

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

Cr.Appeal No. D- 99 of 2017

Present:-
Mr. Justice Naimatullah Phulpoto.
Mr. Justice Shamsuddin Abbasi.

Appellant : Mureed Majeedano s/o Khuda Bux through Mr. Manzoor Hussain Subhopoto, Advocate.

Respondent : The State
through Mr. Muhammad Ayoub Kasar, Special Prosecutor ANF.

Date of hearing : 26.04.2018
Date of judgment : 07.05.2018

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Mureed Majeedano appellant was tried by learned Special Judge Narcotic Substance Act/1st Additional Sessions Judge, Hyderabad in Special Case No. 82 of 2015 for an offence under Section 9(c) Control of Narcotic Substance Act, 1997. On the conclusion of trial, vide judgment dated 31.08.2017, appellant was convicted u/s 9 (c) of CNS Act, 1997 and sentenced to rigorous imprisonment for life and to pay fine of Rs.1,00,000/-. In case of default in payment of fine, appellant was ordered to suffer one year S.I more. Appellant was extended benefit of Section 382-B Cr.P.C.

2. Brief facts of the prosecution case are that on 08.04.2015, complainant Ghulam Abbas incharge PS ANF Hyderabad received spy information that the appellant would reach at Ayoub Hotel in between 3-00 p.m to 6-00 p.m and he would deliver the huge quantity of narcotics

to a particular customer. Upon such information, Ghulam Abbas incharge ANF left the police station ANF alongwith his subordinate staff vide roznamcha entry No.6 at 1500 hours and reached at the pointed place at 1550 hours. It is alleged that at 1630 hours one person appeared from Matiari side and he was holding black shoppers in his both hands. The said person sat on a cot. Spy informer told to the ANF officials that he was Mureed Majeedano. He was encircled by the ANF officials and caught hold. On inquiry, he disclosed his name as Murreed Majeedano. Both the shoppers were secured from his possession and his personal search was conducted. Inspector Ghulam Abbas asked the private persons available there including the persons sitting in the Hotel to act as mashirs but they refused. Thereafter, ASI Ali Muhammad and HC Muhammad Umer were made as mashirs of arrest and recovery. Both the shoppers were opened. Each shopper contained 07 packets of charas. There were two slabs in each packet. Each packet was weighed and it became one Kg, total weight of charas became 14 Kg. Thereafter, all the 14 packets were kept in a black shopper and sealed in presence of the mashirs at spot. It is alleged that from further personal search of accused once CNIC and cash of Rs.3500/- were recovered. Mashirnama of arrest and recovery was prepared. Case property was sealed. Accused and case property were brought to the police station where case property was deposited in Malkhana of the police station. Inspector Ghulam Abbas lodged FIR against the accused on behalf of State. It was recorded vide crime No.14/2015 u/s 9(c) of CNS Act, 1997.

3. During the investigation 161 Cr.P.C. statements of the PWs were recorded on 09.04.2015, charas was sent to the chemical examiner through PC Imtiaz for analysis. During interrogation, accused disclosed

that charas recovered from his possession belonged to his son-in-law Allah Dino. Positive report of the chemical examiner was received. On the conclusion of investigation, challan was submitted against the appellant/accused u/s 9 (c) of CNS Act, 1997. Co-accused Allah Dino was shown as absconder.

4. Trial court declared accused Allah Dino as absconder. Case was ordered to proceed against him u/s 512 Cr.P.C. Proceedings u/s 87/88 Cr.P.C. were concluded against him.

5. Trial Court framed charge against accused at Ex.4, to which he pleaded not guilty and claimed to be tried.

6. At the trial, prosecution examined PW-1 complainant A.D. Ghulam Abbas at Ex.5, he produced attested photocopy of entry No.6, memo of arrest and recovery, letter dated 09.04.2015 for sending the case property to the Chemical Examiner, carbon copy of FIR and chemical examination report at Ex.5/A to 5/E and mashir HC Muhammad Umer at Ex.6. Thereafter, prosecution side was closed at Ex.7.

