JUDGMENT SHEET

IN THE HIGH COURT OF SINDH,

CIRCUIT COURT, HYDERABAD.

Cr.Acquittal.Appeal.No.D- 244 of 2010

Present:-
Mr. Justice Naimatullah Phulpoto.
Mr. Justice Mohammad Karim Khan Aga.

Date of hearing: 25.05.2017.
Date of judgment: 25.05.2017.

Syed Meeral Shah,Addl:P.G. for the appellant / State.
None present for respondents.

J U D G M E N T

NAIMATULLAH PHULPOTO, J: Respondent / accused Abdul Majeed was tried by learned Special Judge for CNS, Hyderabad in Special Case No.15 of 2007 for offence u/s 9 (c) of CNS Act, 1997. By judgment dated 08.04.2010, the respondent/accused was acquitted of the charge by extending him benefit of doubt. Hence the instant Criminal Acquittal Appeal filed by the State.

2. Brief facts unfolded in the FIR are that on 28.02.2007 at 1940 hours complainant Inspector Muhammad Mustafa Anti Narcotic Force Hyderabad lodged his report on behalf of the State stating therein that on 28.02.2007 he alongwith PCs Abdul Hameed, Muhammad Ibrahim, Munir Ahme, Imtiaz Ali and Driver Ashique Hussain in government mobile No.6181 vide entry No.15 of daily diary proceeded for checking and patrolling. During patrolling received spy information that one person is standing alongwith huge quantity of Narcotic at Jamshoro road

near Ad more petrol pump in whose right hand there was one shopping bag. On seeing the government vehicle of P.S. he tried to run away but was encircled by staff and was apprehended on enquire who disclosed his name Abdul Majeed son of Abdul Qayoom by caste Halepoto r/o village Din Muhammad Halepoto, Sindabad Sugar mill taluka Bulri Shah Karim District Tando Muhammad Khan. One black coloured plastic bag which was in his hand was opened having opium which was suddenly weighed which was became 2 Kilo four hundred Grams. One national identity card in the name of Abdul Majeed Halepoto was recovered from his front pocket of his shirt. Three notes of Rs. 100/- each were also recovered on his personal search. Out of above opium, 10 Grams of opium was taken for chemical examination which were kept in empty bag of paper which was sealed and remaining opium was kept in white coloured bag of clothes. The people gathered there refused to associate the proceeding hence in presence of official such Mashirnama was prepared and was read over before them, who after understanding put their signatures. Hence this FIR and case.

3. After completion of investigation, challan was submitted and the accused was sent to stand his trial.

4. A formal charge at Exh-02 U/S 09 (b) of CNS Act 1997 was framed against the accused to which he did not plead guilty and claimed trial.

5. At the trial prosecution examined PW.01 complainant Muhammad Mustafa at Exh-04 who produced Roznamcha entries as Exh-04/A, Mashirnama of arrest and recovery at Exh-04/B, FIR as Exh-04/C, covering letter sent to chemical examiner at Exh-04//E, PW-02 PC Sher Muhammad at Exh-05. Thereafter prosecution closed its side at Exh-06.

6. Statement of accused U/S 342 Cr.P.C was recorded at Exh-07 to which accused denied the prosecution allegations and pleaded his innocence.

7. Trial court after hearing the learned counsel for the parties and assessment of the evidence acquitted the accused by judgment dated 08.04.2010 mainly for the following reasons:-

> ***"The analysis of the evidence reveals that place of wardat is thickly populated area situated in heart of the city, peoples were available, complainant did not disclose the names of the peoples who refused to associate the proceedings.***
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> ***This is case of pre-information when spy informer was also either with the complainant party or who available at some distance. The evidence does not disclose that on the pointation of spy information the accused was arrested or he disclosed feature/Hulia of the accused. The complainant Muhammad Mustafa as Exh-04 deposed that he left the PS ANF at 5.00 P.M in official vehicle whereas PW Sher Muhammad at Exh-05 who is Mashir of ANF party and was accompanied with the complainant and mashir of the recovery deposed that they left the P.S at 5.50 P.M in the official vehicle but he did not disclose the number of official vehicle.***
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> ***P.W complainant in his cross examination replied that they spent 15/20 minutes from leaving the P.S to Qasim Chowk whereas P.W Sher Muhammad replied that they reached at place of recovery within 05 minutes. The P.W Ghulam Mustafa replied that they spend hardly 50 to 55 minutes at the place of incident whereas P.W Sher Muhammad replied that they consumed 15 minutes in the proceedings where recovery was affected.***
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> ***Heard Mr. Balam advocate for accused learned counsel submitted that according to Police Rules 1934 Paras 25. 58 the investigation officer shall be provided with an investigation bag of approved patterns of article from Serial No. 01 to 18 mentioned in the referred Paras but it does not include weighing machine he contended that complainant himself admitted that they were provide bag as per Police Rules.***
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> ***He contended that evidence of the place of Wardat is thickly populated area but police had not been associated two peoples of the locality in recovery proceedings which creates doubt. He relied upon 2004 YLR 356. He contended that provision 103 Cr.P.C. through is inapplicable to CNS Act but Section 25 of the said act did not debar ANF of effect the recovery is presence of private witnesses as they have wherein prior knowledge. He relied upon PLD 2006 Karachi 325.***
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> ***Learned counsel vehemently argued that alleged recovery is of opium was dispatched to chemical examiner but the person who took from Hyderabad to Karachi is not examined in this case as such it caused fatal blow upon the prosecution case. He relied upon 2006 P.Cr. L.J 1664***

