

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

Cr.Appeal.No.D- 149 of 2007

Present:-

Mr. Justice Naimatullah Phulpoto.
Mr. Justice Zulfiqar Ahmad Khan.

Date of hearing: 26.04.2017.
Date of judgment: 09.05.2017.

Appellant Abdul Rehman @
Juman s/o Madad Ali
By caste Jatoi.

Through Mr. Abdul Hameed Bajwa,
Advocate.

The State:

Through Mr. Siraj Ali Khan Chandio
S.P.P. for ANF.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Appellant Abdul Rehman @ Juman by caste Jatoi was tried by learned Sessions Judge / Special Court for CNS Hyderabad for offence u/s 9(c) of CNS Act, 1997. By judgment dated 09.04.2007, appellant was convicted u/s 9(c) of CNS Act, 1997 and sentenced to imprisonment for life and to pay the fine of Rs.100,000/- In case of default in payment of fine, he was ordered to suffer SI for 06 month more. Benefit of Section 382-B Cr.P.C. was also extended to the accused.

2. Brief facts of the prosecution case are that on 17.05.2006 SIP Tahir Ahmed of ANF Hyderabad left P.S. ANF alongwith his subordinate staff including PCs Rahim Bux and Muhammad Ibrahim for patrolling duty at 09:15

a.m. vide roznamcha entry No.5 of 2006. ANF officials while patrolling when reached at Qasim chowk, SI Tahir Ahmed received spy information that the narcotic dealer Abdul Rehman was going in a car of Model 82 Corolla to handover the narcotics at Sharon Filling Station Jamshoro Road. Thereafter, ANF officials proceeded to Rajputana Hospital road and they saw the suspected car appearing from Jamshoro road. PC Muneer gave signal to stop it but the same was not stopped. Two persons were found sitting in it. The vehicle was driven away. ANF officials followed the vehicle in their official vehicle and the said car was stopped at some distance but driver of the car made his escape good. Present appellant was also trying to run away but he was apprehended with a black rexine bag in his hand. It was secured from his possession. It was alleged that as per the ANF official's information that the appellant had narcotics in the bag, Sub-Inspector Tahir Ahmed tried to call private witnesses from the road and made request to 4/5 persons but they were reluctant to act as mashir. Thereafter, it is stated that the Sub-Inspector made PCs Abdul Hameed and Muhammad Ibrahim as mashirs and opened bag in their presence. Bag contained one plastic theli / bag and there was opium in it. The same was weighed and found 15 Kgs. Opium was sealed in the same bag at spot for the purpose of chemical examination by the chemical examiner. Personal search of the appellant was conducted in presence of the mashirs. From the pocket of shirt cash of Rs.1000/- was secured. On inquiry accused disclosed that he had hired a taxi from the Bus Stand Mehar. Appellant did not know the name of the driver who ran away. Mashirnama and arrest and recovery was prepared in presence of the mashirs. Thereafter, accused and the case property were brought to police station where FIR was lodged against the accused on behalf of State. It was recorded vide Crime No.5/2006 for offence u/s 9 (c) of CNS Act, 1997.

3. During investigation property was deposited in Malkhana. 161 Cr.P.C. statements of the PWs were recorded. Opium was sent to the chemical examiner for analysis. Positive report was received. On the conclusion of investigation challan was submitted against the accused u/s 9 (c) of CNS Act, 1997.

4. Trial Court framed charge against accused at Ex.4 u/s 9(c) of Control of Narcotic Substance Act, 1997. To which, accused pleaded not guilty and claimed to be tried.

5. At the trial, prosecution examined PW-1 Complainant Tahir Ahmed Sub-Insepector ANF at Ex.6, who produced departure and arrival entries of roznamcha of PS ANF Hyderabad at Ex.6/A, mashirnama of recovery and arrest of the accused at Ex.6/B, copy of FIR at Ex.6/C and positive chemical examiner's report at Ex.6/D. PW-2 mashir PC Muhammad Ibrahim at Ex.7. Thereafter, prosecution side was closed at Ex.8.

