

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD

Criminal Revision Application No.D-05 of 2021.

DATE	ORDER WITH SIGNATURE OF JUDGE
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	For orders on office objections. For hearing of main case. For hearing of M.A. No.1547/2021.
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26.10.2021.

Mr. Ishrat Ali Lohar advocate for the applicant.
Mr. Muhammad Ayoub Qassar Special Prosecutor ANF.

ORDER

MUHAMMAD IQBAL KALHORO, J:- Applicant standing at trial in Crime No.09/2020, under Section 9 (c) CNS Act, 1997 of P.S. ANF Hyderabad before Court of learned 1st Additional Sessions Judge (MCTC-1) Hyderabad has impugned an order dated 19.02.2021 dismissing his application filed for re-weight of alleged charas recovered from him.

We have heard learned counsel for the parties and perused material available on record. In the trial, in cross-examination of I.O. the applicant has put a suggestion to him that the weight of recovered Charas is not what is shown in the memo of recovery and in FIR and is less than that. He has although denied the suggestion. But it was only in that backdrop, applicant moved the application before learned trial Court for the purpose as above. The reason prevailing over the trial Court to dismiss the application is that the applicant has denied the prosecution case and not owned or admitted to have possessed the property i.e. alleged charas, hence, he has no right to ask for reweight.

Learned Special Prosecutor ANF has supported this order and has said due to afflux of time charas losses vapor and weight and hence any discrepancy in the weight cannot be taken into consideration.

Be that as it may, the accused has a right to a fair trial under Article 10-A of the Constitution of Islamic Republic of Pakistan 1973. His right to move application for re-sending the case property to chemical examiner for re-examination has been recognized in the case reported in PLD 2010 SC 623 (Ali Muhammad versus The State). In the same vein, when an accused questions weight of narcotics showed to have been recovered from him, the

Court would be bound to resolve it before proceeding further in the case. It is not necessary for the accused to admit the property first to gain a right of requesting for re-weight etc. Appellant is essentially challenging the prosecution case over measurement and weight of recovered charas, etc. which needs to be resolved for fair dispensation of justice. The trial Court has erred in not appreciating this aspect of the case. The accused who either questions validity of chemical report or weight of alleged recovered charas etc. would not be asked first to admit the prosecution case or own the property. Because if this logic is accepted, there would be no reason or need to either send the property for re-examination or re-weight / re-measurement. Therefore, we find the impugned order not sustainable in law and set-aside it. Consequently, the application is allowed. The trial Court is directed to reweigh the charas allegedly recovered from the applicant in presence of all the parties concerned within three (03) weeks. However, at the time of deciding the case finally the parties shall be afforded a proper opportunity to address this aspect of the case which shall be taken into consideration while deciding the case.

JUDGE

JUDGE