

**IN THE SUPREME APPELLATE COURT GILGIT-BALTISTAN,
GILGIT.**

Before:-

**Mr. Justice Dr. Rana Muhammad Shamim, Chief Judge.
Mr. Justice Javed Iqbal, Judge.**

Cr. Appeal. No. 04/2016

In

Cr. PLA. No. 05/2016.

1. The State

Petitioner.

Versus

1. Haider son of Jahangir r/o Chamogarh Tehsil & District Gilgit.
Respondent.

PRESENT:-

1. The Advocate General for the petitioner/State.
2. Mr. Ehsan Ali Advocate alongwith Mr. Johar Ali Khan Advocate-on-Record on behalf of the respondent.

DATE OF HEARING: - 10.11.2016.

DATE OF DETAIL JUDGMENT:- 06.01.2017

JUDGMENT.

Dr. Rana Muhammad Shamim, CJ....This Criminal Petition has arisen out of the impugned order dated 26.01.2016 in Cr. Misc. No. 09/2016 passed by the learned Gilgit-Baltistan Chief Court whereby the Anti Narcotics Force was directed for re-opening of the investigation of the case treating the FIR chalked out by Anti Narcotics Force by directing the Trial Court to return the challan, if the same is presented by the normal police, hence, this petition for leave to appeal. This court vide order dated 12.04.2016 granted leave to appeal. Consequently, notice was issued to the respondent and the case was, however, heard on 10.11.2016. Upon hearing we allowed this Criminal Appeal by setting aside the impugned order

dated 26.01.2016 passed by the learned Gilgit-Baltistan Chief Court.

2. Briefly facts of the case are that on 19.11.2015 at about 13:30 pm Jutial Police Station during its routine checking intercepted an NCP Car bearing No. DMR 01-510 and during search found a black brief case and recovered 02 kg Heroin from the said brief case. On inquiry the accused/respondent admitted ownership of the brief case and the recovered heroin powder was weighed in presence of witnesses and found 02 kg. The sample of 15/15 gram from each packet was extracted for chemical examination and the remaining was sealed in presence of witnesses. Consequently, FIR No. 109/2015 dated 19.11.2015 was registered against the respondent under 9(c) The Control of Narcotic Substances Act, 1997. The accused was arrested and after completion of investigation, the challan was submitted before the learned Special Judge (CNSA /Vacations Sessions Judge Gilgit for trial. During the investigation, the respondent/accused filed a bail petition before the learned Special Judge (CNSA /Vacations Sessions Judge Gilgit which upon hearing was declined vide order dated 04.01.2015. Whereafter on transfer of case the respondent filed bail application before the learned Sessions Judge Gilgit who upon hearing granted bail to the respondent on 11.04.2016. Later on the respondent/accused filed Cr. Misc. No. 09/2016 before the learned Gilgit-Baltistan Chief Court which upon hearing was dismissed by

directing the Anti Narcotics Force to re-open of the investigation the case, hence, this petition for leave to appeal.

3. The learned Advocate General submits that it is a day light offence and the police has registered the FIR against the respondent promptly, the respondent/accused prima facie was involved in the trafficking of the heroin. The learned Advocate General submits that the legal questions raised by the petitioner/State during the hearing of Cr. Misc. No. 09/2016 before the learned Gilgit-Baltistan Chief Court which have not been considered by the learned Gilgit-Baltistan Chief Court. He also submits that Sections 21 & 22 of the Control of Narcotic Substances Act, 1997 empowers the police to take cognizance of the said offence and to investigate the same. Similarly Section 54 PPC also empowers the police to arrest any person in cognizable offences. He further submits that under Section 156(2) Cr. PC no one can question regarding the investigation conducted by the police in such cases. He submits that the learned Gilgit-Baltistan Chief Court fell in error by directing the Anti Narcotics Force for re-opening the investigation of the case. He submits that the investigation of the said case has already been conducted by the police and nothing remains for re-investigation in this case. He submits that the learned Gilgit-Baltistan Chief Court has relied upon the judgment dated 08.08.2007 in Cr. Misc. No. 07/2007 passed by this apex court whereby it was held that police has no powers to take cognizance and investigate the offence falling under

the Control of Narcotic Substances Act, 1997. He further submits that the said judgment is required to be revisited in order to resolve this controversy. He referred SRO 656(I)/2014 dated 02.08.2004 issued on 03.08.2004 which empowers the other various agencies including police to take cognizance of case and investigate thereto. The said SRO is reproduced as under:-

