

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD.**

Criminal Appeal No.D-54 of 2017.

Present:-

Mr. Justice Muhammad Iqbal Kalhoro.

Mr. Justice Khadim Hussain M. Shaikh.

Date of hearing: 19.10.2017

Date of decision: 19.10.2017

Appellants: Ghulam Nabi and others through
Mr. Shamsuddin Khushk, Advocate.

The State Through Syed Meeral Shah A.P.G.

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J U D G M E N T

MUHAMMAD IQBAL KALHORO,J:-The appellants have impugned the judgment dated 19.05.2017 passed by 3rd Additional Sessions Judge / Special Judge Control of Narcotics Substances Act, 1997, whereby they were convicted for offence U/s 9(b) Control of Narcotics Substances Act, 1997 and sentenced to undergo R.I for two years and to pay fine of Rs.10,000/- and in case of default in payment of fine, to suffer S.I for one month more.

2. Appellants were arrested by a police party of P.S Hali Road on 14.12.2015 at 1300 hours headed by SIP Muhammad Akram Jatt from adjacent to a wall of Edhi Hospital in Makrani Para Hyderabad. From appellant Ghulam Nabi 160 grams of charas in shape of 14 rods and from the possession of appellant Nadeem 150 grams of charas in the shape of 12 rods were recovered. Recovered charas were separately sealed and such memo of arrest and recovery was prepared at the spot. Subsequently, the

appellants were brought at Police Station and were booked in the present case.

3. The challan was submitted after due investigation in the Court for the purpose of trial and in the trial a formal charge Ex.02 was framed against the appellants to which they pleaded not guilty and claimed trial.

4. The prosecution in support of its case examined P.W-1 SIP Muhammad Akram Ex.5, he has produced memo of arrest and recovery, F.I.R., relevant daily diary entries, a latter for sending the case property to the Chemical Analyzer and his report; P.W-2 H.C Niaz Hussain Panhwar Ex.6. Thereafter the statements of the appellants under section 342 Cr.P.C were recorded in which they have denied the allegations. They have examined themselves on oath under section 340(2) Cr.P.C. In the end of trial they were convicted by the impugned judgment in the manner as stated above.

5. We have heard the Counsel for the parties and perused the material available on record.

6. The prosecution case shows that from appellant Ghulam Nabi 160 grams of charas in the shape of 14 rods and from appellant Nadeem 150 grams of charas in shape of 12 rods respectively were recovered, which were separately sealed at the spot. The entire case property was sent to the office of Chemical Analyzer. The report of the Examiner Analyzer Ex.5/F indicates that in the analysis, 8 grams from each rod were consumed and the remaining property was sealed and it was to be collected from his office. When the evidence of the witnesses was recorded, incriminating charas duly sealed was produced and it was found perfectly in the same condition available at the time of recovery i.e. 14 rods in the same condition recovered from appellant Ghulam Nabi and 12 rods in the same condition recovered from appellant Nadeem. It is strange to note that despite consumption of 8 grams from each rod, all the rods were complete and perfectly in the same condition. Apart from the above, neither the complainant nor the mashir in their evidence have disclosed that as to when the remaining case property was recollected from the office of

chemical analyzer after its analysis and where after such collection the property was kept. It may also be also observed that although the complainant party had advance information about presence of the appellant but no efforts were made to procure the attendance of the private persons to witness the recovery. Although, section 103, Cr.P.C is not applicable to the cases registered under the provisions of Control of Narcotics Substances Act, 1997 but in peculiar facts and circumstances of the case, like the present one, its applicability cannot be ignored.

7. For the foregoing discussion, we are of the view that the prosecution has not been able to prove its case against the appellants. We, therefore, acquit the appellants. Appellants are on bail, their bail bonds are cancelled and surety discharged.

Appeal allowed in the above terms.

JUDGE

JUDGE