

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Crl. Acq. Appeal No.73 of 2013

DATE ORDER WITH SIGNATURE(S) OF JUDGE(S)

**Before: Mr. Justice Nazar Akbar
Justice Mrs. Kausar Sultana Hussain**

Appellant : The State / Anti-Narcotics Force
through Ms.Abida Parveen Chanar,
Spl. Prosecutor ANF a/w. Insp. Nisar
Ahmed, ANF.

Versus

Respondent No.1 : Himat Gul
Respondent No.2 : Naveed Khan
Respondent No.3 : Taj Muhammad
Respondent No.4 : Afsar Ali Khan
Nemo for Respondents.

Date of hearing : **30.11.2020**

Date of Decision : **30.11.2020**

JUDGEMENT

NAZAR AKBAR, J:- This Crl. Acq. Appeal is directed against the judgment dated **07.12.2012** passed by the Special Judge CNS-1, Karachi in **Spl. Case No.63/2012** whereby the trial Court has acquitted the Respondents.

2. Brief facts of the prosecution case are that the ANF officials headed by Inspector Khalid Rasheed under the supervision of Inspector Ghulam Abbas, on spy information, apprehended the truck bearing Regn. No.TKU-885 and apprehended its driver and another namely, Naveed Khan the accused at hand, on **11.05.2012** at **7:00** a.m., at Chamra Chowrangi, Industrial Area, Karachi, and as a result of thorough search of the vehicle in question, secured one bag carrying 10 packets of heroin powder from the back seat of the driver and 100 packets kept in one cloth parcel concealed in the additional

portion of the fuel tank thereof; they also secured cash and papers from the dashboard of the truck and from personal search of each of the suspects, secured their personal belongings under a memo to such effect before the official mashirs namely, Ali Muhammad and Khalid Rasheed accordingly, the culprits were put to arrest thereunder afterward; the FIR was lodged and investigated by the seizing officer.

3. After usual investigation, charge was framed against accused/respondents to which they pleaded not guilty and claimed to be tried. After examination of witnesses and hearing learned counsel for the parties, learned trial Court by judgment dated **07.12.2012** acquitted accused/Respondents by extending him benefit of doubt. Therefore, the appellant/State has filed instant Special Criminal Acquittal Appeal against the said judgment.

4. Learned counsel for the Appellant/ANF Authorities has contended that the learned trial Court without examining the record and evidence passed the impugned order whereby Respondents were acquitted. He argued that whole prosecution story set up by the Complainant has been fully corroborated by the prosecution witnesses, therefore, the impugned order may be set aside.

5. I have heard learned Spl. Prosecutor ANF and perused the record.

6. The perusal of impugned judgment shows that the prosecution witness have not supported the case. In cross-examination PW-01 Ali Muhammad conceded that;

.....The truck did not have any goods. Again says: I do not remember exact position in that regard and cannot say whether the truck was loaded or empty at the relevant time.....

.....only Inspector Khalid Rasheed, constables Majid and Zeeshan are in my memory.....

.....I do not know which police station of the city covers the Chamra Chowrangi. I do not remember the number of the car of the Inspector Ghulam Abbas. He had his own staff present in the car. I do not remember their names. One was driver and other two were spy. I do not remember the name of the official who served the truck as driver and brought it from the spot to the police station at the relevant”.....

Evidence of PW-2 Khalid Rasheed.

.....Inspector Ghulam Abbas was not with us on the spot. He was not in police station, too. He was on rest. He might be at home or on his personal work. I do not remember exactly, where was he but actual position is that he was not present with us on the spot.....

.....He played no role in such arrest, recovery, proceedings and investigation steps. It is a fact that informer did not come in contact with me directly. Vol. says; the superiors disclosed to me about the information with fact of involvement of the informer behind it.....

..... I did not take any action against them or against their refusal in doing such a lawful duty. I picked up the official as mashirs, out of the official party. It is a fact that the dispatch of the crime stuff took place after 3 days.....

.....It is a fact that the memo was not prepared after the proceedings of search, arrest and recovery in question, had been over.....

.....It is a fact that the memo does not show, if the memo started to get authored or prepared/drawn from fetching the accused, earlier to their pointation and effecting recovery of the crime stuff etc. It is

a fact that the memo shows 7:00 'O' clock as it time.....

.....Taj Mehmood was the source of the secured narcotics. It is incorrect to suggest that the accused had no connection with Taj Muhammad. It is a fact that the fuel tank of truck was not put to any expert for verifying and detecting its capacity or otherwise. I did not contact the petrol pumps shown in the receipts Ex-5/N, for verification thereof. I did not confront them with the issuer thereof.....

.....The truck was empty and had not load of goods.....

.....It is a fact that the accused from the story of the prosecution, appear to be the man of career i.e. Transportation Company to which the truck belonged.....

.....It is a fact that during the investigation, I cannot find out any consignee or the persons(s) whom the delivery of the narcotics in question was to be made.....

this was the case of no evidence against the respondents/accused, therefore, in the impugned judgment, learned trial Court has observed as follows:

.....“The fact that the recovery is made from behind the driving seat is understandable when the other recovery is made from the secret cell of the fuel tank of the vehicle in question, for it is strange for the people behind the dispatch of the narcotics in such skillful concealed state, that they would allow their front people (the carrier) to carry the same stuff in a separate state as being kept behind the driving seat so that the same could conveniently be detected by any public agency deployed in the country for checking and detecting the crime and criminals and their activities etc. on its highways throughout the journey from North to South thereof; the seizing officer produced the memo of his proceedings of spot, with the statement strange to the practice that he began to prepare the same as he started the proceedings thereof, and concluded the same at conclusion of such proceedings; hence, the memo is proved to have not been prepared after the proceedings were over as is the normal practice being put to practice in suchlike cases.

On the other hand, the accused denied to have seen the said officials being the same the (officials) who apprehended them on such spot. They also denied the recovery of the crime stuff and proceedings being carried out as well as preparation of the memo to such effect, either before them or in their presence. They also denied to have pointed out any narcotics in the matter. Their statement to the effect that the said officials were not present on the spot, can hardly be ruled out in presence of the contradictory state of the evidence of such witnesses over the presence of the said Ghulam Abbas, alone; admittedly, there were general people available but none could be picked up as witness to such proceedings and the excuse given in that regard, carries no weight for the simple reason that the officials did not take any action against the refusal of the people to become their witness and that they did not collect the particulars of such people as well, which is beyond their duty and imagination as well. The duty and care to maintain the required transparency of the case as to the proceedings aforesaid, and that of the officials concerned, seem to have stood sidelined purposefully in the instant case, which make them cloudy. The case is not free from doubt as such. Consequently, the under discussion point therefore, stands answered as 'not proved' in the above terms accordingly.".....

The above observations of the learned trial Court are enough for acquittal of the respondents.

7. In view of the above, no case is made out for setting aside the impugned acquittal order. Therefore, this Criminal Acquittal Appeal was dismissed by short order dated **30.11.2020** and above are the reasons for the same.

JUDGE

JUDGE

Karachi
Dated: 11.12.2020