

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

Cr.Appeal.No.D- 48 of 2015

Present:-  
Mr. Justice Naimatullah Phulpoto.  
Mr. Justice Muhammad Karim Khan Agha.

Date of hearing: 03.05.2017.  
Date of judgment: 03.05.2017.

Appellant Ashique Ali s/o  
Ghazi Khan Khorkhani.  
(present on bail)

Through Mr. Dilbar Khan Leghari,  
Advocate.

The State:

Through Mr. Shahzado Saleem  
Nahiyoon, A.P.G.

**J U D G M E N T**

**NAIMATULLAH PHULPOTO, J:** Appellant Ashique Ali was tried by the learned Special Judge for CNS Sanghar in Special Case No.52 of 2013. By judgment dated 15.04.2015, appellant was convicted u/s 9(c) of CNS Act, 1997 and sentenced to suffer 07 years RI and to pay the fine of Rs.50,000/- In case of default in payment of fine, he was ordered to suffer SI for 90 days. However, the benefit of Section 382-B Cr.P.C. was also extended to the accused.

2. Brief facts leading to the filing of present appeal are that on 12.09.2013 SIP Muhammad Ishaque Sangrasi SHO PS Sinjhoru left police station

alongwith his subordinate staff namely HC Muharram Ali, PCs Akbar Ali, Yar Mhammad and Ali Muhammad vide roznamcha entry No.6 at 1030 hours for patrolling duty. While patrolling at various places when they reached at Zafar town, SIP received spy information that the present accused was selling charas at 12 water course, Malook Shah road. Police party after receipt of such information proceeded to the pointed place where they saw the present accused standing on the road who on seeing the police party tried to run away but he was surrounded and caught hold. From his possession one black plastic bag / shopper was recovered. On inquiry, he disclosed his name Ashique Ali s/o Ghazi Khan Khorkhani r/o Khorkhani Paro Sinjhor town. Sub-Inspector conducted personal search of the accused but nothing was recovered from his personal search except the said shopper. Thereafter, shopper was opened by Sub-Inspector in presence of the mashirs HC Muharram Ali and PC Akram Ali. It contained seven big and small pieces of charas. Charas was weighed. It became 1500 grams, out of it, it is alleged in the FIR that 20 grams charas were separated from each piece for sending the same to chemical examiner. Thereafter, sample as well as the remaining charas was sealed in presence of the mashirs. Mashirnama of arrest and recovery was prepared in presence of the mashirs. Thereafter, accused and case property were brought at Police Station. FIR bearing crime No.105/2013 was lodged against the accused by SIP Muhammad Ishaque Sangrasi on behalf of State for offence u/s 9(c) of CNS Act, 1997.

3. After registration of FIR investigation was entrusted to SIP Zahid Hussain. Custody of the accused and case property were also handed over to the Investigation Officer for investigation purpose. It is alleged that Investigation Officer recorded 161 Cr.P.C. statements of the PWs. 20 grams of the substance / charas were sent to the chemical examiner on 17.09.2013 for analysis and he received the positive report. After completion of

investigation challan was submitted against the accused for offence u/s 9(c) of CNS Act, 1997.

4. Trial Court framed charge against accused at Ex.3 u/s 9(c) of CNS Act, 1997. To which, accused pleaded not guilty and claimed to be tried.

5. At the trial in order to substantiate the charge prosecution examined PW-1 Complainant / SIP Muhammad Ishaque Sanghrasi at Ex.4. He produced the attested copy of roznamcha entry No.6 as Ex.4/A, memo of arrest and recovery at Ex.4/B and FIR at Ex.4/C who also produced 7 small and big pieces of charas as article 'A'. PW-2 mashir HC Muharram Ali at Ex.5 and PW-3 IO/SIP Zahid Hussain at Ex.6 who produced report of the chemical examiner at Ex.6/A. Thereafter, prosecution side was closed at Ex.7.

6. Statement of accused was recorded u/s 342 Cr.P.C.at Ex.8 in which accused has claimed false implication in this case and denied the prosecution allegations. Accused had raised plea that PWs are the police officials and they have deposed against him at the instance of Wadera Warriyam Faqeer MPA for political reasons. He has also produced the cutting of newspaper daily 'Kawish' dated 15.09.2013, showing that the relatives of the appellant had protested regarding the high handed of police. Accused neither examined himself on Oath in disproof of prosecution allegations nor led any evidence in his defence.

7. Learned trial court after hearing the learned counsel for the parties and assessment of the evidence available on record convicted and sentenced the appellant as stated above. Hence this appeal.

8. The facts of this case and the evidence have already been discussed by the trial court in its judgment. Therefore, there is no need to repeat it.

