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IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Acquittal Appeal No.D-01 of 2017

Before:

Justice Muhammad Iqbal Kalhoro
Justice Irshad Ali Shah.

State: Through Mr.Khadim Hussain Khooharo
Addl.Prosecutor General.

Date of hearing: 14.03.2018.

Date of judgment: 14.03.2018

J U D G M E N T.

Irshad Ali Shah -J:- The instant acquittal appeal is filed by the State through Prosecutor General Sindh against judgment dated 05.09.2016 of learned Sessions/Special Judge CNS, Jacobabad, whereby he has acquitted the respondent/accused of the charge for being in possession of 1500 grams of the Charas.

It was case of prosecution that the respondent/accused was found in possession of 1500 grams of Charas at the time of his arrest, for that he was booked and challaned in the present case. He denied the charge and prosecution to prove it, examined complainant SIP/SHO Nisar Ahmed Noon, produced through him roznamcha entries relating to his departure and arrival at the P.S Mirpur Buriro, FIR of the present case and report of Chemical Examiner. PW/PC Niaz Ahmed and then closed the side. The respondent/accused during course of his examination under section 342 Cr.PC pleaded innocence. On conclusion of the trial, learned trial Court acquitted the respondent/accused of the charge through the judgment which the State has impugned before this Court through the Prosecutor General Sindh, as stated above.

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It is contended by learned Additional Prosecutor General that the prosecution was able to prove its case through cogent evidence which is not considered by learned trial Court in its true prospective. By contending so, he sought for reappraisal of the evidence after due notice to the respondent/accused.

We have considered the above arguments and perused the record which is made available before us.

It was stated by the complainant and his witness before learned trial Court that on 23.11.2015, when they were conducting patrol, they came to know through spy information that the respondent/accused is selling Charas adjacent to Rural Health Centre, Mirpur Buriro. On such information according to them, they proceeded to the pointed place. If for the sake of arguments, it is believed that they proceeded to the pointed place on information then they were under lawful obligation to have associated with them the independent person to witness possible arrest and recovery. It was not done by them. In that situation, the very proceeding by them to the place of incident is appearing to be doubtful one. During course of his cross examination, it was stated by the complainant that the information was related to him by spy in person. The complainant in that respect was belied by his witness Mashir/PC Niaz Ahmed by stating that the spy information was related to the complainant through cell phone. Such inconsistency between the evidence of complainant and his witness obviously has rendered their evidence to be doubtful one. The perusal of report of the Chemical Examiner indicates that the property was dispatched to him on 24.11.2015, through PC Ghulam Shabir, which PC Ghulam Shabir deposited in his office on 02.12.2015, with delay of about 08 days. PC Ghulam Shabir the prosecution was not able to examine to explain the above delay, which

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prejudiced the respondent/accused in his right of valuable defense. In these premises, the learned trial Court was justified to record acquittal of the respondent/accused by extending benefit of doubt to him by way of impugned judgment, which is not calling for any interference by this Court by way of instant acquittal appeal, it is dismissed in limine.

[Handwritten Signature]
JUDGE 4-3-2018

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JUDGE
4/3/18