

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA**

**Criminal Appeal No.D-103 of 2010**

Present:

**Mr. Justice Muhammad Junaid Ghaffar  
Mr. Justice Khadim Hussain Tunio-JJ**

**Appellant:** Muhammad Hashim Buriro,  
through Mr. Rafiq Ahmed Abro, Advocate

**State:** Mr. Khadim Hussain Khoonharo, Addl.P.G

**Date of Hearing:** 29.08.2017

**Date of Decision:** 12.10.2017

**J U D G M E N T**

**KHADIM HUSSAIN TUNIO, J.-** Through captioned criminal appeal, appellant Hashim Buriro has impugned judgment dated 23.06.2010, passed by the Court of Special Judge (CNS, Larkana), whereby appellant was convicted and sentenced for rigorous imprisonment for life and fine of Rs.10,00,000/-, and in case of default to further undergo R.I for 5 years more. Benefit under section 382-B, Cr.P.C. was also extended.

2. Succinctly facts of the present appeal are that on 21.05.2008, the present appellant along with co-accused Syed Ghulam Rasool Shah was arrested by the Excise Police D.I.O Larkana, upon the receipt of spy information that they were driving a truck bearing Registration No. TKC-093, carrying 103 kilograms of charas. Hence, the memo of arrest and recovery was prepared, accused and the case property were brought to PS where FIR was lodged.

3. During investigation, samples were sent to the chemical examiner on 21.05.2008 for chemical report and positive report was received. After usual investigation, challan was submitted against accused under section 9(c) of the CNS Act, 1997

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4. Learned Judge, Special Court (CNS), Larkana framed charge against accused under section 9(c) of the CNS Act 1997 at Ex.2. Accused pleaded not guilty and claimed to be tried.

5. At trial, prosecution examined complainant/Excise Inspector Razi Khan, Larkana at Ex.11, who produced entry, memo, FIR and report of chemical examiner at Exs.11/A to D. PW/Recovery mashir EC Sikandar Ali examined at Ex.12. Thereafter side of Prosecution was closed by the In-charge DPP vide his statement at Ex.13.

6. Statements of accused were recorded under section 342, Cr.P.C at Ex14 & 15 respectively, in which accused claimed false implication in this case and denied the prosecution allegations. Accused did not lead any defence and declined to give statement on oath in disproof of the prosecution allegations.

7. Learned trial Court, after hearing the learned counsel for parties and on assessment of entire evidence, convicted the accused under section 9(c) of the CNS Act, 1997 and sentenced as stated above. Appellant has preferred instant Criminal Appeal against the impugned judgment.

8. Learned Counsel for appellant contended that appellant is innocent and has been falsely implicated in instant crime; that the judgment passed by learned trial Court is against the criminal administration of justice; that the impugned judgment is perverse and shocking; that the trial Judge while awarding the conviction has not considered the material contradictions made in the evidence of the PWs; that no independent witness has been cited by the prosecution and both the PWs are Excise personnel; that neither the Chemical Examiner nor the person who took the sample were examined; that the sample was taken from each bundle and not from each packet of the charas; that the complainant has failed to collect any private person of locality to act as mashir. Learned counsel further contended that the alleged charas has been foisted upon the appellants, he, therefore prayed for his acquittal. The defence in order to prove its contentions, referred to the case law reports as **Bilal v. State (2007 YLR 3096)**, **Gulshan Ara v. State (2010 SCMR 1162)**, **Fareedullah v. State (2013 SCMR 302)** and an unreported case D-104 of 2010, Larkana.

9. While controverting the above submissions, learned A.P.G. contended that the appellant is nominated in the FIR; that the alleged charas has been recovered from the possession of present appellant and co-accused Ghulam Rassool Shah:

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that the offence committed by the appellant and co-accused Syed Ghulam Hyder Shah is heinous one and against the society; that although there are some minor contradictions in the evidence of PWs, but the same may be ignored while deciding the appeal. He has referred to the case law reported as **Abdul Wahid v. State (2003 SCMR 668)** and **Kashif Amir v. State (PLD 2010 SC 1052)**.

10. We have heard learned counsel for appellant, Muhammad Hashim Buriro and learned APG for the State and scanned the material available on record carefully.

11. Perusal of record contemplates that prosecution case hinges upon the evidence of complainant Excise Inspector Razi Khan DIO, Larkana and mashir Excise Constable Sikandar Ali supported by the positive Chemical Analyzer's report. Both witnesses have deposed the same facts of the prosecution case including arrest of present appellant along-with co-accused Syed Ghulam Rasool Shah and recovery of 103 kilograms charas from the secret cavities of truck. PWs have also deposed full details of the occurrence in the same line and fully supported the contents of FIR and memo of arrest and recovery as well as fully corroborated the evidence of each other. PWs had also identified case property as well as appellant and co-accused to be the same, and during their lengthy cross-examination, defence has failed to shatter the authenticity of their evidence, thus their testimony remained unshaken. Indeed, on the day of incident, present appellant along-with co-accused Syed Ghulam Rasool Shah was apprehended from Truck No.TKL-093-QUETTA, at Bugti Railway crossing, National Highway and from personal search of appellant Muhammad Hashim, Rs.200/= were recovered and Rs.2,000/= were recovered from co-accused Ghulam Rasool Shah. One registration book of truck was also recovered from dashboard of the truck. It is well settled that provisions of section 103, Cr.P.C. for association two public persons, is not applicable in cases of recovery of narcotics from a moving vehicle on Highway. Section 25 of CNS Act, 1997, has excluded the provisions of section 103, Cr.P.C. but simultaneously, it places heavy responsibility upon the prosecution to adduce solid evidence to maintain the transparency of the recovery which could eliminate all possibilities of false implication of any innocent person. In the case of **Muhammad Khan v. The State (2008 SCMR 1616)**, the Honourable Supreme Court has observed that police witnesses are as good and respectable as other public witnesses and their statements cannot be discarded merely for the reason that they are the police employees. In the case of **Zafar v.**

