IN THE HIGH COURT OF SINDH
BENCH AT SUKKUR

Spl. Crl.Acq.Appeal No. D – 10 of 2023

Appellant	:	The State through Mr.Aftab Ahmed Shar, Addl.P.G.
Respondents	:	Nemo.
Date of hearing	:	23.11.2023.

JUDGMENT

YOUSUF ALI SAYEED, J. - This Appeal under Section 417(i) Cr.P.C has been preferred by the State so as to impugn the Judgment dated 17.10.2022 entered by the learned 1st Additional Sessions/Special Judge for CNS, Naushehro Feroze in Special Case No. 76 of 2022 emanating from Crime No.113 of 2022 registered at Police Station Padidan in respect of an offence under Section 9(c) of the Control of Narcotic Substances Act, 1997, whereby the Respondent, Muhammad Murad was acquitted of the charge of possession of 1100 grams of charas.

2. Briefly, the case of the prosecution is that the Respondent was apprehended on 07.08.2022, at 1600 hours by a police party headed by ASI Mughal Khan Siyal at the top/Bank of Tetri Minor road on the path leading towards Village Talib Mari, near village Talib Mari, Taluka and District Naushahro Feroze, and the aforementioned quantity of charas was recovered from his possession, along with a cash amount of Rs.300/-.

3. Following the investigation, the charge sheet was submitted against the Respondent/accused and the case was sent up for further proceedings, with the Charge being framed, in response to which the Respondent pleaded not guilty and claimed trial, during the course of which the prosecution called its witnesses who produced the documents specified as under:-

i) PW-1 ASI Mughal Khan Siyal at Exh.4, the Complainant of the case, who brought on record the abstract copy of departure entry No.8, at Exh.04/A, the memo of arrest and recovery at Exh.4/B, the abstract copy of arrival entry No.14 at Exh.04/C, and the FIR at Exh.4/D;

ii) PW-2 PC Sadam Hussain Waswano, a mashir of the occurrence at Exh.05, who brought on record the memo for inspection of place of incident at Exh.5/A;

iii) PW-3 SIP Hazar Khan Ujjan at Exh.06, who produced the abstract copy of departure entry No.27 and arrival entry no.3 on one leaf at Exh.06/A, and the report of chemical examiner at Exh.6/B;

iv) PW-4 PC Hamid Ali Siyal at Exh.07, who produced the copy of the road certificate at Exh.7/A.

4. After the side of the prosecution came to be closed, the Statement of accused under section 342, Cr.P.C was recorded at Exh.9, in which he rebutted the allegations and professed his innocence whilst stating that he had been falsely implicated by the police on the instigation of his cousin, with whom he had murderous enmity. He prayed for justice, but did not examine himself on oath or lead any evidence in his defence.

5. A perusal of the impugned Judgment reflects that from a cumulative assessment of the evidence, the learned trial Court determined that the prosecution had failed to prove the guilt of the Respondent, hence duly extended him the benefit of doubt, resulting in his acquittal, with it being observed inter alia that:

(a) no independent witness had been cited despite the arrest having been shown to have been made from a populated area;

(b) the alleged recovery proceedings and evidence of the witnesses as well as preparation of the documents, particularly the memo for arrest and recovery, all appeared to have been done mechanically and no account of the natural events and their consequences taking place under the circumstances had been recorded;

(C) there were contradictions in the evidence of the Complainant and recovery mashir, as according to the complainant/seizing officer regarding their antecedents between the time of departure from the police station to their arrival at the scene of arrest, as well as the manner in which the arrest made;

(d) the recovery was shown to have been made from the Respondent on 07.08.2022, but the Chemical Examiners Report reflected that the case property was on 12.08.2022, with no explanation for the delay or where the property was kept during the intervening period, raising doubts as to safe custody.

6. When called upon to demonstrate the misreading or non-reading of evidence or other infirmity afflicting the impugned judgment, the learned APG was found wanting and could not point out any such error or omission and remained at a loss to show how a conviction was possible under the circumstances, particularly in view of the points noted herein above.

7. Needless to say, it is axiomatic that the presumption of innocence applies doubly upon acquittal, and that such a finding is not to be disturbed unless there is some discernible perversity in the determination of the trial Court that can be said to have caused a miscarriage of justice. If any authority is required in that regard, one need turn no further than the judgment of the Supreme Court in the case reported as the State v. Abdul Khaliq PLD 2011 Supreme Court 554, where after examining a host of case law on the subject, it was held as follows:-

> "From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has

been categorically laid down that such judgment should not be interjected until the, findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities."

8. However, in the matter at hand the learned trial Judge has advanced valid and cogent reasons in acquitting the Respondents and no palpable legal justification has been brought to the fore for that finding to be disturbed.

9. As such, the Appeal is found to be devoid of merit and stands dismissed accordingly.

JUDGE

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