

JUDGEMENT SHEET

IN THE HIGH COURT OF BALOCHISTAN, QUETTA.

Criminal Revision Petition No.74 of 2024*(Ghulam Muhammad v. The State)*

CC. No.100107703277

JUDGMENTDate of hearing 04.09.2024 Announced on__September, 2024.Petitioner by: Mr. Ali Ahmed Lehri, Advocate.State by: Mr. Fazal-ur-Rehman, State Counsel.

IQBAL AHMED KASI, J.-Through this petition, the petitioner/accused has challenged the validity of the order dated 20.10.2016 (“**the impugned order**”) passed by the learned Judicial Magistrate-VII, Quetta and order dated 03.08.2024 (“**the impugned order**”) passed by the learned Additional Sessions Judge-VII, Quetta (“**the trial Court**”), whereby, an application under Section 89 Cr.P.C. filed by the petitioner/accused for restoration of his attached property, was dismissed.

2. Brief facts of the instant criminal revision petition are that on 09.07.2016, on the report of complainant, namely, Asadullah s/o Pir Muhammad, an FIR No.175 of 2016 was registered at Police Station Brewery, Quetta, under Sections 302, 324, 147 and 149 PPC, wherein, nominated the accused persons, including the petitioner/accused. The petitioner/accused and other co-accused persons were not arrested during the stipulated course of investigation, as such, they were challaned in *absentia* before the Judicial Magistrate-VII, Quetta. During the course of

proceedings under Section 512 Cr.P.C., the Judicial Magistrate-VII, Quetta on 05.09.2016, issued proclamation under Section 87 Cr.P.C. against the accused persons as well as called for reports from Tehsildar concerned in respect of moveable and immovable properties of the absconding accused persons under Section 88 Cr.P.C. Thereafter, the Tehsildar City, Quetta in compliance of such directions, filed report, wherein, it was shown that the immovable property bearing Mutation No.1383, Khasra No.886, situated at Mohal Karez Shadi Khan, Mouza Sirki, Tappa Saddar-II, Tehsil City, District Quetta (**“the property in question”**) has been recorded in the name of the petitioner/accused in the revenue record. The Judicial Magistrate-VII, Quetta issued directions for the attachment of the property in question and as per the report of the Tehsildar City, Quetta the property in question of the petitioner/accused was attached in favour of the State vide impugned order dated 20.10.2016.

3. Further, the petitioner/accused was arrested in the case on 05.12.2023 and was challaned before the trial Court for commencement of trial. During the trial, the petitioner/accused acquired knowledge regarding the proceedings under Sections 87, 88 Cr.P.C. against him and the attachment of his property. Therefore, the petitioner/accused moved an application under Section 89 Cr.P.C. for the restoration of the property in question before the trial Court. Notice of the application was given to the State through learned ADPP and after hearing arguments from both

sides, the trial Court dismissed the application vide impugned order dated 03.08.2024, hence this petition.

4. Learned counsel for the petitioner/accused *inter alia* contended that the impugned order dated 20.10.2016 passed by the Judicial Magistrate-VII, Quetta and impugned order dated 03.08.2024 passed by the trial Court are contrary to facts, law and equity; that both the impugned orders passed by the *fora* below are perverse and causing miscarriage of justice; that the petitioner/accused was unaware about his involvement in the case and he has wrongly been nominated in the instant case because he is head of his Tribe; that neither any notice from the Court of Judicial Magistrate-VII, Quetta nor the Tehsil office was affixed on the house of petitioner/accused; that no intimation notice with regard to the proceedings under Section 88 Cr.P.C. was served upon the petitioner/accused or his legal heir(s); that the property in question is still in possession of the petitioner/accused.

5. Learned State Counsel opposed the contention of learned counsel for the petitioner/accused on the ground that the application filed by the petitioner/accused was hopelessly barred by time; that the petitioner/accused was well aware of the lodgment of the FIR, but he deliberately avoided the notice of the Court, as such, the Court was left with no other option, but to attach the property in question under Section 88 Cr.P.C.; that the impugned orders are speaking one and there is no room available to interfere in the same.

