

IN THE HIGH COURT OF SINDH AT KARACHI

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

CR. APPEAL NO.553/2019

Appellant : Habib Ahmed,
through Mr. Habibur-Rehman, advocate.

Respondent : The state,
through Mr. Abrar Ali Khichi, Addl. P.G.

Date of hearing : 01.10.2019.

Date of order : 01.10.2019.

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.265/2019 arising out of FIR No.42/2019 under section 6/(b) CNS Act, 1997 PS Gizri, Karachi, whereby he was convicted and sentenced to suffer R.I. for six months and to pay fine of Rs.5,000/- and in default thereof to further suffer S.I. for fifteen days more.

2. Brief facts of prosecution case are that on 19.01.2019 complainant ASI alongwith police party was patrolling during which he reached at P&T Colony, Gizri, Karachi, where he found rikshaw bearing registration No.DIS-22288 in which its driver was sitting who was apprehended; on enquiry he disclosed his name as Habib Ahmed and his search was conducted in presence of official witnesses and from his possession yellow coloured shopper was recovered from right side pocket of his shirt which was containing one piece of charas, the recovered charas was weighed with digital scale and found to be 120

grams, which was sealed and such memo was prepared at the spot, FIR was registered.

3. Learned counsel for appellant contended that accused has been falsely implicated in this case by police, evidence brought on record suffers from material contradictions which cannot be relied upon to award conviction to appellant, PWs have given false evidence and prosecution has failed to prove its case against appellant beyond reasonable doubts hence prays for acquittal of appellant.

4. On the contrary, learned Addl. P.G. 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 and testified the mashirnama of arrest; that there is no material contradiction on record hence evidence can safely be relied upon for awarding conviction to the appellant; that recovered charas was sent to the chemical examiner who reported in positive therefore it has been proved by prosecution that substance recovered from possession of present accused was charas hence he is liable for conviction.

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 safe 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 statute, 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-1 (exhibit 5) Ghulamullah has deposed that :- “*I made enquiry from rikshaw driver*

as to why he was standing there, to which he replied that he was standing there for no reason. It is correct that I did not disclose such fact in my statement under section 161 CrPC and in memo of arrest and recovery. It is correct that I have not produced any roznamcha entry showing that digital scale was also alongwith us during the patrolling. Vol. says that it remained with us in investigation kit during patrolling.” Such admissions of prosecution witness, *prima facie*, cause 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. Moreover, chemical examination report is not standing well with the criteria as described in rules and above referred judgment. Hence by short order dated 01.10.2019 we allowed this appeal and acquitted present appellant.

J U D G E

Imran/PA

J U D G E