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IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Cr. Appeal No. D-28 of 2013.

For Regular hearing.

PRESENT:

**Mr. Justice Ahmed Ali Sheikh &
Mr. Justice Salahuddin Panhwar.**

For appellant Salman Ansari:

Appellant produced under custody.

For State:

Syed Sardar Ali Shah Rizv, APG for
the State.

Date of hearing:

30th May, 2013.

JUDGMENT

Ahmed Ali Sheikh, J.- Through this jail appeal, appellant has called in question judgment dated 26th February, 2013 passed by learned Special Judge(CNS), Sukkur, whereby he was convicted under S.9-C of CNS Act, 1997 and sentenced to undergo RI for 04 years and 06 months and to pay fine of Rs. 20,000/-, and in case of default to undergo SI for five months. Benefit of section 382-B CrPC was extended in his favour.

2. Relevant facts of the prosecution case are that on 15.5.2012, complainant SIP Ghazanfar Ali Bhutto of Police Station Newpind Sukkur lodged FIR stating therein that on the said day he along with PC-Ubedullah and PC-Imdad Ali left Police Station vide entry No.25 at 2230 hours for patrolling purpose. After visiting different places, when they reached near Madarsa curve graveyard, they saw a person in pent-shirt having a black coloured shopping bag in his hand, who on seeing the police party tried to escape but he was apprehended under suspicion. Due to non-availability of private persons, complainant appointed PC-Imdad Ali and PC-Ubedullah as Mashirs and in their presence shopping bag was taken into custody and opened, which was containing two pieces of charas, which became

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1600 grams, out of which 300 grams were separated for chemical analysis. The accused was taken into custody along with contraband material and was brought at Police Station, B-section, Sukkur, where FIR was registered.

3. Charge was framed against the appellants, to which they pleaded "not guilty" and claimed trial

4. To prove its case, prosecution examined in all two witnesses, namely, complainant SIP-Gazanfar Ali, and Mashir PC-Ubedullah.

5. Appellant examined himself under S.342 CrPC, in which he denied the prosecution allegations and claimed his innocence. He also examined Mst. Zubeda in his defence. However, he did not examine himself on oath to disprove the charge

6. On the basis of evidence brought on record, learned trial Court passed the judgment as stated above

7. Appellant produced under custody contended that he is innocent and has nothing to do with the alleged contraband Charas. He further submitted that Charas was not recovered from his possession. He went on to say that all the witnesses are police officials, as such their evidence cannot be relied upon safely. He also contended that the sample of Charas was sent to Chemical laboratory after delay of 06 days without any plausible explanation. He further contended that the prosecution evidence is full of contradictions and there is inconsistency between the depositions of prosecution witnesses. He also contended that actually complainant was inimical to him due to dispute over a plot and he was not arrested from the place of incident but was forcibly taken away by complainant from his

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house in presence of his mother and subsequently involved in this false case. Lastly, he prayed for his acquittal from the charge.

8. On the other hand, learned State counsel supported the impugned judgment.
9. For proper adjudication of case, it would be proper to examine evidence produced by prosecution. In his examination-in-chief complainant SIP- Ghazanfar narrated the same facts of the FIR and further deposed that he recovered two slabs of charas from the possession of appellant and out of each slab, he separated 150 grams charas for chemical analysis, however, in cross-examination he admitted that he has not mentioned in the Mashirnama that out of recovered two pieces of charas, two pieces weighing 150 grams from each piece were taken as sample. He also admitted that he does not remember through whom he dispatched the sample to the Chemical Laboratory. He also does not know on what date he dispatched the samples to chemical laboratory. He also admitted that neither he mentioned the number of vehicle nor its colour or model in the Mashirnama as well as in the FIR.
10. PW-2 PC-Ubedullah has repeated the same facts in his deposition like complainant, but in his cross-examination stated that he cannot tell the time of arrest of accused. He also admitted that he does not know the registration number of Suzuki and the name of owner of said Suzuki. He further deposed that he cannot say who had brought the suzuki at the police station. He also admitted that in his 161 CrPC statement, he has not stated that they left the police station on suzuki. He also admitted that there is difference between his signature on Mashirnama and on his NIC. He also admitted that there is no mention either in the Mashirnama or in 161 CrPC statement that 150 grams charas was separated from each piece. He also

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admitted that there are open plots belonging to accused, lying vacant near Islam colony/graveyard from where the police station would be about 2/3 KMs away.

11. The defence witness, namely, Mst. Zubeda, mother of the appellant also deposed that his son was arrested by Ghazanfar Ali Bhutto and others from his house. She also deposed that false case has been registered against the appellant as the complainant has dispute over plot situated in Islam colony, Sukkur as the complainant is residing in Achar Ghitti which is at the distance of one k.m. from their house.

12. From the appraisal of evidence it is quite clear that investigation of this case has been conducted in improper manner as the complainant also acted in dual capacity by investigating the matter himself. It is not clear that who sent the sample of charas to chemical laboratory. It is also an admitted fact that in the FIR, only 1600 grams charas is shown to have been recovered from the possession of appellant and out of which 300 grams was separated for chemical examination, but in their depositions, both witnesses deposed that two slabs of charas were recovered from the possession of appellant and out of each slab, 150 grams was separated for chemical analysis. There is inconsistency in between the depositions of P.Ws. in respect of number of slabs and samples as well as sending the sample to chemical examiner. Chemical Examiner's report shows that sample was delivered at the office of Chemical Examiner on 22.5.2012 after six days of its recovery and it is not known as to how this property was treated during this period of six days. The conduct and the manner in which sample of property was sent to Chemical Examiner and produced in Court also create doubt about the prosecution version with regard to recovery of charas as well as number of pieces of charas as well as

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sample. Apart from this, the defence plea taken by the appellant has been proved to some extent, as the PW-2 Ubedullah has admitted in his cross-examination that the appellant possessed plots in Islam colony, Sukkur while the mother of appellant also deposed that complainant is residing in Achar which is at one k.m. distance from Police Station, and due to dispute over plot, appellant has been implicated by the complainant, therefore, possibility of false implication of appellant at the hands of complainant due to dispute over plot, cannot be ruled out. It is repeatedly held by our superior Courts that for extending benefit of doubt, it is not necessary that there should be many circumstances creating doubt but if a single circumstance creates reasonable doubt in a prudent mind about the guilt of accused makes him entitled to its benefit not as a matter of grace and concession but as a matter of right. Reference can be made to the cases of **Shahid Abbass v. Shahbaz and others** (2009 SCMR 237) and **Tarique Parvez v. The State** (1995 SCMR 1345).

13. The upshot of the above discussion is that the prosecution could not prove its case against the appellant beyond shadow of doubt. Therefore, by short order dated 30th May, 2013 while setting aside the impugned judgment passed by the trial Court, this appeal was allowed and the appellant was acquitted of the charge. These are the reasons in support of our short order.

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JUDGE,
JUDGE,