

color shopping bag concealed under the driving seat was recovered. This bag in itself contained four cloth bags each with one kg of heroin powder totaling four Kgs. Out of recovered heroin sample of ten grams from each bag was taken out for chemical examiner and sealed separately, remaining case property was also sealed separately. On further search of truck registration book in the name of Bilal Khan Niazi were recovered from the Dashboard. On personal search of apprehended person Rs.255/- one purse containing Rs.100/- some papers, wrist watch, one ring and chain like golden and one mobile phone were recovered. The accused was arrested and memo of recovery and arrest was prepared at the spot and accused alongwith the recovered case property and the truck was brought to police station ANF at Clifton where FIR was lodged and investigation was conducted.

3. After usual investigation the challan was submitted in the Court of Special Judge (CNS) Karachi and Special Case No.434/2002 was registered later on it was re-numbered as **231/2004**. The Special Court framed charge against accused/respondent to which he pleaded not guilty and claimed to be tried. After examination of witnesses and hearing learned counsel for the parties, learned Special Court (CNS) by judgment dated **08.10.2007** acquitted accused/Respondent by extending him benefit of doubt. Therefore, the appellant/State has filed instant Criminal Acquittal Appeal against the said judgment.

4. The record shows that before filing the instant acquittal appeal an application for certified copy was filed after **18 days** of judgment dated **8.10.2007**. The certified copies were obtained on **7.11.2007** and acquittal appeal was filed after further delay of **four months** and **twenty days** on **27.3.2008**. Then on **31.7.2008**, the appeal was

admitted for regular hearings. The disinterested legal team of ANF never followed their appeal. Nobody came forward to pay the cost of paper book. However, this Court out of sheer indulgence even after **10 years** of filing of the instant appeal and again in absence of Counsel for ANF on **02.5.2018** passed the following order:

“02.05.2018

None present

As per order dated 31.07.2008 instant Cr/ Acq. Appeal was admitted for hearing and BWs were ordered to be issued against the respondents. **Since then appellant/ANF failed to deposit the costs of paper book.** In the interest of justice three days’ time is allowed. In case of failure, the instant Cr. Acq. Appeal shall be dismissed for non-compliance of court order.”

5. Even after the above order the prosecutor of ANF had hardly shown any seriousness to proceed with this appeal on merits. On **26.6.2018** time was sought to seek instructions. On **16.08.2018** process was issued on an incomplete address of the respondent. On **24.09.2018** process server did not return the process and on **06.11.2018** the process was returned without any legal justification as un-served. On **17.12.2018**, counsel for State was said to be busy before another bench, when a last chance was given and matter was adjourned to be taken on **28.01.2019**. Again on **28.01.2019** non-bailable warrants were issued to be executed through SHO P.S. ANF Clifton, Karachi and in case of non-service, the SHO was required to attend the Court on **19.03.2019**. On **19.03.2019** the SHO did not turn up and a show-cause notice was issued which was subsequently withdrawn, after 3/4 dates of hearing. However dis-interested prosecution never got service executed on the respondent. Therefore, after 12 years of pathetic performance of ANF Prosecutors, We directed the Prosecutor to argue the case on merit, but as no proper

assistance was offered, We passed the following order on

17.11.2020:-

“Reserved for judgment. Learned Special Prosecutor ANF is directed to file written arguments **within three days**. If written arguments are not filed within three days it will be deemed that prosecution has no case and this appeal will be dismissed for non-prosecution.”

6. True to our expectation, till date written arguments have not been filed. Despite the above failure of the prosecution, we have thoroughly scrutinized evidence and perused the record. This Cr. Acquittal Appeal has been filed on frivolous grounds as there has been no material to controvert the findings of the trial Court.

