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

Criminal Acquittal Appeal No. D-226 of 2009

Present:-

Mr. Justice Abdul Maalik Gaddi
Mr. Justice Arshad Hussain Khan

Appellant:	The State / Anti Narcotics Force through Mr. Muhammad Ayoob Kassar, Special Prosecutor, ANF.
Respondents:	None present for the respondents.
Date of hearing:	30.01.2018
Date of Decision:	30.01.2018

J U D G M E N T

ABDUL MAALIK GADDI, J:- This criminal acquittal appeal has been filed by the State / Anti Narcotics Force through its Deputy Director (Law), ANF against the judgment of the learned Special Judge (CNS) /2nd Additional Sessions Judge, Hyderabad in Special Case No.49/2009 relating to Crime No.05/2007 registered at P.S ANF Hyderabad under section 9(c) & 15 C.N.S Act, 1997, whereby the learned trial court acquitted the respondents on an application filed by the respondents for their premature acquittal.

2. Precisely, the fact of the prosecution case are that on 11.7.2007 at 1740 hours, during patrolling A.N.F. officials on secret information reached at the bus stop namely "Badin Bus Stop" Hyderabad, and found two ladies wearing black veils having blue colour shopping bags in their hands. They were apprehended and on personal search of accused Mst. Rubina, two shopping bags of blue colour containing one slab of charas wrapped in plastic in 8 foil packing packets wrapped in cloth weighing 8 kilograms charas were recovered. Samples of 10/10 grams from each packet were secured separately and sealed for chemical analysis

in a Khaki envelope. From accused Mst. Reshman, shopping bag of blue colour containing one slab of charas each wrapped in 7 foil packing packets wrapped in cloth while one slab wrapped in white plastic panni weighing 8 kilograms charas were secured. Samples of 10/10 grams from each packet were secured separately and sealed for chemical analysis in a Khaki envelope. On inquiry both the lady accused disclosed that the recovered charas was given to them by Abdul Majeed and Ashiq Hussain for giving to a person by name Malook Shah. Both the ladies were arrested under a mashirnama. Thereafter challan was submitted.

3. Mr. Muhammad Ayoob Kassar, learned Special Prosecutor, ANF contended that the judgment passed by the learned trial court is perverse and the reasons are artificial, vis-à-vis the evidence on record; that the grounds on which the trial court proceeded to acquit the respondents are not supportable from the documents on record. He further submitted that the respondents have been directly charged and that the discrepancies / lacunas in the record are not so material on the basis of which respondents could be acquitted. He further contended that the learned trial court has based its finding of acquittal merely on the basis of surmises and conjectures and the learned trial Judge has not properly appreciated the grounds of the appellant, therefore, under the circumstances he was of the view that this appeal may be allowed as prayed.

4. We have heard the learned counsel Special Prosecutor for ANF and after going through the record come to the conclusion that the prosecution has failed to establish its case against the respondents for the reasons that there was no recovery of any contraband article from the possession of present respondents and the only allegation against them is that both lady accused namely Mst. Rubina and Mst. Reshma at the time of their arrest disclosed before the police that the charas so recovered from their possession had been given to them by the respondents / accused Abdul Majeed and Ashique Hussain for the purpose of giving to accused Malook Shah. In our view, such admission of the co-accused

before the police has got no value in the eyes of law, as the same is inadmissible under Articles 38 and 39 of Qanun-e-Shahdat Order, 1984.

5. We have gone through the documents on record alongwith impugned judgment with the able assistance of learned Special Prosecutor for ANF and find that admittedly nothing was recovered from the possession of the respondents and they have been involved in this case only on the basis of statements of co-accused, which is inadmissible under the law. The learned trial court while passing the impugned judgment has elaborately discussed the case of the parties in detail. For the sake of convenience it would be proper to reproduce the relevant portion of the impugned judgment, which reads as under;-

> *"As per prosecution story, on 02.11.2007 at 1600 hours, accused Mst. Rubina and Mst. Reshma were found in possession of eight Kilograms of charas each stated to have been recovered by Inspector Muhammad Afzal Asim and during the course of summary enquiry at the place of recovery, both lady accused made admission that such charas had been given to them by accused Abdul Majeed and Ashiq Hussain for transporting upto accused Malook Shah. It is, thus, clear that the present accused Abdul Majeed and Ashiq Hussain were not available at the place of incident, nor anything was recovered from their possession.*
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> *After such charas was recovered from the possession of lady accused Mst. Rubina and Mst. Reshma, the police did not appear to have collected any evidence against accused Abdul Majeed and Ashiq Hussain. Complainant Muhammad Afzal Asim during the course of his evidence, failed to establish that he had collected any substantive evidence against the present accused to have committed the offence. In such circumstances, I am of the view that the trial against present accused Abdul Majeed and Ashiq Hussian is not likely to end in their conviction on the basis of evidence available on record, even if presumed to be true and correct, therefore, further trial in the present case against accused Abdul Majeed and Ashique Hussain would be continuous harassment and amounts to an abuse of process of law as well as abuse of process of court."*

6. From the perusal of documents on record as well as the impugned judgment, it appears that the impugned judgment of the trial court is based upon sound reasons. Respondents / accused were acquitted by the trial court mainly on the ground that nothing was recovered from them and they were involved in the cases on the basis of statement of co-accused which has got no value in the eye of law. During the course of arguments, we have specifically asked the question from learned Special Prosecutor for ANF to point out / show any piece of evidence, which is not supportable from the record, no satisfactory answer was available with him. We again asked the question from learned Special Prosecutor for ANF whether contraband has been recovered from the possession of respondents, he replied in negative. From the perusal of record shows that the trial court has rightly acquitted the respondents / accused through impugned judgment, which is neither perverse nor arbitrary. So far as the appeal against the acquittal is concerned after acquittal respondents / accused have acquired double presumption of innocence, this would interfere only if the judgment / order was arbitrary, capricious or against the record. But in this case, there were number of infirmities and impugned judgment of acquittal in our considered view did not suffer from any misreading and non-reading of documents on record. As regard to the consideration warranting the interference in appeal against acquittal and an appeal against conviction principle has been laid down by the Hon'ble Supreme Court in various judgments. In case of ***State/Government of Sindh through Advocate General Sindh, Karachi versus Sobharo*** reported as ***1993 SCMR 585,*** Hon'ble Supreme Court has laid down the principle that in the case of appeal against acquittal while evaluating the evidence distinction is to be made in appeal against conviction and appeal against acquittal. Interference in the latter case is to be made when there is only gross misreading of evidence, resulting in miscarriage of justice. Relevant portion is reproduced as under:-

"14. We are fully satisfied with appraisal of evidence done by the trial Court and we are of the view that evaluating the evidence, difference is to be maintained in appeal from conviction and acquittal appeal and in the latter case interference is to be made only when there is gross misreading of evidence resulting in miscarriage of justice. Reference can be made to the case of Yar Muhammad and others v. The State (1992 SCMR 96). In consequence this appeal has no merits and is dismissed."

7. For what has been discussed above, we are of the considered view that the impugned judgment is based upon valid and sound reasons and is entirely in consonance with the law laid down by the Honourable Supreme Court of Pakistan. Neither, there is misreading, nor non-reading of documents on record or misconstruction of facts and law. Resultantly this Criminal Acquittal Appeal No.226 of 2009 is without merits and the same is dismissed. These are the reasons of our short order announced in open court today.

JUDGE

JUDGE

A.H.