6. Statement of accused was recorded u/s 342 Cr.P.C.at Ex.9. Accused claimed false implication in this case and denied all the incrementing pieces of evidence against him and stated that PWs have deposed against him falsely as they are the police officials and interested. Accused has raised plea that he is S.D.O. in Education Department. On the day of incident he performed duty as School Supervisor and stopped motorcycle at Khoonharo Patrol Pump situated near Khairpur Nathan Shah. Police arrested him and after severely beating him brought him to the police station in Hyderabad. Accused stated that police demanded illegal gratification, he could not pay and was involved in this case falsely. He produced the copies of his inspection reports of two Schools conducted by him on 16.05.2006 in Taluka Mehar and copies of two orders dated 02.01.2006 and 05.01.2006 whereby

he was assigned the Additional charge of Assistant District Officer, Education Elementary, Mehar and relieving of the said additional charge. Accused examined himself on Oath in disproof of prosecution allegations and examined in his defence his son namely Hakim Ali and DSP Gul Baig Jatoi TPO Taluka Mehar.

7. Learned Special Judge after hearing the learned counsel for the parties and examining the evidence available on record convicted and sentenced the appellant as stated above. Hence this appeal is filed.

8. We have carefully heard Mr. Abdul Hameed Bajwa, learned advocate for appellant, Mr. Siraj Ali Khan Chandio, SSP for ANF and scanned the entire evidence.

9. Mr. Abdul Hameed Bajwa, learned advocate for appellant has mainly contended that the appellant is SDO in the Education Department Government of Sindh. ANF officials have foisted the huge quantity of charas upon him for the malafide reasons. It is further contended that infact opium was recovered from some other person, who was let off by the police on some considerations and the appellant was falsely involved in this case. It is contended that on the day of incident appellant was performing his duty and he had visited two Schools. Mr. Bajwa argued that the case property / car was not produced before the trial court and the prosecution story was highly unnatural and unbelievable. It is also argued that there are material contradictions in the evidence of the prosecution evidence. Additionally, it is argued that defence evidence of the accused has not been considered by the trial court and the prosecution failed to appreciate the evidence according to the settled principles of law. Lastly, it is also argued that the complainant himself has investigated the case and such investigation was dishonest. In support his contentions, learned advocate for appellant has placed reliance

on the cases reported as 1. Akhtar Ali v. The State (2009 P.Cr.L.J. 50), 2. Abdul Manan and another v. The State (2008 P.Cr.L.J. 1268), 3. Fida Hussain v. The State (2013 P.Cr.L.J. 1237), 4. Abdul Qadir v. The State (2015 P.Cr.L.J. 235), 5. Nazeer Ahmed v. The State (PLD 2009 Karachi 191), 6. Abdul Khaliq v. The State (1996 SCMR 1553), 7. Amjad Ali v. The State (2012 SCMR 577) and 8. Ghulam Murtaza and another v. The State (PLD 2009 Lahore 362).

10. Mr. Siraj Ali Khan Chandio, SPP for ANF argued that ANF officials caught hold the appellant on 07.05.2006 with his bag of 15kg opium in presence of the mashirs. It is further contended that within 72 hours of the recovery of opium it was sent to the chemical examiner for analysis and positive report has been produced in the evidence. It is submitted that ANF officials are good witnesses as the other persons, and they had no enmity with the appellant to foist him with such a huge quantity of opium. Regarding the contradictions in the evidence of the prosecution witnesses it is argued that no major contradiction has been pointed out by the defence. As regards to the defence plea, it is argued that defence plea was after thought and it has been rightly disbelieved by the trial court. Learned SSP further argued that the police officer is not prohibited under the law to be the complainant and investigation officer in the case. In support of his contentions he has relied upon the cases reported as 1. Salah-ud-din v. The State (2010 SCMR 1962), 2. Zafar v. The State (2008 SCMR 1254), 3. Ghulam Qadir v. The State (PLD 2006 Supreme Court 61), 4. The State / ANF v. Muhammad Arshad (2017 SCMR 283) and 5. Bakht Jamal v. The State (2003 P.Cr.L.J. 1123).

