IN THE HIGH COURT OF SINDH AT KARACHI.
Criminal Appeal No. 99 of 2001.

Present: **Mr. Justice Shabbir Ahmed.**
Mr. Justice Muhammad Sadiq Laghari.

JUDGMENT

Date of hearing: 21.11.2002 and 22.11.2002

Applicant: Syed Asif Ali Shah through Khawaja Naveed Ahmed Advocate

Respondent: The State through Mr. Shoib Ashraf, Special Prosecutor ANF

MUHAMMAD SADIQ LAGHARI, J. Appellant

Asif Ali Shah was tried and convicted for offence under Section 9-C of CNS Act, 1997 by the learned Special Judge (CNS) Karachi Division vide judgment dated 15.5.2001. He was awarded sentence of imprisonment for life with fine of Rs.1,00,000/- in default to suffer two years S.I. further.

Prosecution case is that Assistant Director ANF Mehmood Baig together with Sub-ordinate staff including Sub-Inspector Ghulam Mustafa and Constable Muhammad Siraj Khan, while patrolling the area, intercepted a suspicious car on super highway near Baqai Hospital Chorangi, at 9:00 A.M. on 16.3.1999. The Driver of the car introduced himself as Syed Asif Ali s/o Syed Yaad Ali r/o Sea View, Clifton, Karachi. In the result of thorough search of the car 5 kg

heroin powder and 10 slab of charas were recovered from it. After drawing representative samples of the heroin and charas from each bag and sealing them the bulk was also sealed separately under the cover of Mashirnama. The occupant of the car was also taken into custody and brought at ANF PS II together with the property articles, whose Assistant Director Mehmood Baig registered the case. The samples were then despatched for chemical examination.

On completion of the investigation Sayed Asif Ali was sent for trial. With him Nasir Khan Afridi, Momin Khan, Basham, Imam Bakhil, Chacha Rad, Arbab Karim, Rana Naeem and Masood Buland were challan in absentia as co culprits. After declaring the absconders as proclaimed offenders the charge was read over to Syed Asif Ali who did not plead guilty and claimed trial. The prosecution examined SIP Ghulam Murtaza, Dr. Zahid Hussain a Chemical Examiner, Muhammad Siraj Khan Constable and Mehmood Baig Assistant Director ANF.

Syed Asif Ali denied prosecution allegations in his statement and pleaded that he was arrested from his residence and then narcotics substances was foisted upon him. He deposed on oath and then examined Dil Muhammad, Rab Nawaz, Muhammad Aslam, Nazir Ahmed Abro ASIP, Ghulam Abbas, Mst, Uzma and Muhammad Ejaz SIP in his defence.

After trial the learned Special Judge CNS, Karachi Division convicted the appellant awarding him sentence as mentioned above. The conviction and sentence have been appealed against.

We have heard the arguments of learned counsel and appraised the evidence with their assistance. Mr. Khawaja Naveed Ahmed the learned Advocate for the appellant stated at the very outset that Complainant Mehmood Baig the Assistant Director ANF told the appellant that he had been exporting the narcotics substance therefore he should pay him 5 lacs and on refusal by the appellant to make the payment present case was manufactured against him.

On merits the learned Advocate submitted that although the prosecution case is that the arrest and seizure were made on super high way but not a single private person witnessed the event. He further argued that the evidence of the ANF people has been falsified by huge defence evidence. He stated further that Mst. Uzma the wife of appellant deposed that her husband was taken away from his residence by ANF people and her evidence has been supported by Chowkidar Rab Nawaz, Watch man Dil Muhammad and visitor Muhammad Aslam. Their evidence gets further support from the evidence of Muhammad Ejaz Ahmed SIP Clifton who confirmed that Mst. Uzma reported to Clifton Police on 15.3.1999 that her husband was taken away from his flat, by four persons. The learned Advocate also submitted that all the defence witnesses except SIP Ejaz Ahmed and ASI Nazir Ahmd have also Deposed on the question relating to the seizure of appellant's car and their evidence proves that the car was taken away in the morning following the night when the appellant was taken away. Summing up his arguments the learned Advocate stated that if the prosecution evidence and the defence evidence are put in juxtaposition it can safely be concluded that the guilt

of the accused/appellant has not been proved. The learned advocate contended in the last that even the colour of the samples was different form the colour of the bulk which proves the manipulations on the part of the ANF people.

