

HIGH COURT OF SINDH CIRCUIT COURT,
HYDERABAD

Criminal Appeal No.D- 68 of 2020
[Muhammad Iqbal versus The State]

BEFORE:
MR. JUSTICE MUHAMMAD KARIM KHAN AGHA
MR. JUSTICE MUHAMMAD SALEEM JESSAR

Date of hearing: 14.06.2023
Date of judgment: 20.06.2023

Appellant : Through Mr. Ishrat Ali Lohar, Advocate

The State : Through Mr. Israr H. Chang, Special Prosecutor
ANF.

J U D G M E N T

MUHAMMAD SALEEM JESSAR, J: Through this appeal, the appellant has impugned the Judgment dated 25.09.2020 handed down by learned Special Judge CNS Jamshoro @ Kotri (Trial Court) in Special Case No.113 of 2019 [Re: **The State versus Muhammad Iqbal & another**], outcome of Crime No.15 of 2019 registered at P.S ANF Hyderabad for offences punishable under Sections 6, 9(c), 14 and 15 of Control of Narcotics Substance Act, 1997 whereby he has been convicted under Section 265-H(ii) Cr.P.C and sentenced to suffer imprisonment for life with fine of Rs.2,00,000/- and in case of non-payment of fine, he has been

directed to further suffer S.I for three (03) months more; he has also been awarded benefit of Section 382-B Cr.P.C, whereas the case against co-accused has been kept on dormant file.

2. Complainant SHO Inspector Aftab Ahmed lodged the aforesaid FIR on 11.10.2019 at 2030 hours, stating therein that on same date he was present on duty at police station and received the spy information that two persons namely Abdul Hameed (**proclaimed offender**), who is famous narcotics distributor and worker Muhammad Iqbal (**appellant**) will come at Site area Bus Stop near Railway Phatak Tehsil Kotri District Jamshoro to deliver a huge quantity of narcotics to their special customer at around 1000 to 1200 hours; that on such information he alongwith ASI Somia, HC Muhammad Umar, PC Mohsin Ali, PC Akhtar Rasool, PC Amin, PC Asif, PC Azmat, Sepoy Mohsin, Sepoy Alhefaz, Driver PC Sajid Akber, PC Asim and spy informer left the police station in government vehicle under entry No.04 at 0900 hours and reached at the pointed place at 0945 hours; that they parked their vehicle at safe hidden place; that at about 1000 hours they saw one person coming from Railway Phatak while carrying a black colour plastic shopper in his right hand; that spy informer informed them that said person is Muhammad Iqbal, hence they apprehended him at the spot; that no private person was ready to act as mashir, therefore, HC Muhammad Umar and PC Mohsin Ali were made as mashirs; that the apprehended person disclosed his name as Muhammad Iqbal S/o Siddiqui Soomro R/o Village Usmanabad Soomro PO Darro Mirpur Bathoro District Sujawal; that black shopper, holding by said person, was checked and 05 packets, covered with yellow color

solution tape were found therein; that each packet contained double slab chars and weighed 01 kg each packet, total 05 kg chars; that 10/10 grams chars was separated from each double slab and was sealed in five khaki envelopes for chemical examination while remaining chars was sealed in white colour bag; that from the person search of apprehended accused they recovered cash Rs.5400/-, original CNIC and one China Mobile phone alongwith SIM card; that then memo of arrest and recovery was prepared at the spot; that the apprehended accused further disclosed that recovered chars belongs to Abdul Hameed S/o Soomar R/o Usmanabad, PO Darro, Tehsil Mirpur Bathoro District Sujawaland it was handed over to him for delivering their special customer; that he also disclosed that Abdul Hameed has kept more narcotics at his residence; that on such disclosure they proceeded towards residence of Abdul Hameed alongwith arrested accused; that they reached at the residence of Abdul Hameed, the door of house was locked; they asked the private person to act as mashir but they refused, then HC Muhammad Umar and PC Mohsin Ali were made as mashir and broke the lock of the door and entered into the house; that on the pointation of arrested accused Muhammad Iqbal they found 02 light khaki colour katas from right side of left room; they opened the same and found 29 packets in one kata covered with yellow colour solution tape and each packet contained double slab chars, the second kata was also opened and found therein 05 round shaped packets covered with yellow colour solution tape and the same was opium; that 29 packets recovered from first kata were weighed and each packet became 01 kg, total 29 kg chars, they separated 10 grams

from each double slab and sealed in 29 khaki envelopes for chemical examination while remaining chars was sealed in white colour bag; that round shaped packets of opium were weighed and the same became 01 kg in each packet, total 05 kg opium, they separated 10 grams opium from each packet and sealed it in five khaki colour envelopes while remaining opium was sealed in white colour bag; that from further search of house they recovered cash Rs.1,80,000/-, and original CNIC of Abdul Hameed; that the recovered case property and accused were taken into custody and such memo was prepared at the spot; that thereafter they returned to police station alongwith arrested accused and case property and lodged the FIR.