11. We have carefully heard the learned counsel for the parties and scanned the entire evidence.

12. Facts of this case as well the evidence produced before the trial court finds an elaborate mention in the judgment dated 09.04.2007 passed by the trial court and therefore, the same may not be produced here so that to avoid the duplication and repeatation.

13. Even at the cost of repeatation, it will be worth to mention here that SIP Tahir Ahmed of ANF left Police Station ANF on 17.05.2006 alongwith his subordinate staff including PCs Rahim Bux, Muhammad Ibrahim and others in the official vehicle for patrolling duty at 9:15 a.m vide roznamcha entry No.15 of 2006 when the ANF officials reached at Qasim chowk they received spy information that narcotic dealer namely Abdul Rehman was going to handover the narcotic through Sheron Filling Station Jamshoro road in his car of model 82 of Corolla. ANF officials held Nakabandi near Rajputana Hospital where suspected car appeared on the road from Jamshoro road. PC Munir gave signal to stop it but the same was not stopped. Two persons were sitting in it. ANF officials followed the vehicle in their official vehicle. Driver made his escape good but present accused who was also trying to run away was apprehended 10/15 paces away and he was carrying a bag in his hand. ANF officials had taken the bag from his hand and called the private persons to act as mashir. The request was made to 4/5 persons but they refused. Sub-Inspector Tahir Ahmed opened the bag in presence of the mashirs, bag contained a white plastic theli and there was 15kg opium in it. Accused was arrested in the presence of mashirs PCs Abdul Hameed and Muhammad Ibrahim. Personal search of the accused was conducted. Rs.1000 cash was recovered from his possession. Accused on inquiry disclosed that he had hired car as a taxi from the bus stand Mehar and he did not know the name of the driver. Mashirnama of arrest and recovery was prepared in the presence of the mashirs and he produced it at Ex.6/B. He had brought the accused and case property at the police station where the FIR was lodged against the

accused. He produced FIR at Ex.6/C. He had sent opium to the chemical examiner through PC Muhammad Ibrahim and produced the positive chemical report at Ex.6/D. He was cross examined by the learned counsel for accused, in which he admitted that there is colony in front of Sheron Filling Station and the driver fled away to that colony. He has denied the suggestion that he did not ask any private person to act as mashir in this case. Complainant has admitted that accused is not previous convict. PC Muhammad Ibrahim of ANF has deposed that on 17.05.2006 he was posted at Police Constable at ANF Hyderabad. On the same date he under the subordination of SIP Tahir Ahmed, PC Abdul Hameed and others had left in the official vehicle for the patrolling when they reached at Qasim chowk, Sub-Inspector received a spy information that present accused would pass through Jamshoro road for coming to Hyderabad in a car having narcotics. Then they proceeded to the Rajputana Hospital road where suspected car appeared and they gave signal to the car to stop but it was not stopped then ANF party followed him but the driver stopped the car and ran away. Present accused also tried to escape but he was apprehended at spot. He was carrying a plastic bag in his hand. It was secured from him. A few persons passing through that area were requested to act as mashirs but they refused. Sub-Inspector then opened the bag in his presence and in the presence of co-mashir. It contained opium in a white polythene sheet. It was 15kg opium. The driver fled away from the place of incident. Personal search of the accused was conducted and cash of Rs.1000/- was recovered from his possession. He has further deposed that SIP inquired from him about the particulars as well as about the car to which accused disclosed that it was a taxi hired from a taxi stand Mehar and he was not aware about the name of the driver. Such mashirnama was prepared in his presence and co-mashir Abdul Hameed. In the cross examination he has denied the suggestion that

nothing was recovered from the possession of the accused. He has also denied the suggestion that he had deposed falsely.

