

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

Cr. Appeal No.D-07 of 2021
[Syed Abdul Manan & another vs. The State]

Cr. Appeal No.D-08 of 2021
[Dad Khan vs. The State]

DATE

ORDER WITH SIGNATURE OF JUDGE

BEFORE:

**MR. JUSTICE MUHAMMAD KARIM KHAN AGHA
JUSTICE MRS. KAUSAR SULTANA HUSSAIN**

Appellants : Through M/s Altaf Shahid Abro & Bakhtiar A. Panhwar

The State : Through Mr. Shahid A. Shaikh, Addl: P.G Sindh

Date of hearing: 18.01.2023

Date of judgment: 25.01.2023

J U D G M E N T

KAUSAR SULTANA HUSSAIN, J: This single judgment will decide the fate of captioned appeals, as both have been directed against same judgment passed in same Crime. The appellants were charged and tried by the Court of learned Special Judge for Control of Narcotics Substances Hyderabad in Special Case No.136 of 2019 [Re: The State versus Dad Khan & Others] arising out of Crime No.33 of 2019 registered at P.S Hali Road Hyderabad under Section 9(c) of CNS Act, 1997 and vide impugned Judgment dated 13.01.2021 they were convicted and sentenced to suffer Rigorous Imprisonment for Life and to pay fine of rupees One Million each and in case of failure in payment of fine, they were directed to further suffer Simple Imprisonment for one year each, however, benefit of Section 382-B Cr.P.C was provided to them.

2. The allegation against the appellants/accused, per FIR, is that they are smugglers and on 28.03.2019 were carrying Chars and Opium in a Truck bearing No.TKR-001 for selling purpose, however, were arrested by the patrolling police party headed by Complainant/SIP Muhammad Khan Panhwar at about 1200 hours near Fateh Chowk Hyderabad. On inquiry the driver of said Truck disclosed his name as Dad Khan S/o Sargul while two persons sitting in said Truck disclosed their names as Abdul Manan S/o Syed Muhammad Rasool and Muhammad Ismail S/o Ali Jan Murwat; from their personal search police recovered some cash amount and mobiles phones with Sims; however, on search of Truck 920 packets were recovered, which were opened and checked and in 800 packets 800 kilograms of Chars was found while from remaining 120 packets 120 kilograms

of Opium was recovered, as such all three accused persons were arrested at the spot and aforesaid FIR was registered against them.

3. After registration of FIR Complainant himself conducted the investigation and on its completion challan was submitted before the competent Court against all accused persons. Trial Court framed the charged against accused persons/appellants, to which they pleaded not guilty and claimed trial. In order to prove the charge, the prosecution examined two witnesses i.e Complainant/IO SIP Muhammad Khan, who produced the certain documents as well as Mashir ASI Muhammad Aslam, who testified such documents. Thereafter prosecution closed its side and statements of accused persons were recorded under Section 342 Cr.P.C wherein they denied the allegations, leveled against them, however, neither they produced any witness in their defence nor examined themselves on Oath under Section 340(2) Cr.P.C. Thereafter, learned trial Court after hearing the parties through impugned Judgment convicted and sentenced all the appellants/accused, as noted above, hence they preferred captioned appeals.