3. After registration of FIR Complainant himself conducted the investigation and on its completion submitted the challan before the learned trial Court, showing the present appellant in custody while co-accused as absconder. The copies were supplied to present appellant and formal charge was framed against him at **Ex.06**, to which he pleaded not guilty and claimed trial vide his plea at **Ex.06/A**. In order to prove the charge prosecution examined four (04) witnesses at **Ex.07 to 10**, who exhibited and recognized certain documents at **Ex.07/A to 10/C**, then prosecution closed its side at **Ex.11**. Statement of appellant, as required under Section 342 Cr.P.C was recorded at **Ex.12**, wherein he denied the allegations of the prosecution witnesses and alleged false implication. Accused has examined himself on Oath under Section 340(2) Cr.P.C at **Ex.13** and has produced Written Statement u/s 265-F(V) Cr.P.C, photocopies of application dated 27.09.2019, muster roll and CDR at **Ex.13/A**. He has also produced one defence witness Zulfiqar Ali, whose

statement was recorded at Ex.14. Finally learned trial Court after hearing the arguments of the learned counsel for the parties convicted and sentenced the appellant, as mentioned supra, while the case of absconder accused Abdul Hameed was kept on dormant file.

4. Mr. Ishrat Ali Lohar, learned counsel for the appellant after going through the evidence has taken us to the defence plea which the appellant has deposed before the trial Court and submitted that said plea has not been kept by the trial Court in juxta position with the prosecution case. He further draws attention of the Court towards defence evidence i.e. 265-F(v) Cr.P.C Ex.12/A, a copy of application moved by the co-villagers alongwith appellant to DIG Police Hyderabad for making complaint against the narcotics dealers and peddlers which was endorsed by the DIG to SSP Sijawal alongwith list of the narcotics dens, as well as wine shops, a copy of muster roll showing presence of the appellant on the very same day on his duty at School and then deposed before the trial Court u/s 340(2) Cr.P.C vide Ex.13 at page 81 of the paper book, deposition of his DW namely Zulfiqar Ali Khaskheli at Ex.14 at Page 84, further submitted that per prosecution case the ANF police had apprehended the appellant from his house and then taken him towards the house allegedly owned by co-accused Abdul Hameed (absconder) and after making alleged recovery from there penned down a joint mashirnama of his recovery and arrest. Mr. Lohar argued that the police allegedly broke the lock installed at the house of Abdul Hameed but said lock has not been shown as property in this case therefore, according to him entire episode of the

prosecution is based upon fabrication and no such offence as alleged had taken place. He after going through the chemical report Ex.7/A at Page 97 of the paper book, submitted that per memo of recovery samples were segregated consisting of 10 grams each but the report shows that they had sent consolidated samples which is not permissible under the law. In support of these contentions, Mr. Lohar has placed reliance upon the case of Abdul Sattar v. The State (2016 SCMR 909). Mr. Lohar further submitted that according to police rules No.25 in all 21 items of different nature including the white papers are to be kept but nowhere it is mentioned that Khaki (brown) envelopes are to be kept by the police as well as sealing of the samples in Khaki envelopes show nothing was secured from the appellant at the relevant time but later in order to implicate the appellant, the police had manipulated such type of things. He further submitted that IO had not extended the scope of investigation to ascertain the ownership of alleged house by collecting any documentary evidence to show it was owned by co-accused Abdul Hameed in support of their allegation hence mere word against word cannot constitute any offence against an individual therefore, the long story cooked up by the prosecution has no independent legs to stand upon. Mr. Lohar submitted that appellant being Government Servant is not only a bonafide citizen but is also a law abiding person and cannot even imagine to commit such crime as alleged. He further submitted that alleged recovery was affected on 11.10.2019 whereas it was sent to Laboratory on 15.10.2019 with the delay of 04 days which according to Mr. Lohar was managed by the complainant with the objective to strengthen the rope of their

false case. He while referring the evidence of incharge Malkhana Ex.10 at Page 64 of the paper book, stated that property viz. 42 sealed parcel, cash of Rs.1,80,000/-, one CNIC of absconder Abdul Hameed, cash of Rs.5400/-, one CNIC of appellant as well one China mobile phone with Sim which he kept in Malkhana but was sent to Laboratory on the direction of complainant on 15.10.2019. He therefore, submitted that retaining of property by Malkhana incharge for 04 days shows either the property was not available or after making arrangement of the same they have manoevered it. He therefore, submitted that prosecution has miserably failed to establish its charge against the appellant as the appellant being a law abiding citizen had moved an application against the narcotics dealers which annoyed them and resultantly the complainant party being in league with those narcotics dealers had implicated the appellant in this false criminal case by foisting the alleged contraband on him. He further submitted that property at the time of its de-sealing in trial Court was found dissimilar and was not same as Malkhana entries exhibited by the prosecution did not show the date and time of its keeping. In support of his contentions he placed reliance upon the cases of (i) **MUHAMMAD BOOTA v. The State** and another [2020 SCMR 196], (ii) **ABDUL HAMEED v. The STATE** [2016 SCMR 707], (iii) **KHAIR-UL-BASHAR v. The STATE** [2019 SCMR 930], (iv) **ANTI-NARCOTICS FORCE REGIONAL DIRECTORATE SINDH through Deputy Director (Law) v. FARHAD KHAN** [2020 YLR 1453] and (v) **QAISER JAVED KHAN v. The STATE** [PLD 2020 SC 57]. He therefore, submitted that by granting appeal in hand impugned judgment which suffers from

many illegalities as well infirmities may be set aside and the appellant may be acquitted of the charges by extending benefit of doubt to him.