14. From the perusal of evidence of SIP Tahir Ahmed and PC Muhammad Ibrahim of ANF, it transpired that 15kg opium has been recovered from the bag of the appellant on 17.05.2006 in presence of mashirs. Appellant was transporting the same in a taxi car and the taxi driver ran away but the appellant was apprehended. With promptitude opium was sent to the chemical examiner on 09.05.2006 and the positive report was received. ANF officials are the competent witnesses like other independent witnesses and their testimony cannot be discarded merely on the ground that they are ANF employees as held by the Honouable Supreme Court in the case of Zafar v. The State (2008 SCMR 1254). Moreover, ANF officials had no animosity against the appellant. We see no reason for the ANF officials to foist such huge quantity of opium upon the appellant. As regards to the contention of the defence counsel of non-performing of the provisions of Section 103 Cr.P.C, it would be appropriate to refer Section 25 of CNS Act, which is reproduced hereunder:-

“25. Mode of making searches and arrest:- The provisions of the Code of Criminal Procedure, 1898, except those of section 103, shall mutatis mutandis, apply to all searches and arrests in so far as they are not inconsistent with the provisions of section 20, 21, 22, and 23 to all warrants issued and arrests and searches made under these sections.”

15. It is clear that the applicability of Section 103 Cr.P.C. in narcotic cases has been excluded and non-inclusion of any private person is not a serious defect to vitiate the conviction of appellant. So far as the objection of the learned counsel for the appellant that the Investigation Officer is the complainant and witness of the occurrence and recovery, a police officer is not prohibited under the law to be the complainant if he is a witness to the

commission of offence and also to be the Investigation Officer, so long as it does not in any way prejudice to the accused person as held in the case of State through the Government of Sindh v. Bashir and others (PLD 1993 SC 408). In this case complainant was SIP Tahir Ahmed and he was the Investigation Officer and mashir was PC Muhammad Ibrahim of ANF. They had no animosity against the appellant to foist 15kg opium upon him. The defence theory appears to be after thought. Accused had raised plea that he is serving as a School Teacher in Education Department Government of Sindh. He was posted as Supervisor of the Schools. He was on duty on 16.05.2006 and had visited two schools namely N.F.B.E. Girls School Baladi situated at Taluka K.N. Shah District Dadu and School Ibrahim Chund. At 2-30 p.m. when he was returning on his motorcycle and reached at Khoonhar patrol pump, he saw three vehicles in which several persons were sitting in civil dresses including the ANF officials in the uniform. They apprehended accused, maltreated him and brought at the police station ANF Hyderabad. Accused raised plea that ANF officials demanded the illegal gratification to which he expressed his inability and he was falsely implicated in this case. Application submitted by his son as Ex.12/A in this regard has also been placed on record. All the prosecution witnesses have deposed in line to support the prosecution evidence. Report of chemical examiner was positive. Witnesses have passed the test of lengthy cross examination but the defence failed to make any dent in the prosecution evidence or to pin point any material contradiction fatal to the prosecution evidence. No enmity whatsoever has been brought on record against prosecution witnesses. Even otherwise, defence theory appears to be after thought and does not appeal to logic and reason. As such defence version has rightly been disbelieved by trial court. The contention of learned Advocate for the appellant that SIP Tahir Ahmed was the complainant as well as Investigation Officer of the case.

There is no prohibition in the law for the police officer to investigate the case lodged by him as held by Honourable Supreme Court in the case of **ZAFAR v. THE STATE** 2008 SCMR 1254, it is held as follows:-

***“11. So far as the objection of the learned counsel for the applicant that the Investigation Officer is the complainant and the witness of the occurrence and recovery, the matter has been dealt with by this Court in the case of State through Advocate-General Sindh v. Bashir and others PLD 1997 SC 408, wherein it is observed that a Police Office is not prohibited under the law to be complainant if he is a witness to the commission of an offence and also to be an Investigating Officer, so long as it does not in any way prejudice the accused person. Though the Investigation Officer and other prosecution witnesses are employees of A.N.F., they had no animosity or rancor against the appellant to plant such a huge quantity of narcotic material upon him. The defence has not produced any such evidence to establish animosity qua the prosecution witnesses. All the prosecution witnesses have deposed in line to support the prosecution case. The witnesses have passed the test of lengthy cross-examination but the defence failed to make any dent in the prosecution story or to extract any material contradiction fatal to the prosecution case. The prosecution has been successful to bring home the guilt of the appellant to the hilt by placing ocular account, recovery of narcotic material, the Chemical Examiner report G.1, Exh.P.3. The learned counsel for appellant has not been able to point out any error of law in the impugned judgment and the same is unexceptionable.*”**

