

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Aftab Ahmed Gorar

Mr. Justice Amjad Ali Sahito

Criminal Appeal No.219 of 2017

Appellant : Muhammad Hassan s/o Natha Khan
Through Mr. Fakhar-e-Alam, Advocate

Respondent : The State
through Ms. Abida Parveen Channar,
Special Prosecutor for Anti-Narcotics Force

Criminal Appeal No.358 of 2017

Appellant : The State/Anti-Narcotics Force through
Director ANF Sindh
through Ms. Abida Parveen Channar,
Special Prosecutor

Respondent : Muhammad Hassan s/o Natha Khan
through Mr. Fakhar-e-Alam, Advocate

Date of hearing : 21.01.2019

Date of order : 21.01.2019.

J U D G M E N T

AMJAD ALI SAHITO, J.– By this common judgment, we intend to dispose of Criminal Appeal No.219 of 2017 filed by appellant Muhammad Hassan, who was tried by learned Judge, Special Court-I, (Control of Narcotic Substances) Karachi along with co-accused Sajid Ilyas Genda in Special Case No. 278 of 2016 arising out of the FIR No.56/2016 for the offence under Section 9(c) of CNS Act, 1997 of PS ANF-II, Karachi vide judgment dated 06.05.2017, whereby he was convicted and sentenced to suffer rigorous imprisonment for two years and pay fine of Rs. 20,000/- (Rupee Twenty Thousand Only) and in default thereof, to further undergo simple imprisonment for five months. The benefit of Section 382-B Cr.PC was also extended to the appellant. In consequent to the aforesaid impugned judgment, the ANF has also filed a Criminal Appeal No.358/2017 for

enhancement of sentence to the respondent (appellant in Crl.Appeal No.219/2017).

2. The case of the prosecution as depicted in the FIR is that on 14.06.2016 at 1530 hours, Complainant Inspector Muhammad Muzamil Ahmed of PS ANF Muhammad Ali Society, Korangi, Karachi on spy information arrested accused Muhammad Hassan and recovered from his possession 1300 grams *charras* while he was selling the same in Karim Bux Lohar Muhalla. Inspector Muhammad Muzamil Ahmed has also prepared a memo of arrest and recovery at the spot and registered FIR No. 56/2016 at PS ANF against the accused/appellant and carried out an investigation. After the usual investigation report under Section 173, Cr.PC was filed before the learned trial Court.

3. The learned trial Court framed the charge against the accused at Exh.4, to which they pleaded not guilty and claimed to be tried. In order to establish the accusation against the accused, the prosecution examined the following witnesses:

- (i) PW-1 Complainant Inspector Muhammad Muzzammil Ahmad at Ex. 5
- (ii) PW-2 SI Syed Salman at Ex. 6
- (iii) PW-3 ASI Zaheer Iqbal at Ex. 7;

4. All the prosecution witnesses were cross-examined by the learned counsel for the appellant. Thereafter, Special Public Prosecutor ANF closed the side of the prosecution *vides* statement at Ex.8.

5. Statements of the accused were recorded under Section 342 Cr.PC. by the learned trial Court at Ex. 09 & 10 in which they denied prosecution allegations. Statement on oath of the accused/appellant was also recorded under Section 340(2) Cr.PC at Ex. 11.

6. The learned trial Court, after hearing the parties and on assessment of the evidence, convicted and sentenced the appellant as stated above vide judgment dated 06.05.2017 which is impugned before this Court by way of filing the instant Criminal Appeal and acquittal the co-accused Sajid Ilyas Genda.

7. Learned counsel for the appellant mainly contended that the appellant is innocent and has falsely been implicated in this case; that the complainant and PWs belong to ANF, hence they are entrusted and setup witnesses; that the evidence of such entrusted witnesses require independent corroboration, which is also lacking in the present case; that all the witnesses are narcotic officials and no independent person has been cited as mashir of arrest and recovery, which is in clear violation of mandatory provision of Section 103 Cr.PC; that the place of recovery was open plot and in the month of June, it was impossible that the appellant was selling the *charras* in open area; that the complainant himself has conducted the investigation of this case, hence he has not properly conducted investigation and there are so many contradictions in the evidence of the prosecution witnesses. He lastly contended that the prosecution has failed to prove its case against the appellant, thus according to him, under the above-mentioned facts and circumstances, the appellant is entitled to his acquittal.

