

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR
Special Crl. Appeal No. D - 47 of 2021

Present;

Irshad Ali Shah, J

Zulfiqar Ali Sangi, J

Appellant: Syed Saboor Ahmed S/o Syed Khan
Muhammad by caste Syed Pathan
(Confined in Central Prison-I, Sukkur)
Through Mr. Aurangzeb Khan Kakar,
Advocate

The State: **Through** Mr. Aftab Ahmed Shar,
Additional Prosecutor General

Date of hearing: 28-03-2024.

Date of decision: 28-03-2024.

JUDGMENT

IRSHAD ALI SHAH, J. It is alleged that the appellant was found in possession /transporting 60 kgs of charas in shape of 60 packets through his Truck by keeping the same in its secrete cavity by police party of Excise PS Naushahro Feroze, for that he was booked and reported upon by the police to face trial for the said incident. At trial, the appellant denied the charge and prosecution to prove the same, examined Complainant Inspector Khalid Hussain, PW/mashir EC Iqbal and PW/EC Hub Ali and then closed its side. The appellant in his statement recorded u/s 342 CrPC denied the prosecutions' allegation by pleading innocence by stating that an scuffle took place at the hotel of Sukhio Machhi and he was taken therefrom by the Excise Police and then was involved in this case falsely. He did not examine anyone in his defence or himself on oath. On conclusion of trial, he was convicted u/s 9 (c) of CNS Act,

1997 and sentenced to undergo rigorous Imprisonment for life and to pay fine of Rs.500,000/- (Five lac) and in default in payment whereof to undergo Simple Imprisonment for two year with benefit of Section 382(b) Cr.P.C by learned Ist Additional Sessions Judge/Special Judge (CNS), Naushahro Feroze vide judgment dated 02-08-2021, which he has impugned before this Court by preferring the instant Special Criminal Appeal.

2. It is contended by learned counsel for the appellant that appellant being innocent has been involved in this case falsely by the excise police personnel by foisting upon him the charas; the report of Chemical Examiner is not fulfilling the requisite protocol; the FIR of the incident and 161 CrPC statements of the PWs have been recorded by a retired Munshi and evidence of the PWs being doubtful in its character has been believed by learned trial Court without assigning cogent reasons, therefore, the appellant is entitled to be acquitted of the offence for which he was charged and convicted by learned trial Court by extending him benefit of doubt. In support of his contentions, he relied upon the case of *Khair-ul-Bashar vs. The State* (2019 SCMR 930).

3. Learned Additional P.G for the State by supporting the impugned judgment has sought for dismissal of instant Special Criminal Appeal by contending that the prosecution has been able to prove its case against the appellant beyond shadow of reasonable doubt, which is supported in shape of huge quantity of charas with

remove chance of its foistation. In support of his contentions, he relied upon case of *Zain Ali vs. The State* (2023 SCMR 1669).

4. Heard arguments and perused the record.

5. It was stated by complainant Inspector Khalid Hussain and PW/mashir EC Iqbal that on 28.07.2019 they with rest of the police personnel were detailed in their duty at Excise check-post Rasoolabad, there at about 5:00 pm; was found coming a Truck from Sukkur side, it was signaled to stop; it was found loaded; on its driver's seat was found sitting the appellant; on search from him was secured Rs.5000/-. On search of Truck there was found a secret cavity near to its fuel tank; it was opened therein were found lying 60 packets of charas, those were secured; each one was weighed to be one kg; from each packet of charas was taken out 100 grams of charas for chemical examination, charas secured and separated was sealed at the spot under memo and then the appellant with the recovery so made from him was taken to PS Excise Naushahro Feroze there he was booked in the present case formally. On investigation the Truck was found to be owned by Muhammad Aslam. The samples of charas were sent to the Chemical Examiner through PW/EC Hub Ali and after usual investigation the challan of the case was submitted before the Court having jurisdiction. It was confirmed by PW/EC Hub Ali that he taken the samples of Charas to Chemical Examiner for chemical examination. The complainant and his witnesses have stood by their version on all material points despite lengthy cross-examination by learned counsel for the

