

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

Cr. Appeal No.D-170 of 2019

[Allah Warayo vs. The State]

DATE

ORDER WITH SIGNATURE OF JUDGE

BEFORE:

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

Appellant : Through Ghulamullah Chang advocate

The State : Through Mr. Israr Hussain Chang Spl. Prosecutor

Date of hearing: 02.02.2023

Date of judgment: 15. 02.2023

J U D G M E N T

KAUSAR SULTANA HUSSAIN, J: Through instant appeal, appellant has impugned the judgment dated 27.08.2019, passed by learned Special Judge for Control of Narcotic Substance/MCTC Hyderabad in Special Case No.97 of 2015 [Re: The State versus Allah Warrayo], outcome of Crime No.18 of 2015 registered at P.S ANF Hyderabad for offence punishable under Section 9(c) of CNS Act, 1997, whereby he was convicted and sentenced Imprisonment for Life with fine of Rs.10,00,000/- and in case of failure in payment of fine, he was directed to further suffer Imprisonment for one year, 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 on 18.05.2015 he was arrested on spy information by the raiding ANF officials, headed by Complainant S.I Muhammad Salman and from his possession they recovered 75 kilograms of Chars, hence aforesaid FIR was registered against him.

3. After registration of FIR, Complainant himself investigated the matter who on completion of investigation has submitted the challan before the concerned trial Court. Then copies of the case were provided to the appellant/accused at **Ex.01** and Charge was framed against him at **Ex.02**, to which he pleaded not guilty and claimed trial vide his plea at **Ex.02/A**. In order to prove

the Charge, the prosecution examined three witnesses, who produced and recognized certain documents. Thereafter prosecution closed its side at **Ex.06** and the statement of appellant/accused under Section 342 Cr.P.C was recorded at **Ex.07** wherein he denied the allegations leveled against him, however, neither he produced any witness in his defence nor examined himself on Oath under Section 340(2) Cr.P.C. The learned Court finally after hearing the parties convicted and sentenced the appellant/accused, as noted above, vide impugned Judgment, hence he preferred captioned appeal.

4. Learned counsel for the appellant, inter-alia, contended that the impugned judgment is result of misreading and non-reading of the material available on record; that no private mashir was associated though Complainant had alleged prior spy information; that there are material contradictions in the evidence of prosecution witnesses; that safe custody of alleged case property is not proved; that in the letter written by IO the name of HC Ghulam Raool is written with handwriting while entire contents of said letter are typed; that though the letter of the IO shows that alleged case property was sent on 19.05.2015, however, the report of Chemical Examiner reflects that it was received on 20.05.2015, which makes the prosecution case highly doubtful; that Complainant himself investigated the matter, which is against the settled principle of law, because no one can be judge of his own cause; that appellant was employee of police department and served the Department for 26 years and during that period there is no such complaint or case against the appellant. He lastly prayed for acquittal of accused. In support of his arguments he relied upon the cases reported in (i) 2022 SCMR 864, (ii) 2020 P Cr.L.J Note 39, (iii) 2018 P Cr.L.J Note 30, (iv) 2020 YLR 503, (v) 2017 YLR 1292, (vi) 2018 P Cr.L.J Note 204, (vii) 2015 YLR 2163, (viii) 2019 SCMR 326, (ix) PLD 2008 SC 376, (x) 2015 SCMR 1002, (xi) 2015 SCMR 1002, (xii) 2022 SCMR 905, (xiii) 2022 SCMR 1248, (xiv) 2022 P Cr.L.J 412, (xv) 2006 YLR 2801 Lahore & (xvi) 2018 SCMR 2039.

5. On the other hand learned Special Prosecutor ANF vehemently opposed the appeal and argued that prosecution has fully established its case beyond any shadow of doubt; that though the witnesses were put to lengthy cross-examination, but they remained consisted; that safe custody of contraband is very much proved; that appellant has failed to prove any enmity with ANF official for his alleged false implication with huge quantity and that association of private mashirs has been exempted by Section 25 of the CNS Act. He prayed for dismissal of captioned appeal. In support of his case he relied upon 2022 SCMR 1097.

6. We have heard the learned counsel for the appellant as well as learned Special Prosecutor ANF and have also gone through the material available on record including case laws cited by them.

7. Record reflects that accused was arrested on 18.05.2015 by the raiding Anti-Narcotic Force on spy information from Ayoub Hotel situated near National Highway and from his possession Complainant/I.O recovered green coloured bag, having 20 multi coloured packets each containing two slabs of Chars weighing one kilogram each total twenty kilograms, which was sealed at the spot and such memo of arrest and recovery was prepared at the spot. On enquiry at the spot accused disclosed before the police party that more quantity of Chars is lying at his home and then he led the police party to his home, situated at Ahmedabad, Tando Adam and from one room of his house he got recovered one katta, containing 55 multi coloured packets, each having two slabs of Chars of one kilogram total weighing 55 kilogram, which were sealed at the spot and such separate memo of recovery was prepared at the spot.

