

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

**Present:-**

**Mr. Justice Abdul Maalik Gaddi.**

**Mr. Justice Adnan-ul-Karim Memon**

Cr. Acquittal Appeal No. D- 17 of 2019

For hearing of main case.

**15.09.2020**

Mr. Muhammad Ayoub Qasar, Special Prosecutor ANF for appellant.

=

**JUDGMENT**

**ABDUL MAALIK GADDI, J-** The captioned appeal is directed against the judgment dated 16.01.2019 passed by 2<sup>nd</sup> Additional Sessions / Special Judge (CNS) Hyderabad, in Special Case No.200 of 2017 arisen out of Crime No.D040401717 registered u/s 9-C of CNS, Act, 1997 at police station ANF Hyderabad, whereby the trial Court after hearing the learned counsel for the parties, acquitted the respondent / accused u/s 265-H(i) Cr.P.C of the charge by extending benefit of doubt to him.

**2.** Brief facts of the prosecution case are that on 12.11.2017 at 11:00 am, complainant SI Syed Salman arrested the accused from Main Gate Agriculture University Tando Jam in presence of official witnesses and recovered 20 small and big pieces of charas lying in black colour shopper weight 2200 grams from his possession. Thereafter such mashirnama of arrest and recovery was prepared after sealing the property at the spot and then took the accused and case property to police station where lodged the F.I.R against the accused on behalf of State.

**3.** The Prosecution in order to substantiate the charge against the respondent / accused, examined the following three (03) witnesses:

**PW-1:** Complainant SI Syed Salman examined at Ex.5, who produced extracts of entries, mashirnama of recovery / arrest, coy of F.I.R, letter to the laboratory, and chemical report at Ex.5/A to 5/E.

**PW-2:** ASI Rahim Bux examined at Ex.6.

**PW-3:** PC Shoukat Ali examined at Ex.7, who produced departure and arrival entries No.5 & 11 on one page at Ex.7/A.

All the above named witnesses have been cross-examined by learned State counsel.

**4.** Learned trial Court after hearing the respective parties acquitted the respondent /accused under Section 265-H(i) Cr.P.C as stated in the preceding paragraph; hence, this Cr. Acquittal Appeal.

**5.** It is argued by learned Special Prosecutor ANF for appellant that impugned judgment passed by the trial Court is against the law and fact is liable to be set-aside and the respondent / accused should be given exemplary punishment. He further submits that all the witnesses examined in this case by the trial Court has supported the version of the complainant and evidence shows that the respondent has committed offence and prosecution has proved its case without any reasonable doubt but the trial Court has delivered the judgment in favour of the respondent without assigning any valid reason. In support of his contention, he has relied upon the case laws reported as Mushtaq Ahmed v. The State & another [2020 SCMR 474], Muhammad Sarfaraz v. The State & others [2017 SCMR 1874], The State v. Muhammad Arshad [2017 SCMR 283], Ghulam Qadir v. The State [PLD 2006 Supreme Court 61], Zafar v. The State [2008 SCMR 1254] and Roshan v. The State [2018 P.Cr.L.J Note 26].

**6.** We have heard learned Special Prosecutor ANF for appellant and perused the evidence and document so brought on record.

**7.** During the course of arguments, learned Special Prosecutor ANF for appellant could not show the specific part of the impugned judgment wherein the trial Court has committed any gross illegality or irregularity. It is noted that place of incident was thickly populated area i.e main gate of Agriculture University Tando Jam and peoples were present there but despite this fact, the complainant has failed to take service of any independent person of the locality to witness the event. It is also noted that whole case of the prosecution hinges upon the evidence of police officials. No doubt police witnesses are as good as other independent witnesses and conviction could be recorded on their evidence, but their testimony should be reliable, dependable, trustworthy and confidence worthy and if such qualities are missing in their evidence, no conviction could be passed on the basis of evidence of police witnesses but here in this case on perusal of evidence of prosecution witnesses it appears that the same are contradictory to each other on material particular of the case. Apart

from that, in this case complainant himself conducted the investigation therefore, evidence of prosecution witnesses could not be safely relied upon. We are conscious of the fact that provisions of Section 103 Cr.P.C are not attracted to the cases of personal search of the accused. However, where alleged recovery was made on a road and the peoples were available there, omission to secure independent mashirs, particularly, in the case of spy information cannot be brushed aside lightly by this court. The Hon'ble Supreme Court has observed similar view with a different angle in a case reported as **State through Advocate General, Sindh v. Bashir and others** (PLD 1997 Supreme Court 408), wherein it is held as under:

*"As observed above, Investigating Officer is as important witness for the defence also and in case the head of the police party also becomes the Investigating Officer, he may not be able to discharge his duties as required of him under the Police Rules".*

8. Similarly in a case reported as **Ashiq alias Kaloo v. The State** [1989 P.Cr.L.J 601], wherein the Federal Shariat Court has observed that investigation carried by complainant while functioning as I.O is biased investigation. Apart from above, the Indian Supreme Court in Cr. Appeal No.1880 of 2011 [Re: **Mohan Lal v. The State of Punjab**] has taken almost similar view and has observed as under:

*"A fair investigation, which is but the very foundation of fair trial, necessarily postulates that the informant and the investigator must not be the same person. Justice must not only be done, but must appear to be done also. Any possibility of bias or a predetermined conclusion has to be excluded. This requirement is all the more imperative in laws carrying a reverse burden of proof".*

9. It is also case of the prosecution that accused / appellant at the time of incident was selling Charas; however, neither any customer to whom the appellant was allegedly selling narcotic was apprehended or captured nor any amount / money towards sale price of said narcotic, was recovered from the possession of the appellant. This aspect of the case also gives serious jolt to the prosecution case. On query, learned Special Prosecutor ANF has failed to produce any criminal history against the respondent / accused. It is also noted that learned trial Court while acquitting the accused has recorded the contradictions in between the statements of prosecution witnesses and when these contradictions were confronted for its reply to learned Special Prosecutor ANF, he has no satisfactory answer with him.

**10.** We have also perused the impugned judgment and come to the conclusion that the learned trial Court has dealt with all aspects of the case quite comprehensively in the light of all relevant laws dealing with the matter and the appellant in his appeal is unable to point out that the impugned judgment by any means suffers from any illegality or miscomprehension or non-appreciation of evidence by way of documents and evidence available on record. We are also not satisfied with any of the grounds agitated by appellant in the memo of appeal for indulgence of this Court in the matter. Therefore, we find that the impugned judgment passed by the trial Court is perfect in law and facts and needs no interference by this Court. As regards the case laws cited by learned Special Prosecutor ANF for appellant, the facts of the same are quite distinguishable to the facts of the present case hence, did not find applicable.

**11.** Considering all the above aspect of the case, we have come to the conclusion that the trial Court has rightly extended the benefit of doubt in favour of the respondent / accused and the impugned judgment dated 16.01.2019 contains valid reasons for extending benefit of doubt to the respondent; therefore, the same does not requires any interference by this Court. Resultantly, we found no merit in this acquittal appeal which is accordingly ***dismissed*** in ***limine*** along with listed application[s].

**JUDGE**

**JUDGE**

***\*Hafiz Fahad\****