appellant; therefore, they could not be disbelieved only for the reason that they are Excise police personnel. Indeed, they were having no reason to have involved the appellant in this case falsely by foisting upon him huge quantity of charas. It is true that on asking it was stated by the complainant that FIR of the incident and 161 CrPC statements of the PWs were written by a retired Munshi who was called for the purpose. By such act no prejudice has been caused to the appellant which could be considered fatal to the case of prosecution. It was simple irregularity. The samples of the charas have been sent to the Chemical Examiner within prescribed time limit and report of Chemical Examiner is in positive. It is in accordance with the requisite standard and protocol. There is nothing in evidence of the complainant and his witness which could have suggested doubt about their version or authenticity of the very case. The appellant during course of his examination under Section 342 CrPC by denying the prosecution's allegation has pleaded innocence but has not been able to substantiate such plea by examining him on oath or anyone in his defence, therefore, his plea of innocence deserved to be ignored as an afterthought.

6. The conclusion which could be drawn of above discussion would be that the learned trial Court was right to conclude that the prosecution has been able to prove its case against the appellant beyond shadow of reasonable doubt, which is strongly corroborated in shape of recovery of huge quantity of charas.

7. In case of *Zafar Vs. The State* (2008 SCMR-1254), it has been held by the Honourable Apex Court that;

“---S. 9(c)---Evidence of police officials---Competence---Police employees are competent witnesses like any other independent witness and their testimony cannot be discarded merely on the ground that they are police employees”.

8. In case of *Muhammad Noor and others Vs. The State* (2010 SCMR-927), it has been held by the Honourable Apex court that;

“The above section expressly cast a duty upon the Court to presume in a trial under the Act that the accused has committed the offence under the Act unless contrary is proved. If the case is of possession of narcotic drugs then first prosecution has to establish the fact that the narcotic drugs were secured from the possession of the accused then the Court is required to presume that the accused is guilty unless the accused proves that he was not in possession of such drugs. Therefore, it is necessary for the prosecution to establish that the accused has some direct relationship with the narcotic drugs or has otherwise dealt with it. If the prosecution proves the detention of the article or physical custody of it then the burden of proving that the accused was not knowingly in possession of the article is upon him. The practical difficulty of the prosecution to prove something within the exclusive knowledge of the accused must have made the Legislature think that if the onus is placed on the prosecution the object of the Act would be frustrated. It does not mean that the word ‘possess’ appearing in the section 6 of the Act does not connote conscious possession. Knowledge is an essential ingredient of the offence as the word “possess” connotes in the context of section 6 possession with knowledge. The Legislature could not have intended to mere physical custody without knowledge of an offence, therefore, the possession must be conscious possession. Nevertheless it is different thing to say that the prosecution should prove that the accused was knowingly in possession. It seems to us that by virtue of section 29, the prosecution has only to show by evidence that the accused has dealt with the narcotic

substance or has physical custody of it or directly concerned with it, unless the accused proves by preponderance of probability that he did not knowingly or consciously possess the article. Without such proof the accused will be held guilty by virtue of section 29, Act 1997. Reliance is placed on cases of Inder Sain v. State of Punjab (AIR 1973 SC-2309)"

9. In case of *Kashif Amir Vs. The State (PLD 2010 SC-1052)*, it has been held by the Honourable Court that;

"---S. 9(c)---Transportation of narcotics--- Driver of the vehicle to be responsible---Person on driving seat of the vehicle shall be held responsible for transportation of the narcotics, having knowledge of the same, as no condition or qualification has been made in S.9(6) of the Control of Narcotics Substances Act, 1997, that the possession should be an exclusive one and can be joint one with two or more persons--- When a person is driving the vehicle, he is incharge of the same and it would be under his control and possession, hence whatever articles lying in it would be under his control and possession".

10. The case law which is relied upon by learned counsel for the appellant is on distinguishable facts and circumstance. In that case the requisite protocol for examination of sample was not observed. In the instant case it is observed.

11. No illegality/irregularity or misreading or non-reading of evidence is noticed which may justify this Court to interfere with the impugned judgment by way of instant Special Criminal Appeal. It is dismissed accordingly.

Judge

Judge