Northern Areas Court of Appeals. He contended that investigation officer/complainant did not took efforts to ask the public through were present on the spot to associate the proceedings therefore entire proceeding in absence of joining them vitiated recovery. He relied upon 2008 MLD 1333 Karachi. He contended that section 25 of CNS Act though exclude the applicability of section 103 Cr. P.C. but it not make the evidence of police official reliable their evidence should always be examined keeping in view the fact that in a society with the level of moral values that unfortunately prevails, a subordinate official is seldom expected to tell the truth in deviation of express or implied instructions of his superior. He relied upon PLD 2001 Karachi 369.

Learned counsel submitted that in statement under section 342 (2) Cr. P.C. accused has denied the recovery of opium weighing 2.4 Kilogram opium on oath he had deposed that on 27-02-2007 came at Hyderabad and stayed at until hotel Gari Khata Hyderabad in room No. 124 and 112 along with other companions and then on 28-02-2007 he went to house of Qasim Lashari at citizen colony Qasimabad, Hyderabad where they were chit chatting when police officials of ANF came there and raided the house and arrested him. Learned counsel added that the evidence of accused which is on oath to that extent is not challenged in cross examination as such evidence is un rebutted and unchallenged, un-controverted, therefore it put reflects upon entire recovery proceeding have claim of the accused is true that he is innocent. He argued that accused on oath stated that he was brought at P.S. along with Allah Waryo and Muhammad Ayoob and during personal search Rs. 47,000/- one mobile and his wallet was taken up by police, thereafter they demanded money which he refused hence was falsely implicated in this case. He in the last submitted that prosecution case suffers from contradictions and does not inspire credibility to believe truth-ness.

On the other hand Mr. Amjad Sahito learned Special Prosecutor ANF submitted that official of ANF are good witness as public there evidence is trustworthy, they had affected recovery of 2.4 Kilogram opium from the possession of accused. The sample was sent to chemical examiner and the chemical examiner report produced before this Court confirm the recovered substance was opium which was being carried contravention to provision. He contended that the contradictions if any are minor due to lapse of time. He contended that recovery proceeding are not necessary to be effected in presence of public witness and section 25 of CNS Act excludes the joining of independent witnesses. He contended that recovery affected by the ANF is governed under special law therefore other law are not applicable. He relied upon 2008 SCMR 1254, PLD 2006 Supreme Court of Pakistan 61 and 2008 SCMR 742 Supreme Court of Pakistan.

The analysis and discussion above reveals that prosecution is miserable failed to prove the guilt of accused in home beyond the shadow of doubt evidence suffered from contradictions, which make the prosecution case doubtful, hence point is replied as doubtful."

8. We have heard Syed Meeral Shah, Additional Prosecutor General Sindh and examined the entire evidence available on record.

9. Learned A.P.G. appearing on behalf of the State argued that a huge quantity of 02 kilo four hundred grams charas was recovered from the accused but the trial court disbelieved the evidence of the prosecution without assigning any reason. He has further argued that the trial court failed to appreciate the evidence according to the settled principle of law. It is further contended that the evidence of the prosecution witnesses is as good as that of the private persons and in this case there was no malafide or enmity against the respondent/accused. Lastly, it is contended that the impugned judgment was a result of misreading and non-reading of the evidence.

