

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

Before:

Mr. Justice Abdul Maalik Gaddi  
Mr. Justice Adnan-ul-Karim Memon

Cr. Appeal No.D- 45 of 2020

Bashir Ahmed

Versus

The State

Appellant Bashir Ahmed  
S/o Wali Muhammad : Through Ishfaque Ahmed  
Almani, Advocate

Respondent the State : Through Ms. Rameshan Oad,  
A.P.G. Sindh

Date of hearing & judgment : 06.08.2020

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

**ABDUL MAALIK GADDI, J.-** Through this appeal, the appellant has assailed the legality and propriety of the judgment dated 27.07.2020, passed by the learned IIIrd Additional Sessions Judge / Special Judge under Control of Narcotic Substances Act, Hyderabad, in Special Case No.271 of 2019 (Re: The State V Bashir Ahmed), emanating from Crime No.137 of 2019, registered at Police Station Hussainabad Hyderabad, under section 9(c) Control of Narcotic Substances Act, 1997, whereby after full dressed trial he has been convicted u/s 9(c) CNSA and sentenced to suffer RI for four years and to pay the fine of Rs.30,000/-. In case of default in payment of fine he was ordered to suffer simple imprisonment for 01 month more. He was also extended the benefit of section 382-B Cr.P.C.

2. Brief facts of the prosecution case as disclosed in the FIR lodged by complainant ASI Niaz Hussain Chandio on 03.09.2019 at Police Station Hussainabad, Hyderabad are that present accused / appellant was arrested on said date at 05.00 p.m. from near Mehmood Garden Chowk, Auto Bhan Road, Hyderabad, by a police party headed by the aforementioned ASI

alongwith his subordinate staff. On personal search, accused Bashir Ahmed was said to be found possessing charas weighing 04 kilograms. The recovered narcotic substance was sealed at the spot in presence of police mashirs and such memo of arrest and recovery was prepared at spot. Then, accused and case property were brought at police station where F.I.R. was lodged as mentioned above.

3. During investigation, Investigating Officer recorded 161 Cr.P.C. statements of the PWs. Sample of the substance / charas was sent to the chemical examiner for examination and positive chemical report was received. On conclusion of the investigation challan was submitted against the accused.

4. Trial court framed charge against accused at Ex.3 u/s 9(c) CNSA, to which, he pleaded not guilty and claimed to be tried vide his plea at Ex.4. At the trial prosecution examined P.W-1 complainant ASI Niaz Hussain Chandio at Ex.5, who produced memo of arrest and recovery, F.I.R, departure and arrival entries at Exs.5/A to Ex.5/D. P.W-2 HC / mashir Juma Khan was examined at Ex.6, who produced memo of place of incident at Ex.6/A. P.W-3 Inspector / Investigating Officer Javed Shah was examined at Ex.7, who produced Malkhana entry, permission letter, police letter, Chemical Analyzer report at Ex.7/A to Ex.7/H, respectively. Thereafter, prosecution side was closed by learned ADPP vide his statement at Ex.8.

5. Statement of accused was recorded u/s 342 Cr.P.C. at Ex.9, in which he denied the prosecution allegations and claimed his false implication in this case; however, he did not examine himself on oath nor led any defence evidence.

6. Learned Special Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as stated above.

7. Learned counsel for the appellant has contended that the prosecution case is highly doubtful; the place of incident was located at busy spot, yet, nobody from the public was joined to attest the arrest and recovery; there are material contradictions in the prosecution evidence, hence it cannot be safely

relied upon; that there was delay in sending the case property to the Chemical Examiner and tampering with the case property during such period could not be ruled out. It is also argued that alleged recovery was made on 03.09.2019, whereas the sample was sent to Chemical Analyzer on 11.09.2019 with a delay of 08 days and no evidence has been brought on the record that charas was in the safe custody during that period. Lastly he argued that accused has been involved in this false case by police due to enmity to teach him a lesson.