“S.R.O. 656 (I)/2014, dated 02.08.2007- In exercise of the powers conferred by Subsection (1) of section 21 of the Control of Narcotic Substances Act, 1997 (XXV of 1997) and in Supersession of its Notification No. S.R.O 1134(I)/97, dated 07.07.1997, the Federal Government is pleased to authorized the members not below the rank of Sub-Inspector of equivalent of the Anti Narcotics Force, Provincial Excise and Police Departments. Inspector or equivalent of the Custom Department and Subedar in the Frontier Corps in the Province of the Baluchistan and the North-West Frontier, Sub-Inspector of equivalent of Pakistan Rangers (Sindh), Inspector or equivalent of Pakistan Rangers (Punjab), Naib Subedar or equivalent of Pakistan Coast Guards and to the Officers of Maritime Security not below the rank of Chief Petty Officer to exercise the powers and perform the function under the aforesaid section and sections 22, 23, 37 (2) of the said Act within the areas of their respective jurisdiction”.

4. The learned Advocate General further submits that the condition laid down for the investigation officer who investigates the case must not be below the rank of Sub-Inspector (SI). He also submits that in case the investigation is conducted by an Assistant Sub-Inspector (ASI) of Police that would be an irregularity which is curable under Section 537 Cr. PC. In supports of his contentions,

the learned Advocate General relied upon a reported case of The State versus Abdali Shah reported as 2009, SCMR 291. He prays that the impugned order dated 26.01.2016 passed in Cr. Misc. No. 09/2016 by the learned Gilgit-Baltistan Chief Court may graciously be set aside being not sustainable.

5. On the other hand, the learned counsel for the respondent supports the impugned order dated 26.01.2016 passed by the learned Gilgit-Baltistan Chief Court. He contends that under Section 9(C) of The Control of Narcotic Substances Act, 1997, the police has neither powers to take cognizance in narcotic cases and insert provisions of Control of Narcotics Substances Act in the FIR(s) registered by them, nor the police can investigate or file the challan thereto in the Courts of law established under the Act 1997. He also contends that the learned Gilgit-Baltistan Chief Court has rightly held that the normal police have no authority to conduct investigation of the cases registered under The Control of Narcotic Substances Act, 1997. He stresses that the law of Control of Narcotic Substances is a special law which provides special mechanism for investigation of the occurrences falling under the said law, therefore, the registration of FIR and the conduct of investigation by the normal police is unlawful, illegal and without jurisdiction. He contends that the impugned order dated 26.01.2016 passed by the learned Gilgit-Baltistan Chief Court may pleased be maintained being well reasoned and well founded.

6. We have heard the learned counsels for the respective parties at length, perused the record of the case file and gone through the impugned order dated 26.01.2016 passed by the learned Gilgit-Baltistan Chief Court. We have also gone through the case laws and SRO 656(I)/2004, dated 02.08.2004- so relied upon by the learned Advocate General, substantiates that the other various agencies including police have powers to take cognizance and to conduct the investigation of the offences fall under the Control of Narcotic Substances Act, 1997 thereto.

7. In view of the above discussions, we allowed this Criminal Appeal vide our short order dated 10.11.2016. Consequently, the impugned order dated 26.01.2016 in Criminal Misc. No. 09/2016 passed by the learned Gilgit-Baltistan Chief Court was set aside. The case be remitted to the learned Special Judge (CNS) at Gilgit for trial of the accused person. We hold that in pursuance of the SRO 656(1)/2004, dated 02.08.2004, the police officers have powers to take cognizance and investigate the offences falling under The Control of Narcotics Substances Act, 1997. The bail granting order dated 11.04.2016 passed in Bail Application 40/2016 by the Special Judge CNSA/Sessions Judge Gilgit was maintained. These were the reasons for our short order dated 10.11.2016.

8. The learned Trial Court was directed to hear and decide the case expeditiously within a period of six (06) months. In case any delay is caused on the part of the accused persons, the

prosecution would be at liberty to move application for cancellation of bail granted to accused in circumstances.

9. The appeal is allowed in above terms.

Chief Judge.

Judge.

Whether the case is Fit to be reported or Not?