

THE HIGH COURT OF SINDH, KARACHI

Present:

*Mr. Justice Mohammad Karim Khan Agha
Justice Mrs. Kausar Sultana Hussain*

CRIMINAL JAIL APPEAL NO. 133 OF 2020

Appellant: Sabir Sultan through Mr. Habib-ur-Rehman Jiskani, Advocate

Respondent: The State through Mr. Ali Haider Saleem, Additional Prosecutor General & Ms. Anila Malik, A.P.G.

Date of hearing: 29.10.2021

Date of Judgment: 29.10.2021

JUDGMENT

MOHAMMAD KARIM KHAN AGHA, I- Appellant Sabir Sultan was convicted vide Judgment dated 11.01.2020 in the Court of IV-Additional Sessions Judge, Karachi/Model Criminal Trial Court - Extension, Karachi (South) in Special Case No.399/2019 for possessing 111 grams of ice (Methamphetamine) in contravention of Section 6/9(b) of Control of Narcotics Substances Act, 1997 and was sentenced to three (3) years rigorous imprisonment with fine of Rs.100,000/-. In case of default in payment of fine, he was to further undergo simple imprisonment for further two months. He was extended benefit of section 382-B Cr.P.C.

2. The brief facts of the case are that Inspector Muhammad Zubair Lakho posted at DIO Excise & Narcotics Control Police Station, on 14.01.2019 was on patrolling and after receiving spy information stopped a motor bike which was being driven by Zahirullah, upon which Sabir Sultan was sitting. On personal search of the appellant he was found to have 111 grams of Ice (Methamphetamine). The appellant was arrested, thereafter he and recovered narcotics substance were taken back to the P.S where FIR was duly registered and the complainant was appointed as I.O

of the case

3. After usual investigation, the appellant was challaned and thereafter he was sent up for trial. The appellant pleaded not guilty to the charge and claimed trial.
4. In order to prove its case, prosecution examined three (3) witnesses and produced various documents and other items. The appellant in his Section 342 Cr.P.C Statement denied the allegations against him and claimed false implication as he was a former ANF Officer and other ANF Officers want to fix him in this case. He did not give evidence under oath and did not call any witness in his defense.
5. After appreciating the evidence on record, learned trial Judge convicted the appellant vide Judgment dated 11.01.2020 and sentenced him as set out earlier in this judgment. Hence, the appellant has filed this appeal against his conviction.
6. Learned counsel for the appellant has read out entire evidence and we have heard the submissions of behalf of learned counsel for the appellant as well as learned Addl. P.G, Sindh and perused the record.
7. Although as a matter of law, complainant and I.O can be one and same; however, it is preferable that complainant and I.O are separate officers especially in a case such as this where no independent Mashir is associated in respect of the arrest and recovery which is made by the police officials. It may be that appellant was arrested and was found to be having 111 grams of Ice (Methamphetamine) with him; however, prosecution has to prove its case against the appellant beyond a reasonable doubt. This includes evidence that the recovered property was kept in safe custody so that it could not be tampered with from the date of its recovery until the date when it was produced in Court for evidentiary purposes. Based on the particular facts and circumstances of this case, we find that the narcotics were recovered on 14.01.2019; however, it was kept in the possession of P.W-2/P.C Amjad Hussain for a period of 2 to 3 days before sending it for chemical examination. During this period, there is no evidence that this narcotics was deposited in the Malkhana. There is no Malkhana entry and the Incharge of Malkhana was not examined. During cross-examination, learned defense counsel suggested that the chemical

had been managed/tampered with. As such, we find that the safe custody of the narcotics has not been proven and it could have been tampered with during this 2 to 3 days' period. Furthermore, we have observed that delay of nine days in total occurred before sending the narcotic for chemical examination because when the narcotics was allegedly sent to the usual chemical laboratory for examination, it was returned to P.W-2/P.C Amjad Hussain as that chemical laboratory did not have the capability to carry out testing the Ice (Methamphetamine). This lapse for sending narcotics by PW-2/P.C Amjad Hussain for a further period of six days creates further doubt as to the safe custody of the narcotics before it was finally sent to PCSIR laboratory which was the correct laboratory which had the capability to carry out such a test.

8. It is settled law that the benefit of doubt goes to the accused as a matter of right and not by way of concession. In this case, as mentioned above, we find that safe custody of the recovered narcotics has not been proven by the prosecution and this has therefore, created doubt in the case of the prosecution. As such, the appellant is acquitted of the charge, his appeal is allowed, impugned Judgment dated 11.01.2020 is set-aside and appellant shall be released from custody unless he is wanted in any other custody case.

9. The appeal is disposed of in the above terms.