8. Learned Assistant Prosecutor General Sindh has supported the impugned judgment by arguing that the impugned judgment is perfect in law and facts; that the learned trial Court while convicting the appellant has addressed all the points involved in this case comprehensively; therefore, the impugned judgment does not require any interference.

9. We have heard the learned parties' counsel and perused the entire evidence available on record and the relevant case law.

10. After meticulous examination of the record we have reached the conclusion that the prosecution has failed to prove its case against the appellant to the required criminal standard for the reasons that despite the place of incident i.e. Mehmood Garden Chowk, Hyderabad, where, as per evidence of both P.Ws many shops and hotels were situated and the recovery being made in daylight hours i.e. at 1700 hours, no attempt was made to associate an independent witness / mashir to attest the arrest and recovery which was important in this case since the appellant has shown enmity with the police, as such the evidence of the police personnel cannot be safely relied upon without independent corroboration, which is lacking in this case. During the course of arguments, we have specifically asked the question from learned A.P.G that when private persons were available at the place of incident why they have not been made mashirs / witnesses of the event? she has no satisfactory reply with her; however, she submits that in such like cases people always avoid to come forward to act as witness. We are not impressed with this explanation for the reason that as per record no sincere efforts have been made by the police party to pick / join any independent

person to witness the incident. This aspect of the case gives jolt to the prosecution case.

11. It is noted that the whole case of prosecution hinges upon the evidence of police officials. No doubt the evidence of police official is good as that of any other witness but when the whole prosecution case rests upon the police officials and hinges upon their evidence and when the private witnesses were available at the place of incident then non-association of private witness in the recovery and arrest proceedings create serious doubt in the prosecution case.

12. We have gone through the evidence so brought on record by prosecution, which is not only contradictory but in the given circumstances it cannot be safely relied upon because the evidence so brought is not confidence inspiring.

13. The case and claim of the appellant is that on 03.09.2019 at about 1240 hours the brother of present appellant Habibullah has made a complaint at Police Station with regard to missing of the present appellant but instant F.I.R. was lodged on same date at 1815 hours just after few hours malafidely and involved him in this case and according to him on this point false implication of the present appellant in this case cannot be ruled out. Learned counsel for the appellant has also pointed out that alongwith the appellant his friend Muhammad Ali was also missing and in this regard N.C was also recorded at Police Station; however, later on the said Muhammad Ali was also involved in Crime No.115/2019 of Police Station Bhitai Nagar, under section 3/4 PEHO and in that case said Muhammad Ali has been acquitted by the trial Court, therefore, on this ground false implication of the appellant in the present case cannot be ruled out.

14. Not only this, the alleged incident took place on 03.09.2019 whereas the case property was sent to Chemical Examiner on 11.09.2019 after a delay of 08 days and no satisfactory explanation has been furnished by the prosecution that during such intervening period where the case property was lying. Most significantly, we find that there is absolutely no evidence on record to show that the charas was kept in safe custody from the time of its recovery until it was sent to and received in the office of Chemical Examiner, which was an

unexplained delay of 08 days. This aspect of the case has also caused a serious dent in the prosecution case.

15. The case and claim of the appellant is based upon denial of incident. In his statement recorded under section 345 Cr.P.C. he denied all the allegations leveled against him in the F.I.R.

16. During the course of arguments, learned counsel for the appellant has also pointed out number of contradictions in the evidence of prosecution witnesses on material particulars of the case and when these contradictions were confronted to learned A.P.G to reply she has no satisfactory answer with her.

17. It is noted that the present appellant is first offender and having no past criminal history on his credit, therefore, we have, for what has been observed above, come to the conclusion that prosecution has failed to prove its case against the appellant beyond shadow of reasonable doubt. Therefore, we had allowed the captioned appeal by our short order passed in open Court today i.e. 06.08.2020 and set aside the impugned judgment dated 27.07.2020, passed by the learned IIIrd Additional Sessions Judge / Special Judge under Control of Narcotic Substances Act, Hyderabad, in Special Case No.271 of 2019 (Re: The State V Bashir Ahmed) and the acquitted the appellant of the charge.

18. Above are the detailed reasons for our short order of even date.

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