IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

**Crl. Appeal No. D – 175 of 2019**

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

Appellant: Ali Akber son of Sahib Khan Laghari, through Mr. Zahoor A. Baloch, Advocate.

Respondent: The State, through Ms. Sobia Bhatti, A.P.G.

Date of hearing: 11-11-2019.
Date of decision: 11-11-2019.

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

It is alleged that on arrest from appellant was secured 3030 grams of charas by police party of PS Tando Muhammad Khan led by SIP Muhammad Ismail Mashori 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 PW-1 complainant SIP Muhammad Ismail Mashoro at (Ex.5), he produced Roznamcha entries, memo of arrest, FIR of the present case, report of chemical examiner; PW-2 PC Sher Ali at (Ex.06); PW-3 WHC Muhammad Ismail Abro at (Ex.07) and then closed the side.

3. The appellant in his statement recorded u/s 342 Cr.P.C denied the prosecution allegation by pleading innocence by stating that he was taken by the police from hotel. He examined himself on oath and DWs Muhammad Khan and Muhammad Bux in his defence to prove his innocence.

4. On conclusion of the trial, 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 Rigorous Imprisonment for six years and six months and to pay fine of Rs.30,000/=and in case of his failure, to make payment of fine to undergo Simple Imprisonment for six months with benefit of section 382-B Cr.P.C vide judgment dated 23.09.2019, which is impugned by the appellant before this Court by preferring the instant appeal.

5. It is contended by learned counsel for the appellant that the appellant is a Councilor of Union Council Bhaledino Sathio, he being innocent has been involved in this case falsely by the police by foisting charas upon him at the instance of his political opponent; he is a disable person, his one arm has already been imputed; there is no independent witness to the incident; the charas has been subjected to chemical examination with delay of two days without any plausible explanation to such delay and the evidence of the prosecution being interested and doubtful has been relied upon by learned trial Court without assigning cogent reason. By contending so, he sought for acquittal of the appellant. In support of his contention he relied upon case of ***Adam Marri vs The State (2018 YLR Note 106).***

6. Learned A.P.G while supporting the impugned judgment has sought for dismissal of the instant appeal by contending that the

offence which the appellant has committed is affecting the society at large.

7. We have considered the above arguments and perused the record.

8. The complainant admittedly was having advance information of the incident, yet he failed to associate independent person to witness the possible arrest of the appellant and recovery of narcotics substance from him, such omission could not be ignored. As per complainant he and his witnesses reached at the place of incident at about 2100 hours and found the appellant available there. He was apprehended there. On search from him was secured the charas. It was weighed and then sealed and then he prepared such mashirnama. The perusal whereof (such mashirnama) reveals that it was prepared at 2100 hours. How it be? Where the time consumed in apprehending the appellant, making enquiry, conducting his search and affecting the recovery gone? No explanation it is offered by the prosecution, which has made the very recovery proceedings to be doubtful. PC Muhammad Junaid, who taken back the charas from the chemical examiner has not been examined by the prosecution for no obvious reason. It is settled by now that the evidence produced in defence, it to be considered in juxta position with the evidence of the prosecution. The appellant admittedly is a disabled person from one arm. He is a sitting councilor of a Union Council and the evidence which is

produced by him in his defence to prove his innocence could not be lost sight of in the circumstances.

9. The discussion involved a conclusion that the case of the prosecution is not free from doubt and appellant is appearing to be entitled to such benefit.

10. 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."*

11. 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.

12. The instant appeal is disposed of accordingly.

**J U D G E**

**J U D G E**

Ahmed/Pa