IN THE HIGH COURT OF SINDH AT KARACHI

CR. APPEAL NO.547/2019

PRESENT: **MR. JUSTICE SALAHUDDIN PANHWAR**
MR. JUSTICE SHAMSUDDIN ABBASI

Appellant : Muhammad Muzzamil,
through Mr. Muhammad Naseeruddin, advocate.

Respondent : The State,
through Mr. Siraj Ali Khan Chandio, DPG.

Date of hearing : 02.10.2019

Date of order : 02.10.2019

J U D G M E N T

SALAHUDDIN PANHWAR, J. Appellant has impugned judgment dated 13.09.2019 passed in S.C. Case No.787/2019 arising out of FIR No.85/2019 under section 6/((b) CNS Act, PS Garden, Karachi South, whereby he was convicted and sentenced to suffer R.I. for six months and to pay fine of Rs.5000/- and in default thereof to further suffer S.I. for fifteen days more.

2. Brief facts of prosecution case are that complainant ASIP Muhammad Qasim lodged FIR that on 12.04.2019 he alongwith his police party was patrolling when he received spy information that one person was selling charas at corner of Azeem Plaza, hence police party reached at pointed place and apprehended present appellant, search was conducted and from his possession police party recovered seven pieces of charas which was weighed with digital scale and found to be 150 grams.

3. Learned counsel for appellant contended that applicant has been falsely implicated by police; actually appellant was

apprehended by Rangers and thereafter his custody was handed over to police; then he was falsely implicated in present case while showing recovery of charas by him illegally; that evidence brought on record suffered from material contradictions which could not be relied upon to convict the appellant but the trial court did not consider this aspect of the case and ignored such contradictions: prosecution was not able to prove its case beyond shadow of doubt but the trial court illegally convicted the appellant hence impugned judgment is liable to be set aside.

4. On the contrary, learned DPG has contended that appellant was arrested red handed and from his possession charas was recovered in presence of mashirs vide mashirnama of arrest and recovery; that the eye witnesses have corroborated each other and supported the prosecution case; that there is no material contradictions on record hence evidence can safety be relied upon for awarding conviction to the appellant; that recovered charas was sent to chemical examiner and his report is in positive, hence appeal of appellant is liable to be dismissed.

5. At this juncture learned counsel for appellant has referred judgment of apex court in case of Khar-ul-Bashar passed in Criminal Appeal No.94/2019 (unreported) and has emphasized over paragraph No.9 and 10 which are that :-

> "9. Not so far back this court required taking of separate samples from every packet of the substance recovered, proof of sale custody and safe transmission of the samples of the recovered substance and proof of conscious possession on the part of a passenger of a vehicle. Apart from that, safeguards were insisted upon in holding of a test identification parade and in recording of a confessional statement under section 164 Cr.P.C. In Ameer Zeb case this court held that for safe administration of criminal justice some minimum standards of safety are to be laid down so as to strike a balance between the prosecution and the defence and to obviate the chances of miscarriage of justice. Such

> minimum standards of safety are even otherwise necessary for safeguarding the fundamental rights of the citizens regarding life and liberty which cannot be left at the mercy of verbal assertions of police officers which assertions are not supported by independent evidence provided by a chemical examiner. Purposive interpretation of the Act and the Rules promotes the protection of constitution and fundamental rights under article 4, 9 and 10A of the Constitution. Employing prudence, practice and caution as interpretative tools to help actualize and operationalize the purpose of the statue, we realize its objective purpose and ensure safe administration of justice so that the convictions under the Act are based on reports of the government analyst that are technically sound and credible.
>
> 10. In the present case examinations of the report of the government analyst mentions the tests applied but does not provide their results except a concluding result, presumably of all the tests, **which is not sufficient**. The report also does not signify the **test protocols that were applied to carry out these tests**. Hence, the mandatory requirement of law provided under rule 6 has not been complied with and, **thus, it is not safe to rely on the report of the government analyst dated 18.02.2016**. As a conclusion, it is reiterated, that the report of the government analyst must mentioned **(i) all the tests and analysis of the alleged drug (ii) the result of the each test(s) carried out alongwith the consolidated result and (iii) the name of all the protocols applied to carry out these tests.**"

6. From above, it is quite clear and obvious that chemical analysis report, if not standing well with above criterion of law, would not be sufficient to hold conviction nor could safely be relied upon while determining question of *liberty* of man, sent up to face trial. The perusal of chemical analysis report of property of this case crime reflects that mandatory requirement of law, as reiterated by honourable Apex Court, regarding examination of charas was not considered. Moreover, chemical report is not containing the letter number and such column is blank.

7. Besides in cross examination PW Muhammad Qasim has deposed that :- *"It is correct that I did not weigh each piece of charas separately. It is correct that pieces were recovered were of different*

sizes which I did not mention in mashirnama and FIR. It is correct that I did not disclose the colour of recovered charas in mashirnama of arrest and recovery or in FIR. It is correct that no entry Number is mentioned in the memo produced as exhibit 3/B and in FIR. Mashirnama of arrest and recovery produced at exhibit 03/B were written down by munshi at the place of recovery. It is correct that said munshi is not witness in the case." In similar way PW Jalal Ahmed has answered in cross examinations that:- *"It is correct that neither date nor any time is mentioned on parcel of case property. …….. It is correct that pieces of substance available in court are different in sizes but I have not mentioned the size of any piece in my statement under section 161 Cr.P.C."* Such admissions of the these witnesses of prosecution, *prima facie,* cause serious cut towards allegedly recovered articles. A case of such like nature (narcotics) can never succeed if status of recovered articles becomes doubtful or when chemical analyzing report thereof is not safe to be relied upon.

8. In view of above, this case is doubtful on two accounts, one is recovery itself is doubtful as entry number is not mentioned and the person who prepared mashirnama was not made as witness, even he was not called by the court. Moreover, chemical examination report is not standing well with the criteria as described in rules and above referred judgments. Hence by short order dated 02.10.2019 we allowed this appeal and acquitted present appellant.

J U D G E

Imran/PA **J U D G E**