

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Criminal Appeal No.S-117 of 2020

Appellant : NEMO.
The State : Through Ms. Sana Memon, A.P.G.
Date of hearing : 23.12.2020
Date of decision : 23.12.2020.

J U D G M E N T

IRSHAD ALI SHAH-J; The appellant for having committed an offence punishable under section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and use of Gtuka and Manpuri Act, 2019 for being in possession of 400 pouches of *manpuri* was convicted and sentenced to undergo R.I for one year with fine of Rs.200,000/- and in case of default in payment of fine to undergo S.I for six months by learned 1st Additional Sessions Judge, Tando Muhammad Khan vide her Judgment dated 8th August 2020 which is impugned by the appellant before this Court by preferring the instant appeal.

2. None has come forward on behalf of the appellant to advance arguments in his favour. However, learned A.P.G for the State did not support the impugned Judgment.

3. There is no independent witness to the incident. Only ten plastic pouches have been subjected to chemical examination, therefore, the liability of the appellant if any was only to the extent of ten pouches. Neither Incharge of *Malkhana* nor the person, who has taken the substance to Chemical Examiner, has been examined

by the prosecution to prove its safe custody and transmission; such omission on part of prosecution could not be overlooked.

4. In case of ***Ikramullah and others vs. The State (2015 SCMR-1003)***, it has been held by the Honourable Apex Court that;

“The prosecution had not been able to establish that after the alleged recovery the substance so recovered was either kept in safe custody or that the samples taken from the recovered substance had safely been transmitted to the office of the Chemical Examiner without the same being tampered with or replaced while in transit”.

5. The opinion of the chemical examiner was only to the extent that the substance was unfit for human consumption. The incident is alleged to have taken place on 17.01.2020, it was the time when the law relating to control of preparation and manufacturing of *Gutka/Manpuri* was not in existence even. It was promulgated on 30th January 2020, therefore, the conviction and sentence recorded against the appellant, for an offence punishable under section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and use of *Gtuka and Manpuri Act, 2020* could hardly be said to be justified and legal.

6. The discussion involves the conclusion that the prosecution has not been able to prove its case against the appellant beyond the shadow of doubt on legal and factual premises and to such benefit he is found entitled.

7. In case of ***Faheem Ahmed Farooqui vs. The State (2008 SCMR-1572)***, it is held that;

“single infirmity creating reasonable doubt regarding truth of the charge makes the whole case doubtful.

8. For what has been discussed above, the impugned judgment is set-aside, the appellant is acquitted of the offence for which he has been charged, tried and convicted by learned trial Court. The appellant is on bail, his bail bond is cancelled and surety is discharged.

9. The instant appeal is allowed accordingly.

J U D G E

Muhammad Danish Steno*