8. On the other hand, learned Special Prosecutor ANF while supporting the impugned judgment has argued that the prosecution has proved its case against the appellant and arrested him while he was selling the *charras*; that the ANF officials had no enmity to foist the *charras* upon the appellant at their own. He thus lastly prayed for dismissal of the instant appeal and prayed for enhancement of the

sentence as per her that the State/ANF also filed an appeal for enhancement of the sentence of the appellant as the appellant has committed the heinous offence.

9. While rebutting the arguments of the learned counsel for the respondent submits in (Cr.Appeal No;358 of 2017) that appellant is facing trial since last three years and after suspension of the sentence, the appellant is regularly attending the Court hence he has not misused the concession of bail and lastly prayed for dismissal of appeal filed by the ANF.

10. We have heard the learned counsel for the appellant as well as learned Special Prosecutor ANF and have minutely gone through the record with their able assistance.

11. In order to prove its case, the prosecution examined PW-01 Complainant Inspector Muhammad Muzammil Ahmad, who deposed in his evidence that he was present at the police station where he has received information that one Muhammad Hassan is selling the narcotic openly in the street of Karim Bux Lohar, Mohalla Chanesar Goth, Mehmoodabad Karachi. He further deposed that on such information, a raid was conducted and the appellant was arrested along with blue colour shopping bag and found *charras* in shape of garda and wrapped in small blue colour plastic shopper. The total *charras* was weighed which became 1300 grams gross net weight became 1207 grams *charras*. The entire *charras* was sealed on the spot for sending the same to the chemical examiner for the report which was received positively in nature. He has also produced the list of cases which were registered against the appellant in the different police station. However, the appellant has denied and submitted that in all narcotic cases, he has been acquitted by the competent Court of

law. In cross-examination, he admitted that he has asked five to six persons as mashir but they refused. However, he has denied that the *charras* has been foisted upon his possession.

12. The prosecution examined PW-03 ASI Zaheer Iqbal at Ex. 07. He has also supported the prosecution story as well as contents of the mashirnama of arrest and recovery. Lastly, the prosecution examined PW-02 SI Syed Salman, who has arrested co-accused Sajid Ilyas Gonda.

13. As regards the arguments of learned counsel for the appellant regarding violation of Section 103 Cr.PC is concerned, it would be appropriate to refer section 25 of the Control of Narcotic Substances Act, 1997 which reads as under;-

“25. Mode of making searches and arrest.--- *The provisions of the Code of Criminal Procedure, 1898, except those of section 103 Cr.PC shall mutatis mutandis, apply to all searches and arrests in so far as they are not inconsistent with the provisions of section 20, 21, 22 and 23 to all warrants issued and arrest searches made under these sections”.*

14. It means that the applicability of section 103 Cr.PC in the narcotics cases has been excluded and none inclusion of any private witness is not a serious defect to vitiate the conviction. So far the evidence of ANF officials is concerned, they are competent and their evidence cannot be discarded, only for the reason that they belong to Anti-Narcotic Force. They have furnished straightforward and confidence inspiring evidence. It is a settled principle of law that the prosecution witnesses belong to the narcotic officials by itself cannot be considered as a valid reason to discard their statements/evidence. The reference in this context is made to the case of **Zaffar vs. the State (2008 SCMR-1254)**, the Hon’ble Supreme Court of Pakistan has held that;-

“Police employees are the competent witnesses like any other witnesses and their testimonies cannot be discarded merely on the ground that they are police officials”.

15. So far the plea raised by learned defense counsel that the complainant has acted as investigating officer in this case and all the witnesses are narcotic officials is of no help to the appellant as there is no bar in the law for a complainant to act as investigation officer of the case. The reliance in this context is placed upon the case of **The State v. Zaffar (2008 SCMR-1254)**, wherein the **Hon’ble Supreme Court of Pakistan** has held that;-

“Police officials are not prohibited under the law to be complainant if he is a witness to the commission of an offence and also to be an investigating officer, so long as it does not in any way prejudice the accused person”.

