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IN THE HIGH COURT OF SINDH CIRCUIT COURT LARKANA

Criminal Acquittal Appeal No.D-05 of 2017

Before:

Justice Muhammad Iqbal Kalhoro
Justice Irshad Ali Shah.

State: Through Mr.Khadim Hussain Khooharo
Addl.Prosecutor General.

Date of hearing: 15.03.2018.

Date of judgment: 15.03.2018

J U D G M E N T.

Irshad Ali Shah -J:- By way of instant acquittal appeal, the State through Prosecutor General Sindh has impugned judgment dated 23.09.2016, whereby the respondent/accused was acquitted of the charge for being in possession of 1200 grams of the Charas, by learned Sessions/Special Judge CNS, Jacobabad.

The facts in brief necessary for disposal of instant appeal are that on 20.05.2015, complainant/SIP Bashir Ahmed of P.S City Jacobabad with his police party when was conducted patrol, when reached adjacent to graveyard of "Jhon Jacob", there at about 2115 hours, found the respondent/accused standing, he was apprehended, enquired upon and on search from him was secured Charas in shape of two "patties", those were weighed to be 1200 grams, those were sealed, a mashirnama of arrest and recovery was prepared at the spot, the respondent/accused was taken to P.S City Jacobabad, there he was booked in the present case and on investigation was challaned.

The respondent/accused denied the charge and prosecution to prove it, examined complainant/SIP Shabir Ahmed produced through him

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roznamcha entries relating to his departure and arrival at the P.S City Jacobabad, mashirnama of arrest and recovery, FIR of the present case and report of Chemical Examiner. PW/ASI Sikandar Ali and then closed the side.

The respondent/accused during course of his examination under section 342 Cr.PC denied the prosecution allegations by pleading innocence, did not examine anyone in his defense or himself on oath.

On conclusion of the trial, the learned trial Court acquitted the respondent/accused of the charge through the judgment, which the State has impugned before this Court by way of instant acquittal appeal through the Prosecutor General Sindh, as stated above.

It is contended by learned Additional Prosecutor General that the learned trial Court has recorded acquittal of the respondent/accused without any justification ignoring the cogent evidence of the prosecution. By contending so, he sought for reappraisal of the evidence after due notice to the respondent/accused.


We have considered the above arguments and perused the record which is made available before the Court.


Complainant and his witness were fair enough to admit that the place of incident is situated in thickly populated area but were not able to assign any reason as to why they failed to associate independent person to witness the arrest of the respondent/accused, which smells of something wrong. It was also admitted by the complainant and his witness that the mashirnama of arrest and recovery was prepared by PC Baqa Muhammad. The PC Baqa Muhammad being author of the mashirnama of arrest and recovery the prosecution was not able to examine, for no obvious reason. His non-examination obviously has

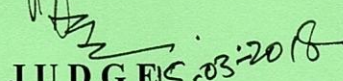


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made the preparation of very mashirnama of arrest and recovery in a manner it is allegedly to have been prepared, to be doubtful one. PC Muhbat Ali who allegedly taken the case property to the Chemical Examiner, the prosecution was not able to examine for no obvious reason, which obviously has deprived the respondent/accused of his valuable right of defense. In these premises, the learned trial Court was justified to record acquittal of the respondent/accused by extending him benefit of doubt to which he was found to be entitled, by way of impugned judgment, which is not calling for interference by this Court by way of instant acquittal appeal, it is dismissed in limine.


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