

ORDER SHEET**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**

Special Criminal Appeal No. D- 57 of 2024

Date of hearing	Order with signature of Judge
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Present:

Mr. Justice Mehmood A. Khan,
Mr. Justice Khadim Hussain Tunio.

1. For orders on office objections.
2. For hearing of main case.
3. For hearing of MA No.419/2024 (stay)

Date of Decision : 21.08.2024

Date of Reasons: 23.08.2024

Mr. Manzoor Hussain Narejo, Advocate for appellant
Mr. Khalil Ahmed Maito, D.P.G.

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J U D G M E N T.

MEHMOOD A. KHAN, J. Appellant Saith Ali alias Ghulam Shabbir alias Shabo son of Photal bycaste Narjeo was tried by learned Additional Sessions Judge-I (MCTC)/Special Judge for (CNS) Khairpur in special case No. 231 of 2023, arising out of crime No. 95/2023 of P.S Gambat for offence under section 9 (b) Control of Narcotic Substances Act, 1997. On conclusion of trial, vide judgment dated 20.04.2024, appellant was convicted for offence U/S 9 (b) CNS Act, 1997 and sentenced to suffer R.I for five years and to pay fine of Rs. 40,000/-, in case of default in payment of fine, appellant was directed to suffer S.I for six months more.

2. Brief facts of the prosecution case leading to of appeal are that on 14.05.2023 at 1700 hours from Gambat via Ranipur road, near Wang Pakhi Naka, Taluka Gambat District Khairpur accused Saith Ali alias Ghulam Shabbir alias Shabo was arrested by police party of Police Station Gambat headed by complainant HC Khair Muhammad khuhro and recovered charas weighing 550 grams lying in blue colour plastic shopper and cash of Rs. 100/- from his possession in presence of mashirs namely: PC Muhammad Ali and PC Khan Bakhsh Gopang, recovered charas was sealed at spot and such memo of recovery was prepared. Thereafter, accused and property was brought at Police Station where FIR was lodged against him on behalf of State. After usual investigation challan was submitted against appellant. Trial Court framed charge against appellant under section 9(b) CNS Act, 1997 to which, he pleaded not guilty and claimed to be tried.

3. During trial prosecution has examined WHC Muhammad Sobhar at Exh.3 he produced attested copy of entry No.68 of register 19 at Exh.3-A, Complainant PW-2 HC Khair Muhammad Khuhro at Exh.4 he produced roznamcha entry No.14 and 24 at Exh.4-A, entry No.27,28 & 31 at Exh.4-B, memo of arrest and recovery at Exh.4-C and FIR at Exh.4-D. Mashir of place of incident PW-3 PC Muhammad Ali at Exh.5. Investigating Officer PW-4 SIP Allah Dino Jamro at Exh.6 he produced letter addressed to Incharge Chemical Laboratory Rohri at Exh.6-B, RC at Exh.6-C, Chemical Examiner Report at Exh.6-D. Thereafter trial Court recorded statement of accused under section 342 Cr.P.C wherein appellant denied the prosecution allegations and claimed his innocence. However, appellant neither examined himself on oath in disproof of charge nor led evidence in his defense but the trial Court after hearing counsel for the parties convicted and sentenced the appellant as stated above.

4. Learned counsel for the applicant contends that compliance of Section 103 Cr.P.C was not available in the matter. It is further contended that there is contradiction in the statements of witnesses and as such the Judgment is liable to be set aside.

5. Learned D.P.G, however, has contended that 550 grams of charas was recovered from the appellant/accused in support of the offence. Four witnesses have been examined wherein two police official being witnesses of recovery are liable to be considered. It is further contended that compliance of Section 103 Cr.P.C is not required to be considered in narcotic cases.

6. Having heard learned counsels and gone through the record.

7. Learned counsel for the appellant has taken us through the evidence and the documents produced in the matter wherein though copy of Book No.19 has been produced we were surprised to observe not only cuttings made therein, it is also observed that the transmission for the purpose of examination by the laboratory required in the matter was found entered as a note although the entry to the Malkhana was dated 14.05.2023 and the transmission date was entered as 16.05.2023. In the first place the cuttings are not liable to be available and the addition of note for transmission in view of serial wise entry required to be made in the Book No. 19 is not found available. As such the purpose of maintaining the book No. 19 which requires serial wise entry to the movement of illicit drug in the present case is found to be without the required security. On account of violation to the serial number and movement to be recorded by notes to the available entry instead of serial wise numbering especially for a different dates is not found to be available as the same flouts the very purpose of existence of the mandated record keeping.

8. We have called upon learned DPG for reasonable explanation in this regard to which learned DPG restricted by the record was only able to come up with the explanation that the entry has been made by way of note and in this regard. As such we have also observed that the copies of rozanamcha-e-Aam though present are restricted to the date of 14.05.2023 as such no supporting material is found available to provide even the opportunity to consider remand. In this regard the depositions in the matter also does not provide any support to such an exercise.

9. In the said circumstances as referred above the transmission of the illicit drugs was not found in accordance with the required standard whereby tampering of the same can safely be presumed to be not present. As such we have accepted the appeal, the conviction and sentence as well as fine recorded by the trial Court was set aside and appellant Saith Ali alias Ghulam Shabbir alias Shabo was acquitted of the charge. However no disturbance to the order as to and in respect of destruction of case property is being made. Accused was ordered to be released forthwith, if not required in some other custody case through short order dated 21.08.204 and these are reasons for the same.

JUDGE

JUDGE

Irfan/PA

