

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

***Cr. Appeal No.D-97 of 2016***

**PRESENT**

*Mr. Justice Naimatullah Phulpoto  
Mr. Justice Zulfiqar Ahmad Khan.*

*Date of Hearing: 18.04.2017*

*Date of Judgment: 18.04.2017*

*Appellant/accused: Ismail through Mr. Samiullah Rind,  
Advocate*

*The State: Through Syed Meeral Shah  
Bukhari, Deputy Prosecutor  
General, Sindh.*

**JUDGMENT**

**NAIMATULLAH PHULPOTO, J:-** Appellant Ismail was tried by learned Sessions Judge/Special Court (CNS), Jamshoro at Kotri, in Special Case No.03 of 2013 for the offence under Section 9(c) Control of Narcotic Substances Act, 1997. By judgment dated 06.09.2016, the appellant was convicted under Section 9(c) Control of Narcotic Substances Act, 1997 and sentenced to 05 years R.I and to pay a fine of Rs.2,00,000/-, in default thereof the appellant shall suffer R.I for 06 months more. Benefit of Section 382(B) Cr.P.C was extended to the appellant/accused.

2. Brief facts of the prosecution case as disclosed in the FIR are that on 20.01.2013 SIP Abdul Lateef S.H.O of

Police Station Naing Sharif left Police Station along with his subordinate staff namely ASI Ghulam Haider and P.C. Dhani Bux vide roznamcha entry No.07 at 1230 hours for patrolling duty in the private vehicle. During patrolling at various places, when police party reached at Jaar Pir. It is alleged that SIP Abdul Lateef SHO Naing Shareef received spy information that one person was selling charas near Baga Sher Dargah. Police party proceeded to the pointed place where they saw that three persons were standing. Out of them, it is alleged that present accused was carrying plastic bag in his hand. Two other persons while seeing the police party ran away but the present appellant/accused was surrounded and caught-hold and a plastic bag was recovered from his possession. SIP opened plastic bag in presence of the Mashirs namely ASI Ghulam Hyder and P.C. Dhani Bux. SIP found five pieces of the charas in the plastic bag. Charas was weighed and its weight was 1030 grams. Personal search of the accused was also conducted. From his personal search cash of Rs.500 was recovered. It is mentioned that due to non-availability of private mashirs, he had made ASI Ali Hyder and P.C. Dhani Bux as Mashirs. The property was sealed at spot. Mashirnama of arrest and recovery was prepared. Thereafter, the accused and case property were brought to the Police Station, where FIR was lodged against the accused on behalf of the State by SHO, it was recorded vide Crime No.04/2013 for offence under Section 9(c) Control of Narcotic Substances Act, 1997.

3. During the investigation, 161 Cr.P.C statements of P.Ws were recorded and sealed parcels of the charas was sent to the Chemical Examiner on 22.01.2013. Positive chemical report was received. On completion of the investigation, challan was submitted against the accused under Section 9(c) Control of Narcotic Substances Act, 1997.

4. Trial Court framed the charge against the accused under Section 9(c) of CNS Act, 1997 at Ex-2. Accused pleaded not guilty and claimed to be tried.

5. At the trial, prosecution examined P.W-1 SIP Abdul Lateef at Ex-5, who produced mashirnama of arrest and recovery at Ex.5-A, F.I.R. bearing crime No.04 of 2013 for offence under section 9(c) Control of Narcotic Substance Act 1997, at Ex.5-B. Attested copies of arrival and departure roznamcha entries No.07 & 09 at Ex-5/C, positive report of Chemical Examiner at Ex.5/E. P.W-2 Mashir ASI Ghulam Hyder was examined at Ex-6. Thereafter, the prosecution side was closed vide statement at Ex-7.

6. Statement of accused under Section under Section 342 Cr.P.C was recorded at Ex-8, in which the accused claimed his false implication in this case and denied the recovery of the charas from his possession. Accused raised plea that the prosecution witnesses are police officials and have deposed against him in order to show their efficiency before superiors. Accused declined to give statement on oath in disproof of the

prosecution allegations. No evidence has been led by the accused in his defence.

7. Learned Trial Court after hearing the learned Counsel for the parties and examining the evidence available on record, convicted and sentenced the accused as stated above. Hence, this appeal.

8. The facts of this case as well as evidence produced before the Trial Court find the elaborate mention in the judgment passed by the Trial Court dated 06.09.2016, therefore, the same may not be reproduced here, so as to avoid duplication and un-necessary repetition.

