

**IN THE HIGH COURT OF SINDH, KARACHI**

Criminal Jail Appeal No. **63** of **2015**

**Present:**

Mr. Justice Zafar Ahmed Rajput

Mr. Justice Khadim Hussain Tunio

Appellants : (1) Naimatullah S/o. Mirbat Marwat  
(2) Kaleemullah S/o. Umar Shah Jehan Marwat  
through Mrs. Najaf Shah, Advocate.  
  
(3) Muhammad Raza S/o. Jamedar Marwat  
(Expired during pendency of appeal in jail on  
10.02.2017; therefore, appeal stood abated, vide  
order dated 07.11.2017)

Respondent : The State,  
through Mr. Khadim Hussain Khoharo, A.P.G.

Date of Hearing : 14.11.2017  
Date of order : 14.11.2017

**JUDGMENT**

**ZAFAR AHMED RAJPUT, J:-** This Criminal Jail Appeal is directed against the judgment, dated 10.09.2015, passed by the Sessions Judge/Special Judge (Control of Narcotic Substances), Kashmore at Kandhkot in CNS Case No.18 of 2013, arisen out of F.I.R No.01 of 2013, registered under Section 6, 8 & 9 (c) of the Control of Narcotic Substances Act, 1997 (hereinafter "**the Act**") at Excise P.S. Circle Kashmore, whereby the appellants were convicted under sections 9 (c) of the Act and sentenced to suffer rigorous imprisonment for twelve years and six months, and to pay fine of Rs. 60.000/= each or in default thereof, to undergo simple imprisonment for nine months further. The benefit of section 382-B, Cr. P.C., however, was extended to appellant.

2. Briefly stated facts of the prosecution case are that on 15.02.2013 complainant Inspector Amir Khan Kalwar of Excise Police, along with his subordinate staff, during checking of vehicles at Indus Highway, near Sada Bahar Hotel, Dera Mord, Taluka Kashmore at 11:45 p.m. got a truck bearing registration



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No. C-3231-Banu stopped and recovered 10 packets of chars, each containing one kg, total 10 kilo grams, lying in secret box cavity of the cabin top of the truck, out of them 200 grams from each packet, total two kilo grams chars, was separately sealed for chemical analysis. Besides the chars, the Excise officials also recovered eight Kalashnikovs with magazines, four T.T. pistols, one Mauser pistol, 25000 bullets of Kalashnikov and 6500 of 44 bore. The appellants, being driver and cleaner of the truck, respectively, were arrested under mashirnama of arrest and recovery and brought at P.S. where F.I.R. was registered against them on behalf of the State.

3. After completion of investigation, Excise Police submitted the challan against the appellants, wherein one Fayaz Ali was shown as absconder, who was subsequently declared by the Court as Proclaimed Offender. Formal charge was framed against the appellants by the trial Court, to which they pleaded not guilty and claimed trial.

4. In order to substantiate the charge, prosecution examined two witnesses. Complainant/I.O Inspector Amir Khan Kalwar has been examined as PW-1 at Exh: 7, he has produced mashirnama of arrest and recovery Exh: 7-A; F.I.R. at Exh: 7-B; chemical examiner's report at Exh: 7-C and copies of departure and arrival entries bearing No. 2/15.02.2013 & 1/16.02.2013 of Roznamcha Book at Exh: 7-D and Exh: 7-E, respectively, while E.C. Muhammad Ibrahim, the mashir, has been examined as PW-2 at Exh: 8.

5. The statements of appellants under section 342 Cr. P.C. were recorded at Exh: 10 and 11, respectively, wherein denying the allegations of prosecution, they claimed that they were taken by the Excise Police from a hotel, where they were having meal, and booked them in the case. They, however, neither examined themselves on oath, under section 340 (2) Cr. P.C., nor even led evidence in their

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defence. Upon the assessment of the evidence on record, the learned trial Court convicted and sentenced the appellants as mentioned above.

6. Learned counsel for the appellants has mainly contended that the appellants have falsely been implicated by the Excise officials to show their efficiency in the eyes of their superior, otherwise the appellants are innocent; that the truck was lying abandoned and the appellants, who were taking meal at nearby hotel, were arrested and implicated by the complainant in two false cases; that there is violation of section 103 of Cr. P.C., as the complainant/I.O did not associate any private person to witness the alleged recovery; that the learned trial Court did not consider the defence plea and, thus, failed to arrive at just conclusion.

