

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Crl. Appeal No. D – 129 of 2019.

Before;

Mr. Justice Muhammad Iqbal Mahar
Mr. Justice Irshad Ali Shah

Appellant: Munawar son of Anwar Rind,
through Mr. Muhammad Sharif Sial, Advocate.

Respondent: The State, through Mr. Nazar Muhammad Memon,
Additional Prosecutor General

Date of hearing: 16-10-2019.

Date of decision: 16-10-2019.

J U D G M E N T

IRSHAD ALI SHAH, J. The facts in brief necessary for disposal of instant appeal are that on arrest from the appellant it is alleged has been secured 1100 gram of charas by police party of PS Sakrand for that he was booked and reported upon and after due trial was found to be guilty for the above said offence and was convicted and sentenced to undergo Rigorous Imprisonment for four years and six months and to pay fine of Rs.20,000/-and in case of his failure to make payment to undergo Simple Imprisonment for six months by learned trial Court vide judgment dated 12.07.2019, which is impugned by the appellant before this Court by way of instant appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police; there is no independent witness to the incident and appellant has been deprived of his right of cross examination to PW/ Mashir ASI Ali Bux. By contending so, he sought for acquittal of the appellant.

3. It is contended by learned A.P.G for the State that PW / Mashir ASI Ali Bux could not be produced by the prosecution before learned trial Court for the purpose of cross examination as he was declared to be proclaimed offender in a murder case. By contending so, he sought for remand of the matter with direction to learned trial Court to examine co-mashir LPC Amanullah Mallah.

4. In response to above, learned counsel for the appellant consented for remand of the matter to learned trial Court for examination of PW / Mashir LPC Amanullah Mallah.

5. We have considered the above arguments and perused the record.

6. PW/Mashir ASI Ali Bux could not be produced by the prosecution before learned trial Court for purpose of his cross examination as he was declared to be proclaimed offender in a murder case by the Court having jurisdiction. In that situation, prosecution was under lawful obligation to have examined co-mashir LPC Amanullah Mallah to prove the arrest of appellant and recovery of contraband substance from him. It was not done, by the prosecution for no obvious reason. In that way, the appellant has been denied valuable right of cross examination, which is against the mandate contained by Article-10(A) of the Constitution of Islamic Republic of Pakistan, which prescribe right of fair trial to every citizen for determination of his criminal / civil liabilities.

7. In view of above, the impugned judgment is set-aside, the case is remanded back to learned trial Court with a direction to examine co-

mashir LPC Amanullah Mallah and then to rewrite judgment by following the due course of law.

8. The instant appeal is disposed of accordingly.

J U D G E

J U D G E

Ahmed/Pa