7. Statement of accused Mureed Majeedano was recorded u/s 342 Cr.P.C. at Ex.8 in which he claimed false implication in this case and denied the prosecution allegations. In reply to question No.7, accused replied that prior to this incident, he had moved applications to the higher authorities against his son-in-law regarding to his involvement in the narcotics, ANF officials conducted raid at the house of accused Allah Dino and recovered charas from his house. After obtaining gratification of Rs.500,000/-, let off accused Allah Dino and challaned him falsely in this case. Accused has examined one defence witness namely Ali

Muhammad. However, he declined to give statement on Oath in disproof of the prosecution allegations.

8. Learned Special Judge after hearing the learned counsel for the parties and examining the evidence available on record, by judgment dated 31.08.2017 convicted and sentenced the appellant as stated above. Hence, this appeal is filed.

9. Mr. Manzoor Ahmed Subhopoto, learned advocate for the appellant mainly contended that prosecution story was un-natural and unbelievable. He contended that the place of arrest and recovery was disputed; that Investigation Officer could not find out the truth and failed to arrest the particular customer of the appellant. He has further contended that safe custody of the charas and its safe transit to the chemical examiner have also not been established. Lastly, it is contended that burden was upon the prosecution to prove charge against the accused beyond reasonable doubt but the prosecution failed to prove it. In support of his contentions, learned counsel has placed reliance on the cases reported as Ikramullah and others v. The State (2015 SCMR 1002), Tarique Parvez v. The State (1995 SCMR 1345), Nazeer Ahmed v. The State (PLD 2009 Karachi 191), Taj Wali and 6 others v. The State (PLD 2005 Karachi 128) and Munawar Ali Jatoi v. The State (2012 MLD 1763).

10. On the other hand, Mr. Muhammad Ayoub Kasar, Special Prosecutor ANF argued that evidence of ANF officials was reliable and trustworthy. ANF officials had no enmity to falsely implicate the appellant in this case. He has further contended that evidence of ANF officials was corroborated by the positive report of chemical examiner. He has prayed for dismissal of the appeal. In support of his contentions, he has relied

upon Roshan v. The State (2018 P.Cr.L.J Note 26), Ghulam Qadir v. The State (PLD 2006 Supreme Court 61), Zafar v. The State (2008 SCMR 1254) and Muhammad Sarfraz v. The State and others (2017 SCMR 1874).

11. We have carefully heard the learned counsel for the parties and scanned the entire evidence.

12. In the present case, Inspector ANF has admitted that private persons were present at the time of recovery so also the persons sitting at the hotel and they refused to act as mashir. We are not prepared to believe the evidence of the complainant/Inspector for the reason that the complainant failed to mention the names of those persons who refused to act as mashir. Moreover, the explanation given by A.D. Ghulam Hyder that the independent persons were available there but they were not willing to give evidence cannot be accepted as well excuse for excluding them without legal justification. Justice is not to be done only in courts. Other persons particularly the one who is entrusted with powers is responsible to do the justice at his level. A responsible officer of ANF, invested with powers of investigation is also obliged in law to do the justice and conduct fair and independent investigation as held in the case of Nazeer Ahmed v. The State (PLD 2009 Karachi 191) as under:-

14. According to para. 3 of rule 25.2 of Police Rules, 1934, it is the duty of an Investigating Officer to find out the truth and his object shall be to discover the actual facts and for the achievement of such object he shall not commit himself prematurely to any view of the facts for or against any person.

15. In the case of the State v. Bashir and others, reported in PLD 1997 SC 408, the Supreme Court, referring to the above Police Rule observed.--

"It could hardly be expected that a police officer, who is heading a raiding party and is a witness, also becomes the complainant and lodges an F.I.R. against the accused, and then becoming an Investigating Officer of the same case, will comply with the aforesaid Police Rule. In the circumstances, the practice of seizing officer or the head of a police party who is also a witness to the crime becoming or being nominated as an Investigating Officer of the same case should be avoided and if any other competent officer is available in the police station, he may be nominated as the Investigating Officer rather than the head of the police party. As observed Investigating Officer is as important witness for the defence also and in case the head of the police party also becomes the Investigating Officer he may not be able to discharge his duties as required of him under the Police Rules."

