

# IN THE HIGH COURT OF SINDH AT KARACHI

## **Criminal Acquittal Appeal No. 16 of 2016**

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Date	Order with signature of Judge
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For hearing of main case

**25.11.2021.**

Ms. Dilkhurram Shaheen, Advocate for the appellant/Custom

### **J U D G M E N T**

**MUHAMMAD KARIM KHAN AGHA, J:** This is an appeal filed by the State through Collector of Custom Preventive, Model Custom Collectorate, Custom House, Karachi, against the acquittal of the respondent vide impugned judgment dated 30.09.2015, passed by learned Special Court-I, (Control of Narcotic Substances) Karachi, in Special Case No.540 of 2014 (561 of 2012), (FIR No.15 of 2012 lodged under Section 9(b) of Control of Narcotic Substances Act at PS Customs, Karachi).

We have heard learned counsel for the appellant who has not been able to point out a single legal infirmity in the impugned judgment. We have gone through the impugned judgment and found that the case of the prosecution is full of doubts. Relevant Paras of impugned judgment read as under:-

"1. That PW No.1 SPO Shahid Maroof, complainant deposed that he separated three samples of five grams each from the Heroin powder each from the Heroin powder recovered from the shoes of accused in presence of mashirs but his version is belied by PW No.2 SPO Arshad Mehmood, mashir who has stated that the complainant separated six samples of 20 grams each viz: three samples of Heroin recovered from suitcase and three samples of Heroin power recovered from shoes of accused. Thus the prosecution has failed to even prove the separation of six samples each containing five grams Heroin powder. When the separation of six samples of

five grams Heroin powder each as claimed by the complainant is not proved by the prosecution through evidence of PWs then how it can be believed that samples sent to the Chemical Examiner were of the alleged Heroin powder recovered from suitcase, its metal handle, and shoes of accused. This alone reason cut the root of the prosecution case and make the whole case doubtful. The benefit of doubt if any will go in favour of the accused.

2. That PW No.1 SPO Shahid Maroof, complainant deposed that he separated three samples of five grams each from the Heroin powder recovered from suitcase and its handle, and so also three samples of 5 grams each from the Heroin powder recovered from the shoes of accused in presence of mashirs, but his version is also belied by the contents of chemical report produced at Ex.8-B, which shows that the sealed parcel contains Heroin powder weighing 4.9 grams.

3. That PW No.1 SPO Shahid Maroof, complainant deposed that he found that Heroin powder was also concealed in the bottom of shoes of the accused, but his version is contradicted by contents of mashirnama and FIR produced by him in his evidence at Ex-6-A & B, in which he has mentioned that the examination of pair of shoes led to further recovery of off-white Heroin packed in polythene packets which were concealed in the cavities under the inner soles of said pair of shoes.

4. That PW No.1 SPO Shahid Maroof, complainant deposed that he found that Heroin powder was also concealed in the bottom of shoes of the accused, but his version is belied by PW No.2 SPO Arshad Mehmood, mashir who stated that complainant in his presence and of co-mashir Muhammad Ali checked the shoes of accused and from inside the shoes of accused Maqbool Khan further 330 grams off-white Heroin powder was recovered.

5. That neither the chemical reports produced by PW No.3 SPO Syed Azhar Mehdi, Investigation Officer in his evidence at Ex-8-A & 8-B, shows that whole Heroin powder lying in both parcel "A" and "B" were consumed in examination, nor the sealed parcel containing remaining Heroin powder of both parcel checked by the Chemical Examiner were produced in evidence by the PWs in this case as proof. The Chemical reports are also silent about availability of signature of complainant and mashirs on both sample parcel".

We have also examined evidence of the prosecution available on record which fully supports the above findings in impugned judgment where we note safe custody of the narcotics was not even proven by the prosecution. We cannot understand as to why this



acquittal appeal was filed in such circumstances keeping in view that virtually the entire prosecution case is full of contradictions and doubts and also keeping in view that the scope of appeal against acquittal is very narrow and that there must be very strong and reasonable grounds for such an appeal even being admitted for regular hearing.

Since there is no legal infirmity in the impugned judgment, this acquittal appeal is hereby dismissed.

We also find that this appeal against acquittal is quite frivolous and Collector of Custom Preventive / appellant has not applied his mind before filing this acquittal appeal. Before filing an appeal against acquittal, the decision of the trial Court should be considered carefully and appeal against acquittal should only be filed if the impugned judgment suffers from serious legal or factual defects as per the relevant legal standards. We have noted that Anti-Narcotic Force and other authorities such as Customs etc., are filing appeals frequently against acquittal in a mechanical and routine manner which is causing a delay in Court work by preventing us from hearing other cases which require expeditious disposal.

Under these circumstances, we impose cost of Rs.30,000/- upon Collector of Custom Preventive, Model Custom Collectorate, Custom House, Karachi, which shall be deposited in the fund of Clinic of Sindh High Court. Collector of Custom Preventive is cautioned that in future he should not file such frivolous appeals. Copy of this judgment shall be sent to Collector of Custom Preventive, Model Custom Collectorate, Custom House, Karachi, for information and compliance and to be cautious in future when

deciding whether or not to file an appeal against acquittal. A copy of this judgment shall also be sent to Director General, Anti-Narcotic Force, Karachi, who shall also ensure that such like frivolous appeals against acquittal should not be filed and that he should apply his mind as guided by his legal advisors before deciding whether or not to file such appeal against acquittal.

This appeal against acquittal is dismissed as mentioned earlier and disposed of in the above terms.

Ashraf