

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.  
**Special Crl. Appeal No. D – 287 of 2019.**

**Before;**

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

Appellant: Ehtisham-ul-Haq son of Noor Haq Yousafzai Pathan  
through Mr. Muhammad Naeem Khan Advocate.

Respondent: The State, through Mr. Aftab Ahmed Shar  
Additional Prosecutor General

Date of hearing: 27.08.2024

Date of Judgment:

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

**MEHMOOD A. KHAN, J.** The facts in brief necessary for disposal of instant appeal are that on arrest from the appellant, it is alleged to have been secured 40 kilograms of charas in shape of 40 packets from the truck bearing registration C-2897 registered at Sawabi by police party of PS Excise DIO camp Ubauro and for that he was booked accordingly.

2. At trial, appellant did not plead guilty to the charge and prosecution to prove it examined PW-1 Inspector Qamaruddin Siyal at Exh.5 who produced mashiranmaa of recovery/arrest, FIR, photocopies of departure and arrival entries, letter No.30/2019 dated 06.08.2013, receipt, positive chemical examiner report, verification letter and verification report issued by MRA Sawabi, verification report at Exh.5-A to 5-I. Mashir/eye witness EC Mukhtiar Ahmed was examined at Exh.6 who verified the mashirnama of

arrest and recovery, letter through which, the property was sent to chemical examiner Rohri and receipt through which he had delivered the charas to the Chemical Examiner Rohri .

3. Appellant in his statement recorded u/s 342 Cr.P.C did not examine any witness in his defense but he got himself examined on oath in terms of section 340(2) Cr.P.C to disprove the prosecution allegation against him.

4. On conclusion of the trial, learned trial Court found the appellant guilty for an offence punishable u/s 9 (c) of CNS Act, and then convicted and sentenced him to rigorous imprisonment for life and to pay fine of Rs. 300,000/- (Three hundred thousand) and in default in payment of fine, to suffer further S.I for six months vide its judgment dated 02.12.2019, which is impugned by the appellant before this Court by preferring the instant appeal.

5. Learned counsel for the appellant has contended that the motor vehicle license recovered from the appellant was admittedly available only for driving of small vehicles and as such the truck in the matter cannot be alleged to be driven by him. Learned counsel also contends that this Court on earlier date had called for examination of the appellant in respect of whom report has been submitted after medical examination whereby it is clear that the appellant is not only having a broken leg, he was also suffering from G6PD deficiency of acute nature since childhood as such it is not possible for him to drive the vehicle alleged against him. Learned counsel also contends that learned trial Court has failed to consider that there has to be a nexus between the appellant and the truck alleged in the matter and the said element was highlighted in the cross examination. Learned counsel has also placed reliance upon the statement made by the accused in the matter wherein according

to him the appellant has deposed the circumstances in which he was arrested and claimed innocence. Learned counsel requires that the appeal be accepted and the accused be acquitted.

6. Learned DPG, however, contends that the appellant was arrested on the spot with huge quantity of narcotics and he has himself admitted that he was fit to drive and further states that the appellant himself has failed to give up explanation of having a driving license despite its claim of inability of driving as such it has come on record that he was having qualification of driving the vehicle and attempt has been made to take benefit of driving of heavy vehicle on a license of non-HTV nature. He further contends that as per the record the said license by virtue of the order of the Court may have been returned. He further contends that no supporting material to the claims made by mere depositions was made available nor any witness in this regard has been examined as such the conviction is not liable to be disturbed. He further requires that the determination to be maintained on account of huge quantity recovered in the matter. He has relied upon the cases of Ghulam Qadir vs. The State (PLD 2006 Supreme Court 61), State through Regional Director ANF Peshawar vs. Sohail Khan (2019 SCMR 1288), Abdul Wahab and another vs. The State (2019 SCMR 2061), Aijaz Ali Rajpar vs. The State (2021 SCMR 1773), Shabbir Hussain vs. The State (2021 SCMR 198), Liaquat Ali and another vs. The State (2022 SCMR 1097), Zain Ali vs. The State (2023 SCMR 1669) and Muhammad Ali Javed vs. The State (2023 P.Cr.L.J 843) in support of his contention.

7. Having heard the learned counsels and gone through the record as already referred to above. It bears from the record that the challan in respect of two persons was forwarded. The present appellant is said to be driver and another person namely: Feroze

Shah is said to be the registered owner who was acquitted of the charge to which apparently no appeal has been filed by the state.

8. Although it is observed from the record that the said owner was never included in the investigation. Nevertheless the cross examination of the Investigating Officer is present and referred for a ready reference as under:

*“ It is correct that we had not found available accused the accused Feroze Shah in the truck. It is correct that accused Feroze Shah was not seen by me. It is correct that IO had involved the accused Feroze Shah in this case. We had not collected the CDR record of mobile phone recovered from the accused Ehitisham-ul-Haq. Since, the accused Feroze Shah was not available in the truck hence, in my opinion he is innocent and mistakenly involved by the complainant. I cannot say, if the accused Feroze Shah had any conscious knowledge about the charas in the truck or not. It is correct that in front of me complainant/IO had not collected any proof against the accused Feroze Shah except his registration book. It is not correct that I am deposing falsely.”*

9. It is very clear that except for the statement of I.O who was in this matter also the complainant and his subordinate staff deposing as to alleged role of the present appellant at the spot in driving the vehicle in question wherefrom the illicit drugs though of huge quantity was recovered the prosecution has nothing available in this regard. The offence alleged in the matter is also limited to possession and this Court is conscious that the person driving the vehicle is to be considered as the in-charge of the vehicle yet in absence of any material available on record linking the person and the subject vehicle to be supported with any other corroborating material, the deposition of an official only supported by his subordinate staff where opportunity was well available for

establishing the link, yet the same has not been availed is not found enough to maintain conviction of imprisonment to life and in the circumstances the conviction is not found liable to be sustained depriving him of his liberty, wherein no earlier history is also attributed to him of any such dealings. As per Jail Roll the appellant has served 04 years, 11 months and 11 days upto 28.08.2024 as substantive sentence excluding remissions.

10. Based upon above discussion, the conviction and sentence awarded to the appellant together with the impugned judgment are set-aside, the appellant is acquitted of the offence, for which he has been charged, tried and convicted by the learned trial court. The appellant is in custody, he shall be released forthwith in the present case. However there is no disturbance to the order as to destruction of the property.

11. The instant appeal is disposed of accordingly.

**J U D G E**

**J U D G E**