09. Mr. Dilbar Khan Leghari, learned advocate for appellant has mainly contended that it was the case of spy information and the Sub-Inspector had sufficient time to collect the independent persons of the locality to witness the recovery proceedings but he did not associate any private person to act as mashir. Learned counsel has argued that the SHO did not take sample from each piece of charas recovered from the possession of the accused for sending to chemical examiner. Counsel for the appellant further contended that there was delay of five days in sending the sample to the chemical examiner, such delay has not been explained by the prosecution. Counsel for the appellant further contended that the relatives of the appellant had protested against the police officials of PS Sinjhoru and such news was published in daily 'Kawish' dated 15.-09.2013. It has also been contended that the appellant had raised specific plea that he has been falsely implicated in this case at the instance of MPA Wadera Warriyam Faqeer due to political enmity. Lastly, it is contended that evidence of the police was not reliable without independent corroboration, which is lacking in this case. In support of his contentions, learned counsel has placed reliance on the case of *Tariq Pervez V/s. The State (1995 SCMR 1345)*, Muhammad Hashim v. The State (PLD 2004 Supreme Court 856) and Taj Akbar v. The State (2011 P.Cr.L.J. 90).

10. Mr. Shahzado Saleem Nahiyoon, A.P.G. appearing for the State did not support the judgment of the trial court mainly on the ground that the investigation has not been conducted properly. He argued that the Investigation Officer neither visited the place of wardat nor recorded the statements of the independent persons of the locality. Learned A.P.G. argued that there was delay of 5 days in sending the charas to the chemical examiner and no police official has been examined before the trial court to show that

the charas was in safe custody during that period. Learned A.P.G. admitted that there is no evidence that the charas was taken from the each piece for sending the same to the chemical examiner.

11. We have carefully heard the learned counsel for the parties and scanned the entire evidence in the light of case law cited by the counsel for the appellant.

12. We have come to the conclusion that the prosecution has failed to prove its against the accused for the reason that it was the case of spy information and the SHO had sufficient time for calling the independent persons of the locality but he avoided for the reason best known to him. It has come on record that the place of incident was thickly populated area but no independent person has been cited by the prosecution to witness the recovery proceedings. Moreover specific plea was raised by the accused that he has been implicated in the case in hand by the police at the instance of Wadera Warriyam Faqeer MPA due to political enmity and such news was published in daily Kawish regarding the protest against the police by the relatives of the appellant. It has also come on record that the charas was recovered from the possession of accused on 12.09.2013 containing 7 big and small pieces but it is not mentioned in the FIR that the charas was taken as sample from the each of piece. It is further alleged by the prosecution that the sample was sent to the chemical examiner after five days through PC Muhammad Hashim. Neither the said PC nor WHC of the police station have been examined by the prosecution in order to satisfy the court that the charas was in safe custody for five days. It is not clear that out of seven pieces of charas recovered from the accused whether sample was drawn from the each piece for sending the same to the chemical examiner. It is matter of record that the place of wardat was a thickly populated area but Investigation Officer

neither visited the place of incident nor he recorded the statements of the people of vicinity in order to prove that the charas was actually recovered from the possession of the accused. Since the appellant has raised specific plea that the appellant and his other relatives had protested against highhandedness of police and in support of his contention, he has produced the copy of news cutting published in daily 'Kawish'. According to the prosecution case seven big and small pieces of charas were recovered from the possession of accused. It is not mentioned that what was the weight of each piece and how many grams from each piece were taken for sending the same to the chemical examiner. Moreover, there was delay of five days in sending the sample to the chemical examiner. WHC of the police station with whom the case property was deposited in malkhana has not been examined so also the PC who had taken the sample to the chemical examiner to satisfy the court that the charas was in safe custody. In this regard reliance is placed upon the case of *IKRAMULLAH & OTHERS V/S. THE STATE (2015 SCMR 1002)*, the relevant portion is reproduced hereunder:-

“5. In the case in hand not only the report submitted by the Chemical Examiner was legally laconic but safe custody of the recovered substance as well as safe transmission of the separated samples to the office of the Chemical Examiner had also not been established by the prosecution. It is not disputed that the investigating officer appearing before the learned trial court had failed to even to mention the name of the police official who had taken the samples to the office of the Chemical Examiner and admittedly no such police official had been produced before the learned trial Court to depose about safe custody of the samples entrusted to him for being deposited in the office of the Chemical Examiner. In this view of the matter the prosecution had not been able to establish that after the alleged recovery the substance so recovered was either kept in safe custody or that the samples taken from the recovered substance had safely been transmitted to the office of the Chemical Examiner without the same being tampered with or replaced while in transit.”

13. 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. Appellant had raised plea that he has been involved falsely at the instance of Wadera Wariam Faqeer MPA as appellant and his family had protested against such highhandedness. Such news was published in daily 'Kawish'. Evidence of police officials did not inspire confidence being tainted with doubts. There are several circumstances which create doubt in the prosecution case. Under the law if a single doubt is created in the prosecution case, it is sufficient for recording the acquittal. In the case of *Tariq Pervez V/s. The State (1995 SCMR 1345)*, the Honourable Supreme Court has observed as follows:-

***“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.”***

15. While relying upon the aforesaid authorities and keeping in view no objection raised by the learned A.P.G. we have no hesitation to hold that the prosecution has failed to prove its case against the accused. While extending benefit of doubt, appeal is allowed. The conviction and sentence recorded by the trial court are set aside. Appellant is acquitted of the charge. Appellant is on bail, his bail bond stands canceled and surety is hereby discharged.

JUDGE

JUDGE

