

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.
Special CrI. Appeal No. D - 13 of 2024

Present;

Irshad Ali Shah, J.
Zulfiqar Ali Sangi, J

Appellant: Muhammad Siddique alias Rehman son of Nooh bycaste Jagirani (Confined in Central Prison Khairpur) **Through** Mr. Rukhsar Ahmed Junejo, Advocate.

The State: Through Mr. Imran Mobeen Khan, Assistant Prosecutor General.

Date of hearing: 07-03-2024.

Date of decision: 07-03-2024.

J U D G M E N T

IRSHAD ALI SHAH, J. It is the case of the prosecution that appellant was found in possession of 2300 grams of charas by police party of PS Wada Machhyoon, for that he was booked and reported upon. On conclusion of trial he was convicted u/s 9 (C) of CNS Act, 1997 and sentenced to undergo rigorous imprisonment of ten years with fine of Rs. 100,000/- and in default in payment whereof to undergo simple imprisonment for six months with benefit of section 382 (b) Cr.P.C by learned Ist Additional Section/(MCTC)/(CNS), Khairpur vide judgment dated 17-01-2024, which is impugned by him before this Court by preferring the instant Special CrI. Appeal.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police by foisting charas upon him and there is inconsistency with regard to number of pieces of charas allegedly secured; therefore, the appellant is entitled to be acquitted of the charge by extending him benefit of doubt. In support of his contention, he relied upon case of *Faizan Ali Vs. The State* (2019 SCMR 1649)

3. Learned Assistant Prosecutor General by supporting the impugned judgment has sought for dismissal of instant CrI. Appeal by contending that the offence which the appellant has committed is affecting the society at large.

4. Heard arguments and perused the record.

5. It was stated by complainant SIP Syed Azhar Hussain Shah and PW/Mashir PC Abdul Karim that on the date of incident they with rest of police personnel were conducting patrol, when reached adjacent to Jamshed Band, there they found the appellant standing with a plastic shopper, he was apprehended and the plastic shopper, which he was having was secured and found containing four big paties and two small paties of charas, those were weighed to be 2300 grams, a memo of arrest and recovery was prepared and then the appellant with the recovery so made was taken to PS Wada Machhyoon and was booked accordingly after keeping the property in *Malkhana*. PW/WHC Sikander Ali has supported the complainant in his version to the extent that he kept the property in *Malkhana*. It was further stated by the complainant and PW/Mashir Abdul Karim that the further investigation of the case was conducted by I.O/SIP Muhammad Ashraf. It was stated by him that on investigation, he recorded 161 Cr.P.C statements of the PWs, visited the place of incident and then dispatched the charas to Chemical Examiner through PC Saleemullah. PW/PC Saleemullah has supported the I.O/SIP Muhammad Ashraf in his version to the extent that he took the charas to the Chemical Examiner. It was further stated by I.O/SIP Muhammad Ashraf that after usual investigation, he submitted challan of the case before the Court having jurisdiction. As per report of Chemical Examiner the charas, which was sent to him for Chemical Examination was found to

be in shape of two paties and two pieces. Where two paties gone? No explanation to it is offered by the prosecution, which prima-facie suggests that the charas sent to the Chemical Examiner was different to the one which allegedly was secured from the appellant. In these circumstances the allegation of foistation of charas upon the appellant by the police could not be lost sight of.

6. The discussion involves a conclusion that the prosecution has not been able to prove its case against the appellant beyond shadow of reasonable doubt and to such benefit he is found entitled.

7. In case of Muhammad Mansha Vs The State (2018 SCMR 772), it has been held by the Hon'ble apex Court that;

"4....Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to the benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted".

8. In view of the facts and reasons discussed above, the conviction and sentence awarded to the appellant by way of impugned judgment are set-aside, consequently he is acquitted of the offence, for which he was charged, tried, convicted and sentenced by the learned trial court and shall be released forthwith, if not required to be detained in any other custody case.

9. Above are the reasons of short order of even date, whereby the instant Special CrI. Appeal was allowed.

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