8. Since the entire prosecution case hinges on the recovery of huge quantity of Chars from the appellant/accused, therefore, first of all it is to be seen whether the entire case property was examined by the Chemical Examiner and it was proved to be Chars or otherwise. In this regard we have before us a letter dated 19.05.2015 written by the Investigation Officer to Chemical Examiner for examination of case property and report of Chemical Examiner, exhibited as **Ex.04/C** and **04/D** respectively. A careful perusal of letter (**Ex.04/C**) shows that two parcels, containing 20 kilograms and 55 kilograms respectively were sent to the office of Chemical Examiner through HC Ghulam Rasool on 19.05.2015 in sealed condition. The report of Chemical Examiner (**Ex.04/D**) reveals that two sealed parcels were received in the office of Chemical Examiner through HC Ghulam Rasool weighing 20 and 55 kilograms respectively, chemical test of said parcels was performed, which was positive. Accordingly it is proved that entire case property was sent for chemical examination and proved to be contraband.

9. Now it is to be seen whether prosecution has proved chain of events and safe custody of contraband. Record reflects that on 18.05.2015 day Complainant S.I Syed Salman had prior spy information about the appellant/accused, accordingly he alongwith other officials of ANF and spy informer left the police station under entry No.06 at about 1200 hours and reached at the pointed out place and on pointation of spy informer they caught hold of the appellant/accused and from his possession recovered 20 kilograms of Chars, which was sealed at the

spot and such memo of arrest and recovery was prepared, duly signed by the mashirs. On enquiry at the spot appellant/accused disclosed the Complainant that Chars in more quantity is lying at his home and then he led the police party to his home, situated at Tando Adam, from where he got recovered 55 kilograms of Chars which was sealed at the spot and memo of such recovery was prepared simultaneously, which was signed by the mashirs and then police party returned at P.S under entry No.07 at about 1830 hours. The above entries and memos of arrest and recovery have duly been exhibited as **Ex.03/A to 03/C** and the same were recognized by the author and mashirs to be the same. Accordingly chain of events is also proved by oral as well as documentary evidence.

10. Record further reflects that on arrival at police station the recovered case property was deposited in Malkhana under entry No.81 (**Ex.04/B**) and on next day viz: 19.05.2015 it was taken out of the Malkhana under Entry No.03 at about 0830 and sent for chemical examination through HC Ghulam Rasool, who after handing over of case property at Laboratory, returned at police station under entry No.9 at about 1540 hours (**Ex.05/A**). These documents establish the safe custody of contraband and its deposit at Laboratory within time, as required by Rule 4(2) of Control of Narcotic Substances (Government Analysts) Rules, 2001. The argument of learned counsel for the appellant that entries No.03 & 09 (**Ex.05/A**) reflect that case property was sent on 19.05.2015, while the chemical report shows that it was received in the office of Chemical Examiner on 20.05.2015, carries no weight, as the letter dated 19.05.2015 (**Ex.04/C**) has endorsement of official of Laboratory, duly stamped, to have received the case property on 19.05.2015 and the depositions of IO as well as HC Ghulam Rasool, duly supported by the documentary evidence, show that case property was sent for chemical examination on 19.05.2015, therefore, mentioning receiving date as 20.05.2019 in report seems to be typing mistake, as during cross-examination of witnesses there is no suggestion on part of defense counsel as to tampering of case property or otherwise. So also there is no complain that at the time of producing the case property before learned trial Court it was in unsealed condition. The letter dated 19.05.2015 written by the Investigation Officer to Chemical Examiner shows that case property was sent in sealed condition, which has been authenticated by the report of Chemical Examiner, as mentioned above, to have received the same in sealed condition.

11. The argument of learned counsel that name of HC Ghulam Rasool is written in manuscript in letter of IO produced at Ex.04/C, also carries no weight, as there is no suggestion of any tampering, so also there is no mandatory

requirement that name of an official, depositing the case property for chemical examination, cannot be written with pen/handwriting. Further the deposit of case property by HC Ghulam Rasool has been established by the oral as well as documentary proof, which includes report of Chemical Examiner.

12. As regards the contention of learned counsel that there are major contradictions in depositions of prosecution witnesses, we have carefully gone through the depositions of all prosecution witnesses and it appears that despite lengthy cross-examination they remained consistent, except some minor contradictions, which can be ignored while keeping in view recovery of a huge quantity of contraband and by taking guidance from the recent decision of Hon'ble Supreme Court reported in 2023 SCMR 190, whereby the Hon'ble Apex Court has held as under:

“.....Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the Courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored”.

13. In the statement recorded under Section 342 Cr.PC the appellant stated that he served in Police Department for 26 years and he was implicated in present case by the Complainant just to let off the real culprit, hence question arises that why the Complainant implicated him in this case with such a huge quantity of contraband by leaving the alleged real culprit, though admittedly he (appellant) was their colleague and since no previous enmity has been alleged and/or proved by the appellant against Complainant or any other official of raiding party/Anti-Narcotic Force. The argument of learned counsel that Complainant himself cannot investigate the matter, has no base at all, for the reasons that the appellant has failed to establish any enmity with Complainant and/or he did not move any application for change of investigation at the time of trial, if at all he had no faith on Complainant. 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)** has observed as under:-

“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 appellant, however, same are distinguishable from 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 appellant, therefore, the impugned judgment dated 27.08.2019, passed by learned Special Judge for Control of Narcotic Substance/MCTC Hyderabad in Special Case No.97 of 2015 [**Re: The State versus Allah Warrayo**], outcome of Crime No.18 of 2015 registered at P.S ANF Hyderabad for offence punishable 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 consequence whereof the present appeal, having no merits, is dismissed.

JUDGE

JUDGE

Sajjad Ali Jessar