Learned Special Prosecutor defended the conviction arguing that by alleging that Assistant Director ANF Mehmood Baig had demanded huge amount from the appellant it has been admitted indirectly that the appellant was involved in the narcotics business. On the merits he argued that the prosecution evidence which although coming from ANF people, is truthful and convincing. That all the three witnesses belonging to ANF are unanimous on the question of interception, recovery and arrest. Their evidence is confirmed by the physical presence of huge narcotics substance and the transport. Touching the defence evidence the learned Special Prosecution contended that the defence is manipulated. On the point that on 15.3.1993 Appellant Syed Asif Shah was taken away from his flat and in the following morning he was brought back there and again taken away together with his car the learned Special Prosecutor argued that the evidence of big number of witnesses in support of above plea is not believable. It does not inspire the confidence for being baseless, inconsistent rather contradictory. He argued further that links were missing in the evidence of DWs as they did not get support from each other. He pointed out that so called complaint about the abduction of the appellant made to Clifton Police, is highly doubtful firstly the alleged incident happened within the limits of Darakhshan P.S. and the report was made to Clifton Police. Secondly there is no proof that the report was received on 15.3.1999. Evidence of Police Officials S.I. Ejaz of Clifton P.S. and Nazir Ahmed Abro of Darakhshan does not confirm the making of complaint on 15.3.1999 as claimed by Mst. Uzma. That Chowkidar Rab Nawaz claimed to have pointed out the flat of appellant to ANF persons and pushed the bell at their instance but Mst. Uzma

who claims to have opened the door in response to the bell does not speak of the presence of Rab Nawaz.

Continuing with his submissions the learned Special Prosecutor argued that DW Dil Muhammad claimed two of the four persons having taken away the appellant to be in uniform, but the application made by Mst. Uzma to Clifton Police does not indicate any such position. The learned Special Prosecutor further argued that evidence of Muhammad Aslam and Rab Nawaz on the point of removal of car is contrary as the former claims it to have happened between 3:30 and 4:00 P.M. and the latter alleges the car to have been removed at about 5:00 P.M. The evidence of Tariq Hussain Mirza of Pak Navy is valueless for the reason that he deposed about a certificate issued by him that car bearing No. Qatar 30986 driven by Mst. Uzma Asif had entered Karsaz Market gate at 9:45 A.M. on 16.3.1999 to visit Mazhar Iqbal Bhatti but while answering a question in cross examination he admitted that he was not on duty.

As mentioned above, the prosecution rely upon the evidence of Assistant Direction Mehmood Baig, SIP Ghulam Murtaza, Constable Muhammad Siraj Khan and Chemical Examiner Dr. Zahid Hussain. They except Dr. Zahid Hussain the Chemical Examiner, have deposed that they being mobile intercepted the suspected car at Super Highway near Baqai Hospital and recovered 10 slabs of charas and 5 kg heroin powder from it. The only person in car was its Driver who introduced himself as Syed Asif Ali. He was taken into custody and the samples were drawn from the slabs of charas and heroin powder. They were sealed separately. They further deposed that the car used for transporting the narcotics substance was also seized and such mashirnama was prepared at the spot. Then the accused, his car and the stuff were brought at ANF Police Station where the case was registered. Complainant Mehmood Baig, Assistant Director produced

the FIR. The witnesses produced the Mushirnama of seizure and arrest and identified the accused/appellant and property in the Court. P.C. Muhammad Siraj Khan and Complainant further deposed that on 16.5.1999 the appellant/accused was taken to his house and the same was searched but nothing incriminating was recovered. They however, had taken some telephone bills and other documents. The photo copies of telephone bill, invoice and exemption certificate have been produced in evidence exhibited. Each of the witnesses was subjected to lengthy and searching cross-examination but nothing such was extracted which could render their testimony doubtful. They all withstood the test of cross-examination. During the course of cross-examination defence theory was put to them but they denied it categorically. Their evidence is direct and straight and convincing and is supported by the physical production of heroin, charas and the car before the Court. The samples drawn at the spot were examined chemically and the evidence of Dr. Zahid Hussain proves that they were charas and heroin powder.