13. In the statement of accused recorded u/s 342 Cr.P.C. age of accused has been shown as 75 years. It is hardly believable that such an old and infirm person would carry 14 Kilograms in his hands. In the FIR it is mentioned that accused was arrested at Ayoub Hotel while he was sitting on a cot but Inspector Ghulam Abbas in his evidence has stated that accused was coming from Matiari side at 1630 hours and he was carrying black shoppers in his hand. PW-2 mashir HC Muhammad Umer had deposed that the place of incident was situated behind the bus stop as such the place of recovery was not certain. According to the prosecution case 14 Kilograms charas was recovered from the accused on 08.04.2015 by ANF officials and he was brought to the police station and case property was deposited in Malkhana such entry was kept in the relevant register but no such entry despite the contention of learned defence counsel has been produced before the trial court. Prosecution had also failed to examine the Head Moharer of police station for proving the safe custody of charas at Malkhana of the police station. Even PC Imtiaz who had taken sample to the chemical examiner has not been examined. Accused has raised defence theory that his son-in-law Allah

Dino who has been declared as proclaimed offender in this case was involved in selling the narcotics. He made applications against him to the higher officials. ANF officials conducted raid upon his house and recovered the alleged charas but ANF officials let him off by accepting the bribe of Rs.500,000/- and involved the appellant in this false case. Unfortunately, Investigation Officer failed to find out the truth of those applications which were addressed to the high officials. Inspector Ghulam Abbas had also failed to arrest the co-accused Allah Dino during investigation. I.O. also failed to arrest the particular customer who had to receive the narcotics from the appellant. We are clear in our mind that investigation has been carried out in a casual and stereotype manner without making an effort to discover the actual facts/truth.

14. We have already held that the safe custody of the recovered substances as well as safe transmission of the samples to chemical examiner Karachi had not been established by the prosecution but we add that report of the chemical examiner was also legally laconic and deficient as such tampering or replacement while in transit of the narcotics cannot be ruled out. A bare look at the report submitted by the Chemical Examiner in the present case shows that the entire page which was to refer to the relevant protocols and tests was not only substantially kept blank but the same had also been scored off by crossing it from top to bottom. This surely was a complete failure of compliance of the relevant rule and such failure reacted against reliability of the report produced by the prosecution before the learned trial Court. Section 36 of the Control of Narcotic Substances Act, 1997 requires a Government Analyst to whom a sample of the recovered substance is sent for examination to deliver to the person submitting the sample a signed

report in quadruplicate in "the prescribed form" and, thus, if the report prepared by him is not prepared in the prescribed manner then it may not qualify to be called a report in the context of section 36 of the Control of Narcotic Substances Act, 1997 so as to be treated as a "conclusive" proof of recovery of narcotic substance from an accused person.

15. In the view of above, report of chemical examiner was deficient in the eyes of law the same would not improve the case of prosecution as held in the case of *IKRAMULLAH & OTHERS V/S. THE STATE (2015 SCMR 1002)*.

16. In our considered view, prosecution has failed to prove that the charas was in safe custody for the aforementioned period. Even positive report of the chemical examiner would not prove the case of prosecution. Above mentioned circumstances have created reasonable doubt in the prosecution case. It is settled law that it is not necessary that there should many circumstances creating doubts. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right.

17. We have no hesitation to hold that the prosecution has failed to prove its' case against the accused. Resultantly, appeal is allowed. Conviction and sentence recorded by the trial court vide judgment dated 31.08.2017 are set aside. Appellant is acquitted of the charge. Appellant is in custody. He shall be released forthwith if he is not required in some other case.

JUDGE

JUDGE