4. Mr. Altaf Shahid Abro advocate, who is representing the appellants in Cr. Appeal No.D-07 of 2021, in support of his case argued that there are two aspects of the case in present matter i.e question of law as well as question of fact; the question of law involved in the matter is that chemical report must be in prescribed proforma with full protocol as per mandatory Rule 6 of Chemical Analysis Rules, 2001 while the question of fact is safe custody of contraband for which it is necessary for prosecution to examine the Muhrar of Malkhana, which has not been done; however, both these aspects have not been considered by the learned trial Court and has passed the impugned judgment in hasty manner. Arguing further he submits that property was not dispatched to Chemical Examiner within 72 hours, which is clear violation of law, but same was also not considered by the learned trial Court; that Complainant himself investigated the matter, though it is well settled law that no one can be judge of his own acts; that though the place of alleged incident is thickly populated area, however no private witness was associated which is clear violation of Section 103 Cr.P.C; that admittedly the alleged Chars and Opium were not recovered from physical possession of accused persons and the same has been foisted upon them. He prayed for acquittal of accused persons. In support of his case he relied upon (i) 2007 Y.L.R 1601 (Karachi), (ii) P.L.D 2012 SC 369, (iii) P.L.D 2020 SC 57, (iv) 2010 SCMR 930, (v) 2015 SCMR 1002, (vi) P.L.D 2019 S.C 64, (vii) 2022 SCMR 1422, (viii) 2022 SCMR 1627, (ix) SCMR 2105, (x) 2022 SCMR 2093, (xi) 2018 SCMR 2039, (xii) 2004 P Cr.L.J 361 (Lahore), (xiii) 2022 SCMR 2121, (xiv) 2021 SCMR 451, (xv) 2022 SCMR 1641, (xvi) judgments dated 25.10.2022 & 20.09.2019 passed by Hon'ble Supreme Court in Cr. Appeals No.139 of 2022

& 7-P of 2017 respectively and (xvii) judgment dated 12.01.2023 passed by this Court in Cr. Jail Appeal No.D-75 of 2020.

5. Mr. Bakhtiar A. Panhwar advocate, who is representing the appellant in Cr. Appeal No.D-08 of 2021 adopted the arguments advanced by learned counsel for co-appellants and also relied upon same case laws; however, he admitted that accused Dad Khan was driving the said Truck.

6. Learned Additional P.G; however, vehemently opposed the appeals and supported the impugned judgment and argued that prosecution has fully established its case and there are no contradictions in the evidence of the prosecution witnesses who arrested the appellants red handed on the spot with a massive quantity of narcotics; that safe custody has been proved which lead to a positive chemical report. He prayed for dismissal of appeals. In support of his case he relied upon (i) 2022 SCMR 1097 & (ii) 2022 SCMR 1784.

7. We have heard the learned counsel for the appellants as well as learned Additional P.G and have also perused the material available on record.

8. From the perusal of record, which includes evidence of prosecution witnesses, it appears that on fateful day police party left the P.S at about 1015 hours under Roznamcha Entry No.13 (**Ex.6/A**) for patrolling purpose, during which they received the spy information about accused persons that they are smugglers and are coming on Truck bearing No.TKR-001 towards Fateh Chowk Hyderabad. On receiving such information police party reached at the pointed placed and stopped the said Truck at about 12:00 hours; accused Dad Khan was driving the Truck while two co-accused Abdul Manan and Muhammad Ismail were sitting beside him on front side, thereafter police party conducted search of Truck and from its rear portion 800 packets, containing 800 kilograms of Chars and 120 packets containing 120 kilograms of Opium were recovered, as such all accused persons were arrested at the spot and case property was sealed at the spot and such mashirnama (**Ex.6/B**) was prepared there, then accused persons alongwith case property were brought at police station under Roznama Entry No.17 (**Ex.6/C**) and subject FIR (**Ex.6/D**) was lodged against them. The above said entries as well as mashirnama of arrest establish the departure and arrival of police party as well as arrest of accused person alongwith huge quantity of contraband at the spot on the fateful day.

9. At the outset we have perused the report of Chemical Examiner, which is in positive and shows that recovered contraband is Chars and Opium. Report further shows that same is strictly in accordance with the principles enunciated in the cases of The State vs. Imam Bakhsh (**2018 SCMR 2039**) and Khair-ul-Bashar vs. The State (**2019 SCMR 930**), hence argument of learned counsel that report of Chemical Examiner is not in prescribed proforma has no footings at all.

10. Record further reveals that on the same day viz: 28.03.2019 Complainant/I.O deposited the case property/contraband in Police Malkhana under Roznamcha Entry No.19 (**Ex.6/E**) and wrote letter (**Ex.6/F**) to his high-ups for sending the same to Chemical Examiner and on 01.04.2019 it was sent to the office of Chemical Examiner through PW ASI Muhammad Aslam, WHC Gada Hussain, P.C Ghulam Ghouse and DHC Akhtar Ali in Government Mobile under Roznamcha entry No.08 (**Ex.6/H**), therefore, safe custody of contraband for intervening period i.e 29.03.2019 and 30.03.2019 is duly proved. As far as argument of learned counsel that in order to prove safe custody of contraband Muhrar of Malkhana was not examined is concerned, same does not carrying weight for the reason that same has duly been proved by the documentary evidence, even otherwise evidence of prosecution witnesses shows that said question was not put by the appellants' counsel to them during cross-examination.