6. I have heard learned counsel for the parties and perused the available record minutely with their able assistance. Admittedly, the petitioner/accused, namely, Ghulam Muhammad was nominated in the case FIR No.175/2016, dated 09.07.2016, under Section 302, 324, 147 and 149 PPC with Police Station Brewery Road, Quetta and as per the record, the petitioner/accused remained absconder for a considerable period, therefore, proceedings under Sections 87, 88 Cr.P.C. were instantiated against him as well as the impugned order of attachment of the property in question was passed by the Judicial Magistrate-VII, Quetta on 20.10.2016. In compliance with the attachment order, the property in question i.e. Mutation No.1383, Khasra No.886, was attached.

7. The record further transpires that the petitioner/accused was arrested and he was challaned before the trial Court to face the trial for the murder charge, whereas, the trial is in progress. In the meanwhile, the petitioner/accused submitted an application for release of the property in question. The only ground on which the trial Court declined to release the property in question/attached property is that the application was not submitted within the prescribed period of limitation. The period of limitation prescribed by Section 89, Cr.P.C. for filing the application for restoration of the attached property is two years from the date of attachment. The date of attachment in the case of immovable property means the date on which the property is practically and physically attached on the spot in accordance with the provisions

of subsection (4) in pursuance of the attachment order made under subsection (1) of Section 88, Cr.P.C.

8. Now the question which is to be determined is whether in pursuance of the order under subsection (1) of Section 88, Cr.P.C. the property in question was actually attached under the provisions of subsection (4) or not. The record shows that while passing the impugned attachment order dated 20.10.2016, the Judicial Magistrate-VII, Quetta simply directed the Tehsildar concerned to attach the property in question of the petitioner/accused. The record further reflects that except the attachment of the property in question, no other steps were taken for implementation of the impugned attachment order. The impugned attachment order was neither made through the Collector of the District nor the possession of the attached property/property in question was taken from the petitioner/accused in accordance with the provisions of Section 88 (4), Cr.P.C. Admittedly, the possession of the attached property remained with the petitioner/accused during the alleged period of abscondence and even now he is in its possession and this aspect of the case was not rebutted by the learned State Counsel. Subsequently, in the circumstances, it is established that the property in question/attached property was not practically attached on the spot, the same remained in its actual physical possession during the alleged period of abscondence and so, he could not get the knowledge of the impugned attachment order till his arrest. In

this view of the matter, the period of limitation for restoration of the property in question/attached property has to be reckoned from the date of knowledge and not from the date of the impugned attachment order.

9. The next question requiring consideration is whether the petitioner/accused is legally entitled to release of the property in question/attached property regarding which the impugned attachment order was made by the Judicial Magistrate-VII, Quetta or not. It is well-settled that the objection of attachment of property under Section 88, Cr.P.C. is to procure the attendance of an accused person and this object has already been achieved as the petitioner/accused has been arrested and the trial is in progress. The property in question/attached property never remained under the control of the Government and the impugned attachment order has not attained finality as it is not yet implemented under the provisions of Section 88(4), Cr.P.C. The petitioner/accused is in possession of the property in question/attached property from the date of the impugned attachment order till now. All the above facts and circumstances justified the release of the property in question/attached property from attachment and it was the requirement of law as well, but the Court below had wrongly declined to release the property in question/attached property. The refusal to release the property in question/attached property in favour of the petitioner/accused on the only ground that he

remained absconder in a criminal case, would be absolutely unjustified and against all canons of justice.

Thus, keeping in view of the above discussion, the instant petition is allowed and the impugned orders dated , passed by the Judicial Magistrate-VII, Quetta and order dated 03.08.2024, passed by the learned Additional Sessions Judge-VII, Quetta, are set aside and the property in question/attached property i.e. Mutation No.1383, Khasra No.886, situated at Mohal Karez Shadi Khan, Mouza Sirki, Tappa Saddar-II, Tehsil City, District Quetta, is ordered to be released in favour of the petitioner/accused.

Announced in open Court

Dated Quetta the ____ September, 2024

JUDGE