Although it has come in evidence that there was difference in the colour of the samples of charas and slabs produced before the Court but that does not affect the prosecution evidence which is otherwise believable being direct and convincing. The samples were handled at different stages exposing them to air and they were also subjected to chemical examination, therefore, gradual change in the colour of the stuff due to handing and the environments where they were stored can not be excluded. Even chemical examiner Dr. Zahid Hussain could not give, reason for such difference. The direct question was put to him as to how the samples were different from the rest of charas, but he did not state clearly that both of them were of different origin. Therefore prosecution evidence can not be disbelieved for change/difference in the colour of the samples and the slabs of charas.

On the point of defence evidence the argument of learned Special prosecutor have substance in them. First leg of the defence version is that during night intervening 15th and 16th March 1999 four ANF personals whisked the appellant from his flat and the event was witnesses by his wife Chowkidar Dil Muhammad and Watchman Rab Nawaz. Further that the incident was reported by Mst. Uzma the wife of the appellant to Clifton Police. Although Chowkidar Dil Muhammad and Mst. Uzma have deposed on the point but links are missing in their evidence which is even otherwise inconsistent . Dil Muhammad deposed that on 15.3.1999 at 10 P.M. two persons in civil dress came and enquired from him about number of the flat of the appellant. After getting the number one of them went and brought three persons in Official Uniform after that they took them forcibly through the lift and asked to push the bell of the flat. In response to the bail wife of the appellant opened the door and two persons in civil dress entered the flat. After that he went away. About ten minutes thereafter the appellant was taken away by those persons. The evidence of Mst. Uzma on this point is not consistent with the evidence of Dil Muhammad. She does not say that she has seen Dil Muhammad with the persons who had taken away her husband. She also claimed number of those persons to be four and not five as claimed by Dil Muhammad. She claimed to have reported the incident to Clifton Police . She produced the copy of that report as Ex.D5-A but the same is inconstant with the evidence of Dil Muhammad. In the report the lady witness alleged the four persons to have kidnapped her husband stating further that she could not recognize the culprits and would identify them. Thus she did not alleged any of the four persons to be in uniform.

Moreover, the complaint was made to Clifton Police whereas the flat of the appellant is situate within the jurisdiction of Darakhshan P.S. Also the complaint is not proved to have been made on 15.3.1999. It bears endorsement of

SHO marking the report to ASI Muhammad Ejaz. The endorsement is dated 19th February. Pssibly figure 2 was written instead of 3 through mistake. However the endorsement can at the most show that the complaint was received on 19.3.99. Evidence of Muhammad Ejaz Ahmed Sub inspector and ASI Manzoor Ahmed Abro DWs relates to that complaint. It does not show that the complaint was actually received on 15.3.1999.

On the point of lifting the car of appellant on 156.3.1999 the evidence is of watchman Rab Nawaz, Mst. Uzma and Muhammad Aslam, Rab Nawaz deposed that the car was taken by persons in uniform at 5:00 P.M. on 16.3.1999, whereas Muhammad Aslam claims the car to have been lifted between 3:30 to 4:00 P.M. Moreover the Mashirnama prepared on 15.3.1999 and FIR registered on same date do contain the seizure of the car and nothing such has come on record which not show that mashirnama and FIR were written on 16.3.1999 after 4:00 P.M. or after 5:00 P.M.

Evidence of Tariq Hussain Mirza of Pak Navy is also valueless for the reason that he has deposed about a certificate issued by him that car bearing No. Qatar 30986 driven by Mst. Uzma Asif had entered Karsaz Market gate at 9:45 A.M. on 16.3.1999 to visit Mazhar Iqbal Bhatti and went out from this gate at 10:15 A.M. He however admitted that he was not on duty at the gate on 16.3.1999 and had issued certificate on the basis of entries in the register. When questioned zabout register containing the entry he stated that it was destroyed. He further stated that there was no such record showing n order by competent authority for destruction of such register. In absence of the basis on which the certificate was claimed to have been issued the certificate itself looses its value.

The result of above discussion is that evidence of prosecution side does establish the recovery of narcotics substance from the possession of the appellant on 15.3.1999. He is therefore rightly been convicted by the learned trial Court. Consequently the appeal fails and is dismissed.

JUDGE