

**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr. Jail Appeal No. D- 177 of 2010

Present:

Mr. Justice Ahmed Ali Shaikh,
Mr. Justice Nisar Muhammad Shaikh,

Date of hearing:	13.09.2011
Date of decision:	13.09.2011
Appellant:	Hussain Keerio through Mr. Ayaz Hussain Tunio Advocate
Respondent:	The State through Mr. Shahzad Saleem Nahyoon, Assistant Prosecutor General Sindh.

J U D G M E N T

AHMED ALI SHAIKH, J:- The captioned Criminal Jail Appeal NO.D-177/2010 is directed against the Judgment dated 25.5.2010 recorded by Special Judge CNS Sanghar, whereby the Appellant was convicted u/s 9(c) of Control of Narcotics Substances Act, 1997, and sentenced to suffer R.I for 07 years with fine of Rs.25000/-, in lieu thereof, further S.I for one year. However, benefit of section 382-B Cr.P.C extended in favour of the appellant.

Relevant facts giving rise to this appeal are that on 03.09.2011 appellant was arrested by the police party headed by SHO Javed Iqbal Chandio of P.S. Chotyarion from Sanghar Chotyarion road while he was found in possession of 1090 grams Charas; out of which 90 grams were sealed separately for chemical examination rest of the same also sealed. Such mashirnama was prepared in presence of mashirs ASI Sultan Ahmed and PC Muhammad Mithal.

A formal charge u/s 9-(c) of Control of Narcotics Substances Act, 1997; was framed against the Appellant, to which he pleaded not guilty and claimed for trial.

To substantiate its case, prosecution examined P.W. Javed Iqbal DSP Headquarter Sanghar, ASI Muhammad Yousif Arain and ASI Sultan Ahmed.

The Appellant in his 342 Cr.P.C statement denied the prosecution allegations and professed his innocent however, neither he examined himself on oath nor led any evidence in his defence.

After hearing the learned Counsel for the parties, learned trial Court passed impugned Judgment which has been impugned through the instant appeal.

Learned Counsel for the Appellant contended that the impugned Judgment is a result of misreading and non-reading of evidence; while passing the impugned judgment learned trial Court did not consider the evidence in its true perspective. He further contended that charas was allegedly recovered from the Appellant on 03.09.2009 but sample was sent to the Chemical Examiner on 15.09.2009. He further invited our attention to the deposition of P.W. ASI Muhammad Yousif which reflects that neither he inspected the place of occurrence nor prepared such mashirnama. Per learned Counsel neither investigation was conducted in a proper manner nor the I.O. examined any person to unearth the truth or falsehood of the prosecution case.

Conversely, Shahzad Saleem Nahyoon, Assistant Prosecutor General, while defending the impugned Judgment submitted that the prosecution has proved its case beyond reasonable doubt therefore, appeal merits no consideration.

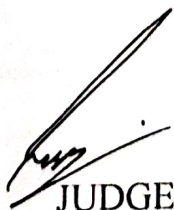
We have heard learned Counsel and perused the record with their able assistance.

Admittedly, the Appellant was arrested on 03.09.2009, and on the very same day case was registered and his custody was handed over to ASI Muhammad Yousif, who acted as investigating officer. Upon a perusal of evidence, it appears that on 03.09.2009 SHO P.S. Chotyarion delivered him copy of F.I.R. No.32/2009, memo of arrest and recovery and Roznamcha entry. However, it appears that charas allegedly recovered from the Appellant was not handed over to him. Such fact gets corroboration from his cross examination which reveals that he received sample on 06.09.2009 and sent the same to the Chemical Examiner on 10.09.2009 through Constable Mithal, however, Chemical Examiner's report reflects that the sample was sent on 15.09.2009 through P.C Muhammad Ayoob. Such contradiction creates

doubt about the truthfulness of prosecution case, therefore, no sanctity can be attached to the prosecution case. Though the charas was allegedly recovered from the Appellant on 03.09.2009 but sample was sent to the Chemical Examiner on 15.09.2009 and in this regard prosecution could not explain whether during such period, charas was in safe custody. Apart from the above, the investigating officer neither visited the place of occurrence nor prepared such memo which reflects that the investigation of the case in hand was not conducted in a fair manner but mere formalities were observed without adopting proper procedure. Even there is glaring contradictions in the prosecution evidence with regard to the date when the sample was sent to the Chemical Examiner. In this regard the I.O has deposed that he sent the sample on 10.09.2009 through constable Mithal whereas the Chemical Examiner's report reveals that same was sent on 15.09.2009 through P.C Muhammad Ayoob. Such contradiction creates doubt in the prudent mind. In the case in hand there are certain contradictions which create doubt and it is well settled law that if a single circumstance creates doubt in the prudent mind, its benefit must be extended in favour of the accused as a matter of right as laid down by their lordships in the case reported as 1995 SCMR 1345.

For the foregoing reasons, we are of the considered view that the prosecution has failed to prove its case beyond shadow of doubt, consequently instant appeal is allowed and Judgment whereby the Appellant was awarded sentence is set-aside.

These are the reasons in support of our short order dated 13.09.2011 whereby the appeal was allowed.



JUDGE



JUDGE

A.K