10. Respondent/accused despite notice did not appear.

11. We have perused the prosecution evidence with the assistance of learned Additional Prosecutor General and impugned judgment passed by the trial court. In its concluding paras, the trial court has appreciated the evidence and by assigning sound reasons recorded acquittal in favour of the accused/respondent. Trial court in the judgment has mentioned that there are material contradiction in the evidence of the prosecution witnesses. It has been also observed that the prosecution failed to prove the safe custody of the narcotic as such the judgment of the trial court is based upon the sound reasons. Even otherwise scope of appeal against acquittal is very narrow and limited as held by the Honourable Supreme Court in the case of The State v. Abdul Khaliq and others (PLD 2011 Supreme Court 554). Moreover, the scope of interference in appeal against acquittal is narrow and limited because in an acquittal the presumption of the innocence is significantly added to the cordinal rule of criminal jurisprudence as the accused shall be presumed to be innocent until proved guilty. In other words, the

presumption of innocence is doubled as held by the Honourable Supreme Court of Pakistan in the above referred judgment. The relevant para is reproduced hereunder:-

> **"16. We have heard this case at a considerable length stretching on quite a number of dates, and with the able assistance of the learned counsel for the parties, have thoroughly scanned every material piece of evidence available on the record; an exercise primarily necessitated with reference to the conviction appeal, and also to ascertain if the conclusions of the Courts below are against the evidence on the record and/or in violation of the law. In any event, before embarking upon scrutiny of the various pleas of law and fact raised from both the sides, it may be mentioned that both the learned counsel agreed that the criteria of interference in the judgment against ' acquittal is not the same, as against cases involving a conviction. In this behalf, it shall be relevant to mention that the following precedents provide a fair, settled and consistent view of the superior Courts about the rules which should be followed in such cases; the dicta are:**
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> > **Bashir Ahmad v. Fida Hussain and 3 others (2010 SCMR 495), Noor Mali Khan v. Mir Shah Jehan and another (2005 PCr.LJ 352), Imtiaz Asad v. Zain-ul-Abidin and another (2005 PCr.LJ 393), Rashid Ahmed v. Muhammad Nawaz and others (2006 SCMR 1152), Barkat Ali v. Shaukat Ali and others (2004 SCMR 249), Mulazim Hussain v. The State and another (2010 PCr.LJ 926), Muhammad Tasweer v. Hafiz Zulkarnain and 2 others (PLD 2009 SC 53), Farhat Azeem v. Asmat ullah and 6 others (2008 SCMR 1285), Rehmat Shah and 2 others v. Amir Gul and 3 others (1995 SCMR 139), The State v. Muhammad Sharif and 3 others (1995 SCMR 635), Ayaz Ahmed and another v. Dr. Nazir Ahmed and another (2003 PCr.LJ 1935), Muhammad Aslam v. Muhammad Zafar and 2 others (PLD 1992 SC 1), Allah Bakhsh and another v. Ghulam Rasool and 4 others (1999 SCMR 223), Najaf Saleem v. Lady Dr. Tasneem and others (2004 YLR 407), Agha Wazir Abbas and others v. The State and others (2005 SCMR 1175), Mukhtar Ahmed v. The State (1994 SCMR 2311), Rahimullah Jan v. Kashif and another (PLD 2008 SC 298), 2004 SCMR 249, Khan v. Sajjad and 2 others (2004 SCMR 215), Shafique Ahmad v. Muhammad Ramzan and another (1995 SCMR 855), The State v. Abdul Ghaffar (1996 SCMR 678) and Mst. Saira Bibi v. Muhammad Asif and others (2009 SCMR 946).**
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> **From the ratio of all the above pronouncements and those cited by the learned counsel for the parties, it can be deduced that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty; in other words, the presumption of innocence is doubled. The courts shall be very slow in interfering with such an acquittal judgment, unless it is shown to be perverse, passed in gross violation of law, suffering from the errors of grave misreading or non-reading of the evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. It has been categorically held in a plethora of judgments that interference in a judgment of acquittal is rare and the prosecution**

must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. Moreover, in number of dictums of this Court, it has been categorically laid down that such judgment should not be interjected until the findings are perverse, arbitrary, foolish, artificial, speculative and ridiculous (Emphasis supplied). The Court of appeal should not interfere simply for the reason that on the re-appraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably perverse, suffering from serious and material factual infirmities. It is averred in The State v. Muhammad Sharif (1995 SCMR 635) and Muhammad Ijaz Ahmad v. Raja Fahim Afzal and 2 others (1998 SCMR 1281) that the Supreme Court being the final forum would be chary and hesitant to interfere in the findings of the Courts below. It is, therefore, expedient and imperative that the above criteria and the guidelines should be followed in deciding these appeals."

12. For the above stated reasons, there is no merit in the appeal against acquittal. Acquittal recorded by trial Court in favour of respondent /accused is based upon sound reasons, which require no interference at all. As such, the appeal against acquittal is without merit and the same is dismissed.

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