

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

CrI. Jail Appeal No.D- 18 of 2020

Present:

Omar Sial and

Jawad Akbar Sarwana, JJ

Appellant : **Muhammad Younis Noonari** through
Mr. Pervez Ali Maitlo, Advocate.

The State : Through Mr. Mohsin Ali Khan, SPP, ANF.

Date of Hearing(s) : **15th & 20th June, 2023**
Date of Decision : **27th June, 2023**

J U D G M E N T

Omar Sial, J. Mohammad Younis and Syed Faheem Shah were accused of committing an offence punishable under section 9(c) of the Control of Narcotic Substances Act, 1997. An F.I.R. bearing number 34 of 2016 was registered against them at the Anti-Narcotics Force Sukkur police station on 01.12.2016.

2. A brief background to the case is that Inspector Wajid Hussain of the ANF received spy information that a notorious drug dealer named Mohammad Younis Noonari would deliver a substantial quantity of narcotics at an identified CNG filling station in Gambat. An ANF police party reached the identified spot and soon saw the suspected person with his motorcycle. The man, who happened to be the appellant Mohammad Younis was apprehended and checked. A search of the bag lying on his motorcycle was effected and 20 kilograms of charas was recovered. Younis was arrested and upon being interrogated informed the ANF investigators that the charas had been supplied to him by Syed Faheem Shah.

3. Both appellants pleaded not guilty and claimed trial. Syed Faheem Shah was acquitted under section 265-K Cr.P.C. by the 1st Additional Sessions Judge, Khairpur on 28.09.2019. At trial the prosecution examined **PW-1 Inspector Wajid Hussain** who was the complainant as well as the investigating officer of the case. **PW-2 PC Asghar Ali** witnessed the arrest and recovery. **PW-3 HC Abdul Hameed** took the narcotics from the ANF Maalkhana to the chemical laboratory for analysis. Noonari in his section 342 Cr.P.C. statement professed innocence however declined to be examined on oath or produce witnesses in his defence. He did not even provide any clarification or explanation in his statement as to why he was falsely accused.

4. Mohammad Younis, however, on 13.03.2020 was convicted for an offence under section 6 of the CNS Act, 1997 by the learned Special Judge (CNS), Khairpur vide his judgment dated 13.03.2020 and sentenced to a life in prison as well as directed him to pay a fine of Rs. 100,000 or spend a further period of one year in prison. This judgment of the learned trial court has been called into question through these proceedings.

5. Learned counsel for the appellant has argued that section 103 Cr.P.C. was not complied with; a section 164 Cr.P.C. statement was not recorded; the appellant, if at all, would be liable for 400 grams of charas, as that is the quantity that was sent to the chemical analyst for analysis; finally he argued that the bag of charas was found on the motorcycle and not in the physical possession of the appellant. To the contrary the learned Special Prosecutor ANF supported the impugned judgment. We have heard the learned counsel for the appellant and the learned Special Prosecutor, ANF. Our observations and findings are as follows.

6. As regards the argument that section 103 Cr.P.C. was not complied with, suffice it to say that section 25 of the CNS Act, 1997

excludes the applicability of section 103 Cr.P.C. in cases falling within the ambit of the narcotics legislation. The samples taken and sent for analysis were representative samples of the entire seizure made. 20 packets of charas were recovered from the possession of the appellant. Each packet has 2 slabs of charas in it and each packet weighed 1 kilogram. From each slab 20 grams of charas were taken as a representative sample and sealed on the spot.

7. The seizure and sampling was done on the spot by Inspector Wajid Hussain on 01.02.2016 at 4:00 p.m. The samples were sealed in a separate bag whereas the remaining charas was also sealed in the same bag in which the appellant had been carrying. The sealed property, samples and the remaining were deposited in the ANF Maalkhana by Inspector Wajid Hussain, who was also the Maalkhana In Charge. On 02.12.2016, the samples were taken out of the Maalkhana by Inspector Wajid Hussain and handed over to H.C. Abdul Hameed so that he could take the same to the chemical analyst's office. Both Inspector Wajid Hussain and H.C. Abdul Hameed were examined at trial. Wajid produced the extract of Register XIX, Entry No. 446 which evidences the deposit of the sealed samples and the remaining charas in a sealed position in the Maalkhana. H.C. Abdul Hameed was also examined at trial and testified that he had taken the samples from Inspector Wajid and then deposited them at the chemical analyst's office on 02.12.2016. He also produced an extract of the Roznamcha Register showing that he took the samples to the analyst at 12:40 p.m. on 02.12.2016. The report issued by the chemical analyst reflects that H.C. Abdul Hameed deposited the samples in a sealed state at the laboratory on 02.12.2016. In our opinion, the prosecution succeeded in establishing a chain of safe and secure custody of the samples from the point they were seized to the point that the same were deposited in the office of the chemical analyst. The entire case property was also produced in court at trial.

8. The argument raised by the appellant's counsel is that as the charas was in a bag lying on a motorcycle, it cannot be said that the appellant was in conscious possession or that the narcotics were in his possession. With much respect, we are not inclined to agree with the learned counsel. The motorcycle was in the possession of the appellant at the time the seizure was made. There was no other person but him on the motorcycle. 20 kilograms of charas were in the bag that was on top of the motorcycle. The appellant was very much in the exclusive and conscious possession of the appellant. In any case, we find this argument to be meaningless keeping in view that all along the appellant has kept the stance that he has nothing to do with the whole incident and that everything alleged by the prosecution was false.

9. Keeping in view the evidence produced at trial against the appellant, counsel's argument that the appellant did not record a confession under section 164 Cr.P.C. holds little weight.

10. The record reflects that the appellant was apprehended red handed with 20 kilograms of charas in his possession. Representative samples were taken from each slab of charas recovered. The samples and the left over charas were all sealed on the spot. The chain of safe custody was established at trial. The chemical analyst opined that all the samples sent to it were indeed charas, a substance the possession of which is prohibited under the CNS Act, 1997. No argument alleging malafide on the part of ANF to falsely implicate the appellant was made and none is borne out of the record.

11. In view of the above, we find no reason to interfere with the judgment of the learned trial court. The appeal is **dismissed**.

JUDGE

JUDGE