16. Reluctance of general public to become witness in such like cases had become judicially recognized fact and there was no way out to consider the statement of the official witnesses as no legal bar or restriction has been imposed. In such regard police officials were good witnesses as could be relied upon, if their testimony remained un-shattered during the cross

examination. The provision of Section 25 of the CNS Act has provided the exclusion of Section 103 Cr.P.C. during recovery proceedings as held in the case of Salah-ud-din v. The State (2010 SCMR 1962). Relevant portion whereof is reproduced hereunder-

“4. We have carefully examined the entire record and perused the judgment impugned with the eminent assistance of Mr. Kamran Murtaza, learned Advocate Supreme Court on behalf of petitioner. After having gone through the entire evidence by keeping the defence version in juxtaposition we have no hesitation in our mind to hold that prosecution has proved the factum of recovery on the basis of forthright and convincing evidence. The statement of prosecution witnesses namely Ghulam Hassan, IP/SHO (P.W.1), Muhammad Ansar, SI (P.W.2) and Amanullah Kethran SIP/I.O (P.W.3) have been thrashed out in depth who all have supported the prosecution version and stood firm to the test of cross examination and nothing beneficial could be elicited casting any doubt on their veracity. The petitioner was apprehended at the spot from a doubt seater Datsun pickup bearing registration No.WAC-526 on whose search 20 kilograms hashish (charas) was found for which F.I.R was got lodged with promptitude and samples from alleged recovered material were sent to Chemical Expert without any loss of time which were found “charas” as a result of chemical examination. No enmity whatsoever has been alleged against the prosecution witnesses and there is hardly any possibility for false implication without having any ulterior motive which was never alleged. In view of the overwhelming prosecution evidence the defence version has rightly been discarded which otherwise is denial simpliciter and does not appeal to logic and reason. We are conscious of the fact that no private witness could be produced but it must not lost sight of that reluctance of general public to become witness in such like cases by now has become a judicially recognized fact and there is no way out but to consider the statement of an official witness as no legal bar or restriction whatsoever has been imposed in this regard. We are fortified by the dictum laid down in Hayat Bibi v. Muhammad Khan (1976 SCMR 128), Yaqoob Sah v. The State (PLD 1976 SC 53), Muhammad Hanif v. State (2003 SCRM 1237). It is well settled by now that police officials are good witnesses and can be relied upon if their testimony remained un-shattered during cross examination as has been held in case of Muhammad Naeem v. State (1992 SCMR 1617), Muhammad v. State (PLD 1981 SC 635). The contentions of Mr. Kamran Murtaza, learned Advocate Supreme Court on behalf of petitioner qua violation of provisions as enumerated in section 103, Cr.P.C. seems to be devoid of merit when examined in the light of provisions as contained in section 29 of the Act which provides exclusion of section 103, Cr.P.C. The learned trial Court has

appreciated the entire evidence in accordance with well settled principles of appreciation of evidence and conclusion arrived at has been affirmed by the learned Division Bench vide judgment impugned which being well based does not warrant interference. The petition being meritless is dismissed and leave refused.”

17. Learned advocate for the appellant emphasized that there are material contradictions in the case of prosecution but no such material contradiction has been highlighted to create doubt in the prosecution story. Courts are supposed to dispose of the matter with dynamic approach, instead of acquitting the drug paddlers on technicalities as held in the case of Ghulam Qadir v. The State (PLD 2006 SC 61). In another case The State/ANF v. Muhammad Arshad (2017 SCMR 283), it is observed that no proper investigation was conducted, but the material that came before the court was sufficient to connect the accused with the commission of crime, the accused could still be convicted, notwithstanding minor omissions that had no bearing on the outcome of the case.

18. In view of above, we reached at the conclusion that the impugned Judgment passed by learned trial court does not suffer from any illegality, gross irregularities or infirmities so as to call for interference by this court. The learned trial Court has advanced valid and cogent reasons for passing the impugned Judgment and we see no legal justification to disturb the same. Consequently, appeal is without merits and the same is dismissed. Needless to mention that trial Court has already extended benefit of Section 382-B Cr.P.C. to accused.

JUDGE

JUDGE