11. The contentions of learned counsel for the appellants that no private person has been associated as witness and there are certain contradictions in the evidence brought on record have no force, as applicability of section 103 Cr.P.C has specifically been excluded by virtue of section 25 of the C.N.S. Act 1997 and the alleged contradictions in the evidence of prosecution witnesses appear to be minor in nature, which seem to be not fatal to the case of prosecution. It is well settled principle of law that minor discrepancies in the evidence of raiding party do not shake their trustworthiness as expressed by the Hon'ble Apex Court in the case titled as **STATE/ANF V. MUHAMMAD ARSHAD (2017 SCMR 283)**.

12. As far as the defence plea raised by the appellants that they have been falsely implicated in present Crime and Chars has been foisted upon them is concerned, the accused persons were arrested at the spot with huge quantity of contraband, packed in 920 packets was recovered from secret cavities of Truck, admittedly driven by one of the accused, while two co-accused were sitting beside him, duly proved by the Complainant/I.O and testified by other witness/mashir. It is being noted that it is almost impossible to foist such a huge amount of narcotics. As such it cannot be presumed that they were not in knowledge of such huge quantity of contraband lying in Truck. Furthermore it also cannot be said that two co-accused were travelling in said Truck as passengers, because Truck is not a public transport vehicle and accused Abdul Manan had also admitted in his 161 Cr.P.C statement that he is owner of said Truck. The witnesses/police officials narrated the story in true manner and remained consistent despite lengthy cross-examination their testimony could not be shattered. In addition to above, no circumstances suggest alleged false implication of present accused persons with such a huge quantity of contraband. Reliance in this regard is placed on the case of **NAVEED AKHTAR vs. The State (2022 SCMR 1784)** as well as the case of **LIAQUAT ALI and another vs. The State (2022 SCMR 1097)**.

13. The ground taken by the learned counsel that Complainant himself investigated the matter, which is violation of law, has also no force at all, as in normal circumstances, there is no bar for a police officer to become complainant of the case and also to investigate it unless prejudice is not pleaded by the accused facing trial or if such police officer is having some grudge or vengeance against the accused. The rancor or hostility of the police officer can be perceived from record based on some confidence inspiring substance. Record reflects that appellants have failed to establish any enmity with Complainant/Investigation Officer for their alleged false implication in present crime with such a huge quantity of contraband, even otherwise during trial they have also not moved any application before the competent Forum/Court for change of Investigation Officer, if at all they had no faith on Investigation Officer/Complainant. Our view is fortified by the Hon'ble Supreme Court of Pakistan in case reported as **STATE THROUGH ADVOCATE GENERAL, SINDH V. BASHIR** and others (PLD 1997 Supreme Court 408), an observatory extract of which is being reproduced hereunder:-

“There is no legal prohibition for a police officer to be a complainant if he is a witness to the commission of an offence and also to be an Investigating Officer so long as it does not, in any way, prejudice the accused person. The Court will have to apprise the evidence produced by the prosecution as a whole and will have to form the opinion after evaluating the same.”

14. We have also perused the case laws relied upon by the learned counsel for the appellants and observe that same are distinguishable to the facts and circumstances of present case.

15. For the foregoing reasons, we have come to the conclusion that the prosecution has successfully proved its case against the appellants, therefore, the impugned judgment dated 13.01.2021 passed by the learned Trial Court in Special Case No.136 of 2019 [**Re: The State versus Dad Khan & Others**] arising out of Crime No.33 of 2019 registered at P.S Hali Road Hyderabad under Section 9(c) of CNS Act, 1997 is strictly in accordance with law, hence requires no interference by this Court, as such same is hereby maintained and in result whereof the present appeals, having no merits, are dismissed.

JUDGE

JUDGE