5 Mr. Israr Hussain Chang, learned Special Prosecutor ANF opposed the appeal and supported the impugned judgment on the ground that the contradictions pin pointed by learned counsel for the appellant are minor in nature therefore, cannot be considered. As far as non-association of independent persons as witnesses to the recovery proceedings, learned Special Prosecutor argued that by virtue of the CNS Act, 1997 (the Act) applicability of the Section 103 Cr.P.C has been excluded. Learned Special Prosecutor further submitted that there is no legal bar for the complainant to act as I.O of the case besides the chemical report was also positive. Lastly he submitted that prosecution has proved its case as well crime chain against the appellant therefore, appeal merits no consideration and prayed for its dismissal.

6. We have heard learned counsel for the appellant as well Special Prosecutor ANF and have gone through the evidence made available before us on record.

7. Admittedly the appellant is a Government Servant and has categorically deposed before the trial Court in his statement u/s 342 Cr.P.C as well 340(2) Cr.P.C to the effect that on fateful day he was on his duty. At about 1230 hours he left the work place and came to home where he gone to Mosque for offering Jumma prayer and then took rest. In the evening he heard some hue and cry outside his home therefore, he came out and found that some persons were

present in civil dresses who were beating the son of one Abdul Majeed. Out of those persons one inquired from the appellant regarding his relationship with Abdul Hameed to whom he told that he is son of his Phuphi (paternal aunt) and then he was caught hold and was put in vehicle and beaten. Later he was brought to PS Daro and in the evening at about 6-30 or 6-45 p.m he was taken to Hyderabad and then was sent to jail. The plea taken by the appellant carries much weight and truth because alongwith his statement he had also exhibited an application which was sent by the appellant as well 23 other co-villagers against the narcotics peddlers whereby they all had beseeched to DIG Police Hyderabad for taking legal action against the narcotics dealers so that their children and youth may get rid from addiction and pass a healthy life. This would have been of even greater concern to the appellant who was a School Teacher. In our view the peddlers as well narcotics dealers are often running the business under the Umbrella of police as well other agencies and when any respectable citizen or a person of conscious mind makes a move to highlight their ill deeds, the local police generally protect their front men i.e. the drug dealers and curb the citizens so that they may not raise their voice against the crime as well as the criminals, same is position in this case. As far as alleged house of Abdul Hameed is concerned where alleged contraband was lying and was recovered by the police on alleged pointation of appellant. Per prosecution case the police broke the lock of said house and then entered into the house but no record has been shown or produced by the prosecution to believe that said house was of the co-accused and the appellant being vigilant of lying the

narcotics over there had got recovered it to police. This valuable plea neither has been discussed by the trial Court in depth nor has been kept in juxta position with the prosecution case. By not discussing this plea the trial Court has seriously erred and has caused miscarriage of justice and prejudiced the case of appellant by relying upon the evidence adduced by the prosecution in black and white and ignoring his plea. Moreover, the house wherefrom the alleged contraband was recovered on the pointation of appellant is situated in a residential area where thousands of inhabitants used to reside and the police had advance information, but they failed to associate any independent person from the locality to witness the recovery proceedings. No doubt the applicability of Section 103 Cr.P.C has been excluded / ousted from the Act yet it was incumbent upon the complainant particularly when he was going to charge a person for the offence which carries maximum punishment in shape of imprisonment then he should have made efforts to call some independent person to save himself from any blame. In both situations a room for doubt has been created by the prosecution itself which goes in favour of the accused. As far as objection raised by learned Special Prosecutor ANF that none from co-signatory of the application filed by appellant had come forward to depose in support of the defence plea is concerned, we are conscious and aware of the mal practice of the criminals as well their protectors, the persons would have been most likely afraid of their reaction on the ground that when the appellant had been implicated then they also might be implicated by them hence due to fear of any adverse action at the hands of criminals they would not have come forward. Since

sending of samples to Laboratory with the delay of 04 days has not been justified by the prosecution which not only vitiated the evidentiary value of the prosecution case but also creates a big room for doubt doing with the discrepant chemical report therefore, by considering the defence plea as well other material discrepancies in the prosecution evidence, we find that appeal in hand merits consideration. Accordingly, it is hereby allowed by extending the benefit of doubt to the appellant. Consequently, the impugned judgment dated 25.09.2020 handed down by learned Additional Sessions Judge / Special Judge (N) / MCTC Jamshoro @ Kotri in Special Case No.113 of 2019 arising out of Crime No.15/2019 registered at P.S ANF Hyderabad for offences u/s 6, 9(C), 14, 15 of CNS Act, 1997, is hereby set aside. Appellant Muhammad Iqbal son of Siddique by caste Soomro is in custody; therefore, he shall be released forthwith if his custody is no longer required by the prosecution.