16. Even otherwise, mere status of one as **official** would not alone prejudice the competence of such witnesses until and unless he is proved to be **interested**, who has a motive, to falsely implicate an accused or has the previous enmity with the person involved. The reliance in this context is made to the case of **Farooq v. The State (2008 SCMR-970)**.

17. The case in hand, appellant has failed to bring on record any material to show any animosity or ill-will with the complainant and the prosecution witnesses, thus in the absence thereof, the competence of prosecution witnesses being officials was rightly believed. Moreover, a procedural formality cannot be insisted at the cost of completion of an offence and if an accused is otherwise found connected, then mere procedural omission and even allegation of improper conduct of investigation would not help the accused. The reference in this context is made to the case of the **State/ANF vs.**

Muhammad Arshad (2017 SCMR-283), wherein the **Hon'ble Supreme Court of Pakistan** has held that:-

“We may mention here that even where no proper investigation is conducted, but where the material that comes before the Court is sufficient to connect the accused with the commission of crime, the accused can still be convicted, notwithstanding minor omissions that have no bearing on the outcome of the case”.

18. It is pertinent to mention here that chemical examiner's report regarding *charras* is sufficient to prove that the substance recovered from the appellant can be used to cause intoxication and the prosecution has discharged its initial onus while proving that substance was recovered from the possession of the appellant for which the appellant has failed to discharge his burden in terms of Section 29 of Control of Narcotic Substances Act 1997.

19. Though the investigation officer and other prosecution witnesses are narcotic officials and they have no enmity or rancor against the appellant to plant 1207 grams of narcotics substance against him at their own sources. The defense has not produced any evidence to establish animosity qua the prosecution witnesses. In matters of narcotics, the absence of enmity or any valid reason for false involvement would also be circumstances tilting the case against the accused. The reliance is made on the case of **Salah-ud-Din vs. The State**, reported in **2010 SCMR-1962**, wherein the **Hon'ble Supreme Court of Pakistan** has held that:-

“...No enmity whatsoever has been alleged against the prosecution witnesses and there is hardly any possibility for false implication without having any ulterior motives which was never alleged. In view of overwhelming prosecution evidence the defense version has rightly been discarded which otherwise is denial

simpliciter and does not appeal to logic and reasons...”

20. Here, all the witnesses have deposed in the same line to support the prosecution case and despite cross-examined by learned defense counsel at length, the defense has failed to point out any dent or to extract any material contradiction fatal to the prosecution case. The version of the complainant/Narcotic Inspector Muhammad Muzzammil Ahmed has been fully corroborated by Mashir of arrest and recovery, which is substantiated with a memo of arrest and recovery, FIR as well as roznamcha departure and arrival entry showing their movement and positive chemical examiner's report.

21. Considering the above facts and circumstances, we are of the view that prosecution has succeeded to bring the guilt of accused/appellant at home and has proved its case against the appellant beyond any shadow of a doubt. Learned counsel for the appellant has failed to point out any material illegality or serious infirmity committed by the learned trial Court while passing the impugned judgment, which in our humble view, is based on an appreciation of evidence and same does not call for any interference. Accordingly, the instant Criminal Appeal No.219/2017 being devoid of merits was dismissed by us vide short order dated 21.01.2019 and accused was taken into custody to serve out the remaining sentence.

22. Reverting to the Criminal Appeal No.358/2017 filed by the ANF for enhancement of the sentence to the respondent (appellant in Crl.Appeal No.219/2017) is concerned, as per sentencing policy provided Ghulam Murtaza case, the conviction is provided 1 year and 9 months and fine of Rs. 13,000/- in default of the fine S.I. for four months, if recovery is up to 1000 grams charras in this case net recovery is 1207 grams *charras* the appellant/respondent was

convicted and sentenced for R.I. for two years and to pay fine Rs.20,000/- (rupee twenty thousand only) in default of payment of fine he further undergoes for S.I. five months.the appellant undertakes that in future he will not indulge in such cases. Since the appellant is facing trial since 2016, keeping in such view of the situation, the conviction awarded to the appellant was maintained while passing the short order dated 21.01.2019 whereby the Criminal Appeal No.358/2017 was dismissed.

23. These are the detailed reasons for our short order announced by us on 21.01.2019.

JUDGE.

JUDGE