7. On the other hand, learned APG has fully supported the impugned judgment and has maintained that the prosecution has proved its case against the appellants beyond any shadow of doubt; that the prosecution witnesses have fully supported each other on all material aspects of the case. He has further maintained that the defence plea raised by the appellants were considered and discarded by the trial Court. He has also maintained that the provision of section 103 Cr. P.C. has not been made applicable in the cases of recovery of narcotic substances under Section 25 of the Act of 1997. Learned A.P.G. while placing his reliance on the case of *Kashif Amir v. The State (PLD 2010 SC1052)* has lastly maintained that the appellants being driver and cleaner of the truck are responsible for the transportation of the narcotics, having knowledge of the same as no condition and qualification has been made in section 9 (c) of the Act that the possession should be an exclusive one and can be joint one with two or more persons.

8. We have heard the learned counsel for the appellants, APG and have perused the material available on record.

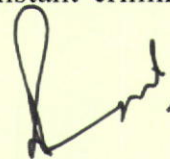


9. It is reflected from the evidence of prosecution witnesses that on 15.02.2013, at 02:00 p.m., Complainant/I.O Inspector Amir Khan Kalwar of Excise Police, Kashmore Circle, along with his sub-ordinate staff, namely, EC Muhammad Ibrahim, EC Ghulam Bux, EC Javed Ahmed, EC Asif Majeed, EC Mumtaz Ali and EC Haroon Bux left EPS, vide entry No.2 (Exh: 7-D) and proceeded in government vehicle for checking purpose towards Excise Check Post, Kashmore, Dera Mord, near Sada Bahar Hotel. During checking of vehicles, at 11:45 p.m., they signaled a truck through torch light to stop; the truck having registration No. C-3231/Banu, was being driven by appellant No.1, while appellants No. 2 disclosed himself as first cleaner of the truck. The truck was without cargo and during its search in top of cabin a secret cavity was found, which was opened by the Excise officials and from there, they recovered eight Kalashnikovs with magazines, four T.T. pistols, one Mauser pistol, 25000 bullets of Kalashnikov, 6500 of 44 bore and 10 brown packets each containing one kg chars, total 10 kilo grams, out of which 200 grams from each packet, total two kilo grams chars, was separately sealed for chemical analysis. Such mashirnama of recovery and arrest was prepared at the spot (Exh:7-A) in which EC Muhammad Ibrahim and Ghulam Bux acted as mashirs. The appellants were brought at EPS, Kashmore Circle along with case property, where F.I.R (Exh. 7-B) was registered against them. Thereafter, complainant Inspector Amir Khan Kalwar along with mashirs and recovered weapons went to P.S. Guddu where he lodged the F.I.R. bearing Crime No.12 of 2013 and; subsequently, he sent the case property to Chemical Examiner on 18.02.2013 through EC Shahzad Ahmed which was received in his office on the same day. As per report of Chemical Examiner (Exh: 4-C) total ten sealed paper packets were received to his office and each of them having two perfect seals and signatures of said I.O and mashirs, having each 213 grams gross weight and 200 grams net weight of Chars. During evidence of PWs, the case property, including truck, was produced before the trial Court,

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10. There appears no material contradiction in the evidence/statements of PWs rendering the prosecution case as doubtful. The evidence of PWs in respect of arrest and recovery of chars is consistent and confidence inspiring. It may be observed that the alleged truck was under control and possession of appellants being driver and cleaner, hence whatever articles lying in it would be under their control and possession. Regarding not associating any private person as mashir, the I.O has explained that the private person had refused to act as mashir. Even otherwise, Section 25 of the Act specifically excludes application of Section 103, Cr.P.C. in narcotic cases. As regard defense plea, the appellants have failed to bring on record any substance in support of their defense plea, which appears to be after thought. It goes without saying that in narcotic cases the Courts should have a dynamic approach in appreciating the evidence and the discrepancies, which may occur in the statements of prosecution witnesses due to lapse of time or those having no impact on the material aspects of the case, have to be ignored.

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11. For the foregoing facts and reasons, we do not find any misreading or non-appreciation of evidence and any illegality or legal or factual infirmity in the impugned judgment so as to justify interference by this Court in recording sentence and conviction to appellants by the trial Court. Hence, instant criminal appeal is dismissed.



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