7. The story of prosecution is that Investigating Officer/PW-2 Ghulam Abbas has registered the case at A.N.F. Police Station Clifton. He claimed that on spy information he has arrested the appellant while sitting on driving seat of truck No. JT-3290 parked near Sabzi Mandi, Shahzob Hotel, University Road at about 15 kilometers from the police station in presence of Constables Shahid Raza and Muhammad Ibrahim of P.S. Clifton. He recovered 4 k.g. of heroin powder. Admittedly the place of wardat is situated in District East within the Jurisdiction of A.N.F P.S. Gulshan-e-Iqbal. The I.O. has never informed about his arrival within the jurisdiction of ANF P.S. of Gulshan-e-Iqbal, in District East, Karachi, which creates clear doubt in the story of prosecution. It cannot be believed that complainant who also acted as I.O. was unaware of territorial jurisdiction of A.N.F. P.S. Clifton. The action taken by the I.O. on the spy information of an offence outside territorial jurisdiction was without lawful authority and violative of mandatory **Rule 25.4** of the Police Rule, 1934. It reads as follows :-

“25.4.—Where offence appears to have occurred in other police station .---

(1) If a police officer after registering a case and commencing and investigation discovers that the offence was committed in the jurisdiction of and other police station he shall at once send information to the officer-in-charge of such police station.

(2) Upon receipt of information such office shall proceed without delay to the place where the investigation is being held and undertake the investigation.”

8. The prosecution has failed to establish even arrest of Respondent No. 1 from Sabzi Mandi on 29th November 2002 at 1800 hours to prove the charges against him. In his defence, the Respondent No. 1 has categorically deposed on oath that he was arrested from the jurisdiction of Soldier Bazar Police Station alongwith three other persons and his arrest has been reported in newspapers of 30th November 2002 from Osmanabad within the jurisdiction of Soldier Bazar Police Station. He also categorically stated on oath that arrest of four persons from Soldier Bazar P.S. on 29th November 2002 could also be confirmed from Entry No. 49/2002 maintained by Soldier Bazar P.S. at 2200 hours regarding arrival and departure of P.C. Ghulam Abbas. On his request, Court has ordered production of said entry and interestingly PW-2 Muhammad Arshad SIP P.S. Soldier Bazar on **16.09.2006** appeared before the Court and produced Roznamcha Entry, in which he conceded that Entries No. 39 to 59 are missing from the original register, however, despite absence of such original entries the very existence of entries as alleged by the respondent was confirmed by the news items appeared on **30.11.2002** regarding arrest of the appellant, Owais Khan Niazi from the jurisdiction of P.S. Soldier Bazar. The entire case of prosecution regarding arrest of respondent in connection with the alleged recovery of 4 k.g. heroin from the truck in Sabzi Mandi has been doubtful. Why the spy information received at a distance of 15

k.m. from place of offence was not conveyed to the A.N.F. P.S Gulshan, the nearest spot further creates doubts in the story of prosecution.

9. The defence evidence was far-most reliable that the false story created by A.N.F. Clifton and this was the very reason for the trial Court to acquit the Respondent with the following observation:-

.....“I see no reason to disbelieve the evidence of DW2 who is an independent witness having no relationship with the accused and even any acquaintance with the accused has not been suggested during cross examination. I also lay my hand on 2000 MLD 618 (Quetta), wherein as a well settled proposition of law it has been held that in criminal cases the burden to proving its case rests on the prosecution which is duty bound to prove its case, against the accused, beyond reasonable doubt. This duty, it may be mentioned, does not change or vary even in a case in which no defence plea is taken by the accused. The defence plea is always to be considered in juxtaposition with the prosecution case and, in the final analysis, if defence plea is proved or accepted then the prosecution case would stand discredited/shattered. However, if the defence plea is substantiated to the extent of creating doubt in the credibility of the prosecution case, then in that case too, it would be enough. It may be noted that in case it is not established, at all no benefit would accrue to the prosecution on that account and its duty to prove its case beyond doubt would not be diminished even if the defence plea is not provided or is found to be palpably false.”.....

10. In view of the above, no case is made out for setting aside the impugned acquittal order. Therefore, this Criminal Acquittal Appeal is dismissed.

JUDGE

JUDGE

Karachi
Dated:30.12.2020