest of substantial justice.

We have heard learned counsels for the parties at length and also perused the record with their assistance. This is an admitted fact that the Challan/final report in criminal case registered under section 156(1)(8) Custom Act 1969 read-with Foreign Regulation Act 1947 in respect of alleged smuggled Pak. Currency recovered from the possession of a driver of NATCO truck on KKH road near Sust Custom Check Post was submitted in the Court of Session Judge Gilgit and learned Session Judge Gilgit having no Authority to exercise the power of Special Judge Custom, could not take cognizance of the matter. Consequently, the Challan would be deemed to be pending with prosecution branch of Custom department for submission in the Court of competent jurisdiction, and notwithstanding the question whether the Seizer of alleged smuggled Pak. Currency by the Custom mobile Squad was in accordance with Law and may or may not constitute an Offence under Custom Act 1969 triable by the Special Judge Custom, the pivotal question requiring determination by us in the present petition would relate to the invocation of the provision of Section 561-A Cr.PC in a criminal case before submission of final report in the Court of Competent Jurisdiction and taking cognizance of the matter by such Court.

There is no cavil to the legal proposition that Chief Court having the status equal to a High Court in the Provinces of Pakistan may exercise power under section 561-A Cr.PC and pass an order for real and substantial justice, but the provision of Section 561-A Cr.PC cannot be used as an alternate or additional remedy to divert the ordinary course of criminal procedure or in departure to the normal remedies provided under the law. There is no concept of use of extra ordinary jurisdiction available to the Chief Court under Section 561-A Cr.PC in the cases pending with investigation Agencies, rather this power is exercisable in rare cases pending before the courts in the interest of substantial Justice. The invoking of this provision in normal circumstances would tend to circumvent the process of Law, as the inherent power under section 561-A Cr.PC is meant to make such orders as may be necessary to give effect to any order passed under Criminal Procedure Code or to prevent the abuse of process of any Court or otherwise to secure the ends of Justice. This extra Ordinary power under section 561-A Cr.PC is not extendable to the criminal matter pending in investigation or to the cases in which the final report/

Challan has not been submitted before the Court of competent jurisdiction or no court has yet taken cognizance in the case.

The final report in the present case under Custom Act 1969 required to be submitted in the court of special Judge Custom to be established under custom act 1969 read with Anti Smuggling Act 1977 was submitted in the court of Session Judge Gilgit with the impression that said court was competent to take cognizance in the matter, whereas no such power was available with the Session Judge Gilgit to act as Special Judge Custom and consequently the Chief Court was also not supposed to deal with the case property for the purpose of custody under section 516-A Cr.PC is exercise of power under section 561-A, Cr.PC.

In the light of facts the present case and the legal position explained above no court of general jurisdiction or the Chief Court in original or revisional Jurisdiction could pass any order in respect of the Custody of property subject matter of the case registered under Custom Act 1969, at the stage before taking cognizance of the case by the court competent jurisdiction for the purpose of inquiry or trial.

The court pending the inquiry or trial may deal with the property/subject matter of the alleged offence to have been committed under section 516-A Cr.PC wherein it is provided in that when any property regarding which any offence appears to have been committed is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for proper custody of such property pending conclusion of inquiry or trial as the case may be. The expression Court means, Court of Competent Jurisdiction whereas, the present case, registered under Custom Act 1969 was not pending in inquiry or trial before any court of competent Jurisdiction, therefore, no order in respect of the custody of property could have been passed either by a Criminal Court of general jurisdiction, under Section 516-A Cr.PC, or by the Chief Court in exercise of power under section 561-A Cr.PC. This is settled law that the scope of section 561-A Cr.PC cannot be enlarged to the Police investigation or to the cases which are not pending in inquiry or trial before the Court of competent jurisdiction, and in the present case registered under section 156(1)(8) of the Custom Act read with Foreign Exchange Regulation 1947 the final report for the purpose of trial required to be submitted before the court of competent jurisdiction was still pending with the concerned prosecution agency and Pak. Currency confiscated in the adjudication proceeding by the Custom Authorities on the original side was in the custody of State Bank of Pakistan, therefore, in the given facts and circumstances of the case, the Chief Court was not supposed to entertain a direct petition under section 561-A Cr.PC filed by a stranger in the case for custody of the Currency Notes at this stage.

In the light of the foregoing reason, we convert this petition into an appeal and set aside the order passed by the Chief Court Under Section 561-A Cr.PC regarding the custody of (Pakistani Currency) with the observation that subject to all just exception that the respondent or any other person on proof of bonafide ownership of the case property may at an appropriate stage in due process of law invoke the jurisdiction of competent court for custody of property (Currency Notes) under the relevant provision of law. This appeal is allowed in the above terms with no order as the cost.

Chief Judge

Judge