

IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD.

Cr. Appeal No. D — 57 of 2014.

**PRESENT**

**Mr. Justice Naimatullah Phulpoto**

**Mr. Justice Zulfiqar Ahmed Khan.**

Appellant: Mohib Mallah s/o Haji Mallah.  
Through Mr. Ahsan Gul Dahri, Advocate.

The State : Through Syed Meeral Shah Bukhari, D.P.G.

Date of Hearing: 12.04.2017

Date of Judgment: 12.04.2017.

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

**NAIMATULLAH PHULPOTO, J.** Appellant Mohib Mallah was tried in crime No.210 of 2013, registered at Police Station Kazi Ahmed on 05.10.2013, for offence under section 9(c) Control of Narcotic Substance Act 1997, and vide Judgment dated 28.05.2014 learned Special Judge (Narcotics) Shaheed Benazirabad, in Special Case No.557 of 2013, convicted accused under section 9(c) Control of Narcotic Substance Act 1997, and sentenced to 04 years R.I. and to pay fine of Rs.20000/-. In case of the default in payment of the fine, he was ordered to suffer R.I. for 04 months. Appellant was extended benefit of Section 382-B Cr.P.C. The appellant has challenged his conviction and sentence through this appeal.

2. Mr. Ahsan Gul Dahri, learned advocate for appellant read out the charge framed against the appellant by the trial court at Ex.5 and he has

drawn the attention of the court to the charge which is reproduced as under:-

“ CHARGE

I, Mushtaque Ahmed Kalwar Sessions Judge and Special Judge (Narcotics), Shaheed Benazirabad, do hereby charge against you.

Mumtaz Ali s/o Dadan Shah

**As follows**

That on 05.10.2013, at 0700 hours, at link road leading from Timpur towards Maqbool Shah; Deh Deran, District Shaheed Benazir Abad, you have been apprehended by the complainant SIP Ghulam Abbass Shar, of P.S. Kazi Ahmed, and from your possession 1900 grams Charas and cash amount of Rs.200/- were recovered thus, thereby you have committed an offence punishable U/S 9(c) Control of Narcotic Substance Act 1997, within the cognizance of this Court.

And I hereby direct that you be tried by this Court on the aforesaid charge.”

3. Mr. Dahri raised contention that appellant is Mohib Ali s/o Haji Mallah and not Mumtaz Ali s/o Dadan Shah. Counsel for appellant submits that defective charge was framed, which caused prejudice to accused at trial. Lastly it is submitted that appellant is entitled to acquittal on this ground alone.

4. Learned D.P.G. concedes to the contention of learned advocate for the appellant that charge was framed by the trial court against Mumtaz Ali s/o Dadan Shah and not against the appellant / accused. Learned D.P.G. though submitted that error in framing of charge would not vitiate the trial.

5. Under section 222 Criminal Procedure Code, charge shall contain the particulars as to the time and the place of the alleged offence and the person (if any) against whom, or the thing (if any) in respect of which, it

was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

6. For the sake of convenience, section 222 is reproduced as under:-

“222. Particulars as to time, place and person.---(1)

The charge shall contain such particulars as to the time and place of the alleged offence, and the person (if any) against whom, or the thing (if any) in respect of which, it was committed, as are reasonably sufficient to give the accused notice of the matter with which he is charged.

(2) When the accused is charged with criminal breach of trust or dishonest misappropriation of money, it shall be sufficient to specify the gross sum in respect of which the offence is alleged to have been committed, and the dates between items or exact dates, and the charge so framed shall be deemed to be a charge of one offence within the meaning of section 234;

Provided that the time included between the first and last of such dates shall not exceed one year.

7. In the case of ASSADULLAH KHAN v. THE STATE and another reported in P.L.D. 2017 Peshawar 55, it has been held as under:-

**Charge against accused shall be specific, fair and clear in all respects to provide an opportunity to the accused to defend himself/herself in due course of trial. The charge shall be clear and by no means, confused to prejudice the accused. Charge is a precise formulation of specific accusation made against an accused person, who is entitled to know its nature at the early stage. Its aim is to explain to the accused as correctly and precisely as well as concisely as possible the allegations with which the accused is to be confronted. The charge must convey to the accused with sufficient transparency and in clear terms what the prosecution intends to prove against the accused. It shall contain all essential details as to time, place as well as specific manner of the alleged offence, the manner in which the offence was committed with full description of the accusation with which he is confronted. The prime object and the principle of framing charge shall be, to**

**make aware the accused, of the substantive accusations which are to be proved by the prosecution with clear intention and with unambiguous description of the offence so as to enable the accused to defend himself.**

8. In the present case charge has been framed against Mumtaz Ali s/o Dadan Shah and not against Mohib s/o Haji Khan by caste Mallah. Rightly it is contended by the learned counsel for the appellant that serious prejudice has been caused to the appellant by such error in the framing of the charge on the part of the trial court. Therefore, keeping in view the error committed by the trial court in framing of the charge against the appellant, we have no hesitation to hold that conviction and sentence recorded against the appellant vide impugned judgment are not sustainable under the law. The same are set-aside. Case is remanded back to the trial court for framing the charge afresh in accordance with law. Appellant is present on bail. He shall continue to be on bail. Appeal is disposed of in the above terms. However, trial court is directed to decide the case within three (03) months from the date of receipt of copy of this order under intimation to this court.

JUDGE

JUDGE

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