**The State (2008 SCMR 1254)**, the Honourable Supreme Court has observed that police employees are competent witnesses like any other independent witness and their testimony cannot be discarded merely on the ground that they are police officials; Applicability of section 103, Cr.P.C. in Narcotic case has been excluded under section 25 of Control of Narcotic Substances Act, 1997; Non-inclusion of any private witness is not a serious defect to vitiate the case; Appeal was dismissed.

12. In the instant appeal, appellant has failed to point out any animosity or ulterior motives on the part of complainant regarding the false involvement of appellant in instant crime and foisting of huge quantity of charas, thus the recovery effected from accused would neither become doubtful nor lose its evidentiary value merely on the grounds that PWs are police officials and no public person was associated as mashir at the event of recovery of narcotics from the possession of accused. Mere assertion of accused that he had been involved falsely in narcotics case, in absence of any tangible evidence, was of no consequence nor did it create any doubt about the recovery of narcotics. For the contention raised by appellant is that the real culprit was released by the complainant, it is an admitted fact that appellant had neither moved any application to the higher authorities by disclosing the name of actual culprit allegedly released by the complainant nor made any complaint for transfer of the investigation to any other Investigating Officer nor such application was moved before the trial Court, thus appellant was bound to establish the defence plea agitated by him by adducing tangible evidence and such allegation in absence of sound evidence, could not be considered in view of Article 121 of Qanun-e-Shahadat, 1984. In the case of **Anwar Shamim and another v. The State (2010 SCMR 1791)**, the Honourable Supreme Court has observed that it is duty and obligation of accused to prove the plea taken by him in his defence in term of Article 121 of Qanun-e-Shahadat, 1984. More so, section 29 of Control of Narcotic Substances Act, 1997, cast burden upon the accused to establish his innocence and absolve himself from the allegations of recovered substance, while prosecution has only to show by evidence that accused was in physical custody or directly concerned with recovered narcotics substance. In the case of **Mohammad Noor and others v. The State (2010 SCMR 927)**, the Honourable Supreme Court has held that prosecution, has only to show by evidence that accused has dealt with Narcotics Substance or has physical custody of it or directly concerned with it, unless accused proves by preponderance of probability that he did not knowingly or consciously possess the articles: without



such proof, accused can be held guilty by virtue of Section 29 of Control of Narcotic Substances Act, 1997. Charas weighing 268 Kg was recovered from secret cavities of vehicle; accused who was driving the vehicle and also in possession of the Article whatever lying in it; allegation against co-accused was that on his information secret cavities of vehicle were opened and Charas was secured; Co-accused was in knowledge of availability of secret cavities; therefore, he was also involved in the case along with driver; Supreme Court declined to interfere in the conviction and sentence awarded to both the accused was maintained.

13. Further, complainant took separate representative samples from recovered 103 kilograms of narcotics substance which is corroborated by Chemical Analyzer's report dated 28.05.2008, which reflects that 206 black brown colored rods sealed in wrapper(panne), were received for chemical examination, and said substance was declared as charas. In the case of **Hameed Zaid v. The State (PLD 2012 SC 380)**, the Honourable Supreme Court had observed that sample taken of a recovered substance must of be a representative sample of the entire recovered substances. If no sample is taken from any particular packet/cake/slab or if different samples taken from different packet/cake/slab are not kept separately for their separate analysis by Chemical Examiner, then the sample would not be representative sample and it would be unsafe to rely on mere word of mouth of prosecution witnesses regarding the substance of which no sample has been taken or tested being narcotic substance. In present case, complainant had taken separate samples from all packets in view of the above referred case law.

14. As far as the contention raised regarding conducting of investigation by the complainant himself, it is well settled that complainant being a Police Officer was competent to investigate the case if he was witness of offence, and such recovery could not be defeated merely on the ground that the complainant and the Investigating Officer was a same police officer, if no mala fide was established against the said complainant. In the case law reported as **PLD 1997 SC 408, 2003 SCMR 1237 and 2008 SCMR 1254**, the Honourable Supreme Court has observed that plea raised by accused that complainant himself was Investigating Officer and all prosecution witnesses were officials of Anti-Narcotic Force, Police Officer was not prohibited under the law to be a complainant, if he was a witness of an offence. More so, PWs have fully supported the case of prosecution and they have deposed same facts and events and defence has failed to shake and shatter the

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authenticity of their testimonies, thus minor contradictions or improvements would not be fatal to the prosecution case. In the case **Anwar Shamim (supra)**, the Honourable Supreme Court has observed that minor contradictions or improvements in statements of witnesses are to be over-looked, however, only material contradictions are to be considered.

15. As far as the case law referred by the learned Counsel for the appellant, same is not applicable with the facts and circumstances of the present case as facts and circumstances are distinguishable with the facts of the instant case.

16. For the foregoing reasons, we are of the considered view that prosecution has succeeded to bring the guilt of accused at home and appellant has failed to point out any material illegality or serious infirmity committed by the trial Court or non-reading of the evidence while passing impugned judgment, which does not call for any interference, therefore, same stands maintained. Resultantly, instant criminal appeal stands dismissed being having no merits.