9. Mr. Samiullah Rind, learned Advocate for the appellant mainly contended that according to the case of prosecution SIP Abdul Lateef had received spy information that three persons were standing at Dargah Baga Sher but police caught hold present accused and two persons succeeded in running away. It is contended that it was highly unbelievable police officials was armed with official arms and ammunition yet two persons easily ran away though it was a day time incident. It is contended that the place of arrest and recovery was near Dargah Bagah Peer and it was a case of spy information but SIP failed to call any independent person of locality to act as mashir in the recovery proceedings but SHO deliberately avoided it. It is also argued that SIP Abdul Lateef S.H.O. of Police Station Naing Shareef had left for patrolling in the private

vehicle and it was also highly questionable that why official vehicle was not used. Counsel for the appellant further argued that according to the evidence of the SIP the recovered property was kept in Malkana with W.H.C. and the same was sent through P.C. Sharif to the office of the Chemical Examiner for analysis but both of them have not been examined by prosecution for the satisfaction of the court to show that case property was safe and it was not manipulated or tampered during the period it was kept in Malkana. It is also contended that SIP has not mentioned the routes which he adopted during patrolling for reaching to the pointed place. Learned counsel has also submitted that there are material contradictions on record in the evidence of the S.H.O. and the Mashir in respect of the recovery proceedings. Lastly, it is contended that prosecution case was highly doubtful. In support of his contention learned counsel has relied upon the cases of *IKRAMULLAH & OTHERS v. THE STATE [2015 SCMR 1002]*,

10. Syed Meeral Shah Bukhari, learned D.P.G argued that police officials had no enmity with the appellant and charas was recovered from his possession and report of the Chemical Examiner was positive. Trial court has rightly appreciated evidence and convicted the appellant. He has supported the judgment of the trial court.

11. We have carefully heard learned Counsel for the parties and perused the evidence minutely.

12. From the perusal of the evidence, it transpired that SIP Abdul Lateef S.H.O. of Police Station Naing Shareef had left the Police Station along with ASI Ghulam Hyder and P.C. Dhani Bux for patrolling in the private vehicle. When the police party reached at Jar Pir, SIP received spy information that present accused was selling charas near Dargah. On receiving such information police party proceeded to the pointed place where saw that three persons were selling charas near Baga Sher Dargah. Out of them, present accused was carrying plastic bag in his hand. Two accused persons while seeing the police party ran away but the present appellant was surrounded and caught-hold and a plastic bag was recovered from his possession. It is unbelievable that how two accused persons succeeded in running away when police party was armed with arms and ammunition and it was a day time incident. It is also matter of the record that it was case of spy information and the alleged recovery was made from the accused at Dargah Bagga Sher but no private person from the Dargah was called by SIP to act as Mashir in this case. Even no efforts were made. No person has been examined by the SIP to whom according to the case of prosecution the accused was selling the charas. Five pieces of charas were recovered from shopper of accused but size of the pieces and description is not mentioned in the Mashirnama and evidence of the complainant. According to the case of the prosecution sealed parcel was signed by ASI Ali Haider and P.C. Dhani Bux but no date has been mentioned on the sealed parcel. After the recovery of the charas, it was

handed over to W.H.C. but the said W.H.C. has not been examined before the trial court in order to prove the safe custody of charas in Malkhana. The recovered charas was sent to the Chemical Examiner by P.C. Shareef, he has also not been examined. Learned Advocate for appellant has contended that charas was tampered at Police Station. There was no evidence on the record that the charas was in safe custody for two days in Malkana of the Police Station. In this respect, rightly reliance has been placed upon the case of **IKRAMULLAH & OTHERS V. THE STATE** reported in 2015 SCMR 1002.

Relevant portion is reproduced as under:-

“5. In the case in hand not only the report submitted by the Chemical Examiner was legally laconic but safe custody of the recovered substance as well as safe transmission of the separated samples to the office of the Chemical Examiner had also not been established by the prosecution. It is not disputed that the investigating officer appearing before the learned trial court had failed to even to mention the name of police official who had taken the samples to the office of the Chemical Examiner and admittedly no such police official had been produced before the learned trial Court to depose about safe custody of the samples entrusted to him for being deposited in the office of the Chemical Examiner. In this view of the matter the prosecution had not been able to establish that after the alleged recovery the substance so recovered was either kept in safe custody or that the samples taken from the recovered substance had safely been transmitted to the office of the Chemical Examiner

without the same being tampered with or replaced while in transit.”

13. It was also highly questionable that S.H.O. had gone for patrolling in the private vehicle why not in official vehicle. We have also noticed material contradictions in the evidence of the prosecution witnesses with regard to the recovery proceedings and presence of the private witnesses around the place of recovery. The plea is raised by the accused that he has been falsely implicated in this case. In such circumstances it is quite unsafe to rely upon the evidence of the police officials without independent corroboration, which is lacking in this case.

14. In view of above, we have come to conclusion that prosecution has failed to establish its case against the appellant beyond shadow of doubt for the reasons that there are major contradictions in the evidence of the prosecution with regard to the route adopted by the Police for patrolling, number and size of the pieces of the charas recovered from the possession of the accused. Safe custody of the charas at *Malkhana* was also not established. Prosecution story was also unnatural and unbelievable. In such circumstances, it would be unsafe to rely upon the evidence of the police officials without independent corroboration, which is lacking in this case. There are several circumstances in this case, which create doubt in the



prosecution case. Reliance has been placed upon the case of KHALIL AHMED V/S. THE STATE (PLD 2008 Karachi 8).

15. For giving benefit of doubt, it is not necessary that there should be many circumstances creating doubts. If there is a single circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right as held by Honourable Supreme Court in the case of **TARIQ PERVEZ v. THE STATE** [1995 SCMR 1345].

16. For the above reasons, appeal is allowed, impugned judgment dated 06.09.2016 is set-aside and the appellant is acquitted of the charge. The appellant Ismail is in custody, he shall be released forthwith if not required in any other case.

JUDGE

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