

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

**Cr. Jail Appeal No.D-266 of 2012**  
[Syed Shiraz Hussain vs. The State]

**DATE**

**ORDER WITH SIGNATURE OF JUDGE**

**BEFORE:**

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

**Appellant : Through Mr. Muhammad Ali Shaikh advocate**

**The State : Through Mr. Shahzado Saleem Nahiyoon A P.G**

**Date of hearing: 24.01.2023**

**Date of judgment: 01.02.2023**

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

**KAUSAR SULTANA HUSSAIN, J:** Through captioned jail appeal, appellant has impugned the Judgment dated 30.08.2012 passed by learned Special Judge (Narcotics) Shaheed Benazirabad in Special Narcotic Case No.54 of 2011 [Re: The State versus Syed Shiraz Hussain] outcome of Crime No.01 of 2011 registered at Excise Police Station, Nawabshah Town for offense punishable under Section 9(c) of Control of Narcotics Substance Act 1997, whereby he was convicted and sentenced to undergo Imprisonment for Life and was directed to pay fine of Rs.5,00,000/- and in case of failure in payment of fine, he was directed to further suffer Rigorous Imprisonment for six months more, however, benefit of Section 382-B Cr.P.C was provided to him.

2. The facts of the matter have sufficiently been disclosed in the impugned Judgment, therefore, there is no need to reiterate the same for the sake of brevity and to avoid repetition. However, the allegation against the appellant/accused, per FIR, is that he was arrested on 28.01.2011 by the Excise Police headed by Complainant Inspector Anwer Solangi near Excise Check Post situated at Sakrand Road driving a Dumper Truck bearing No.T.T.A-027 and from the secret cavities, available at the floor of said Truck, four hundred kilograms of Charas rods, lying in four hundred plastic bundles, were recovered.

3. After registration of FIR Complainant himself conducted the investigation and on its completion challan was submitted before the competent Court against the appellant/accused. Then copies were supplied to accused at **Ex.02** and Charge was framed against him at **Ex.05**, to which he pleaded not guilty and claimed trial vide his plea at **Ex.06**. In order to prove the Charge, the prosecution examined two witnesses i.e Complainant/Inspector Anwer Solangi at **Ex.07**, who produced

certain documents at **Ex.07/A to 07/E** and mashir E.C Ghulam Mustafa, who recorded his statement at **Ex.08** and recognized his signatures on the documents, already produced by the Complainant/I.O. Thereafter prosecution closed its side at **Ex.09**, then statement of accused was recorded under Section 342 Cr.P.C at **Ex.10**, whereby he denied the allegations, leveled against him and claimed his false implication in the case. The accused did not examine any witness in his defence, however, he also got recorded his statement on Oath under Section 340(2) Cr.P.C at **Ex.11** and then defense side was closed at Ex.12. Thereafter, learned trial Court after hearing the parties through impugned Judgment, available at **Ex.13**, convicted and sentenced the appellant/accused, as noted above, hence he preferred captioned appeal.

4. We have heard the learned counsel for the appellant as well as learned Additional P.G Sindh and have also gone through the material available on record.

5. Record reflects that though prosecution has alleged that 400 separate bundles were recovered from the Truck driven by the appellant/accused, however, memo of arrest and recovery, depositions of both witnesses and report of Chemical Expert show that only twenty bundles were sent for analysis and admittedly no sample from remaining 380 bundles of alleged recovered Chars was separately sent for chemical examination. In view of the dicta laid down by a larger Bench of Hon'ble Supreme Court in the case of **Ameer Zeb versus The State [PLD 2012 SC 380]** sample(s) must be taken from each and every rod/slab/packet/cake of alleged recovered contraband and if no sample is taken from any of the rod/packet/cake/slab or, if different samples taken from different rods/packets/cakes/slabs are not kept separately for their separate analysis by the Chemical Examiner, then the sample(s) taken only from a particular rod/slab/packet/cake cannot be said to be representative of entire alleged recovered contraband and same would be unsafe to rely on the mere depositions/statements of prosecution witnesses.

6. The Hon'ble Supreme Court in the case of **SHARAFAT KHAN versus THE STATE [PLD 2022 SC 281]**, while relying upon the Ameer Zeb's case *supra*, maintained the conviction of appellant/accused, however, reduced it for the term already undergone by him while holding as under:-

*“8. In the present case, 25 packets were recovered, each having 14 separate slabs of the alleged narcotic drug; thus, in fact, there were 350 (25 x 14) separate physically independent units of the alleged narcotic drug. In order to burden the appellant with the liability of the entire quantity of the alleged narcotic drug recovered, the representative sample had to be taken from every physically separate and independent unit of the alleged narcotic drug, i.e., from all the 350 slabs of the alleged narcotic drug recovered from the appellant.*

*In this case, 25 samples of 5 grams were collected from each of the 25 packets, without specifying whether it was taken from one slab out of the 14 found in each packet, or that each 5-gram sample was obtained from all of the 14 slabs found in one packet. The prosecution has not even argued that the representative sample was taken from each of the 350 slabs, rather it is an admitted fact on part of the prosecution that 5-gram sample was taken from only one slab out of the 14 found in each packet. Thus, the prosecution is found to have proved only those parts of the charas allegedly recovered from the appellant to be the narcotic drug of which samples were taken and sent for analysis to the FSL, that is, about 1785 grams,<sup>1</sup> not 25,000 grams as alleged.”*

7. In the present case though it is alleged that 400 separate bundles were recovered from the Truck driven by the appellant/accused, however, it is an admitted position that only twenty (20) separate bundles were sent for chemical examination, report of which is positive and available on record. But there is no report in respect of remaining 380 bundles of alleged Chars, therefore, the prosecution is found to have only proved 20 bundles (20 kilograms) of Chars recovered from the appellant/accused and the appellant/accused cannot be burdened for remaining 380 bundles of alleged Chars, as there is no report with regard to said remaining 380 bundles that whether same are contraband or otherwise.

8. Keeping in view the above position of case as well as law reproduced above, we have gone through the proviso provided under Section 9(c) of the Act *ibid* as well as sentencing policy laid down in Ghulam Murtaza's case [**PLD 2009 Lahore 362**], which provides that if the quantity of recovered Chars exceeds 10 kilograms the accused would be awarded sentence for Life Imprisonment or Death. In the case in hand, as discussed above, the prosecution has successfully proved 20 kilograms of Chars recovered from appellant/accused, as such same would still lead to a sentence of Life Imprisonment. Accordingly the conviction and sentence awarded to the appellant/accused by the learned trial Court is maintained, however, to the extent of proven quantity of 20 kilograms of Chars.

Captioned jail appeal is disposed of in the above terms.

JUDGE

JUDGE