IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Crl. Appeal No. D – 78 of 2019.

Before;
Mr. Justice Muhammad Iqbal Mahar
Mr. Justice Irshad Ali Shah

Appellant: Bilal son of Asghar Ali Shah,
through M/s. Farhad Ali Abro and Shoukat Ali Kaka, Advocates.

Respondent: The State, through Mr. Nazar Muhammad Memon, Additional Prosecutor General

Date of hearing: 15-10-2019.
Date of decision: 15-10-2019.

J U D G M E N T

IRSHAD ALI SHAH, J. The facts in brief necessary for disposal of instant appeal are that on arrest from the appellant it is alleged have been secured 1020 gram of charas by police party of PS Maki Shah for that he was booked and reported upon.

2. At trial, appellant did not plead guilty to the charge and prosecution to prove it examined complainant SIP Rana Abdul Razaque and PW Mashir PC Mirza Rashid Baig and then closed the side.

3. Appellant in his statement recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence by producing certain documents, but did not examine him on oath or anyone in his defence to disprove the prosecution allegation against him.

4. On evaluation of evidence, so produced by the prosecution learned trial Court found the appellant guilty for an offence punishable u/s 9(c)of CNS Act, and then convicted and sentenced him to undergo R.I for four years and six months and to pay fine of Rs.20,000/=and in case

of his failure, to make payment of fine to undergo Simple Imprisonment for one month vide judgment dated 14.05.2019, which is impugned by the appellant before this Court by way of instant appeal.

5. We have heard the learned counsel for the parties and perused the record.

6. The police party went at the place of incident on advance information yet no independent person was associated by it to witness the possible arrest and recovery, such omission could not be lost sight of. The recovery of the charas was said to be in shape of pieces. How many pieces those were? No explanation to it is offered by the prosecution. Nothing has been brought on record which may suggest that the ten gram of the charas as sample was taken out from entire recovery or it was single piece. Such omission on the part of prosecution could not be overlooked. The sample of the charas has been subjected to chemical examination with delay of about 07 days to its recovery. Why with such delay? No explanation to it is offered by the prosecution. None has been examined by the prosecution to prove the safe custody and transmission of the alleged charas to the chemical examiner In end of trial, learned trial Court formed an opinion without any cogent reason that the substance which allegedly is secured from the appellant is ***opium*** and then all the questions which were put to the appellant by learned trial Court to have his explanation u/s 342 Cr.P.C were in that respect, which appears to be surprising.

7. The conclusion which could be formed of the above discussion, would be that the prosecution has not been able to prove its case against

the appellant beyond shadow of doubt and he is found entitled to such benefit.

8. In case of **Ikramullah & ors vs. the State (2015 SCMR-1002)**, it has been observed by Hon'ble apex court that;

> *"In the case in hand not only the report submitted by the Chemical Examiner was legally laconic but safe custody of the recovered substance as well as safe transmission of the separated samples to the office of the Chemical Examiner had also not been established by the prosecution. It is not disputed that the investigating officer appearing before the learned trial Court had failed to even to mention the name of the police official who had taken the samples to the office of Chemical Examiner and admittedly no such police official had been produced before the learned trial Court to depose about safe custody of the samples entrusted to him for being deposited in the office of the Chemical Examiner. In this view of the matter 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".*

9. In case of **Tarique Pervaiz vs. The State (1995 SCMR 1345),** it has been held by Hon'ble Apex Court that;

> *"For giving benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt- if a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right."*

10. Based upon above discussion, the conviction and sentence awarded to the appellant together with the impugned judgment are set-aside, the appellant is acquitted of the offence, for which he has been

charged, tried and convicted by the learned trial court. The appellant is in custody, he shall be released forthwith in present case.

11. The instant appeal is disposed of accordingly.

J U D G E

J U D G E

Ahmed/Pa