

**HIGH COURT OF SINDH CIRCUIT COURT,  
HYDERABAD**

**Cr. Jail Appeal No.D-99 of 2019**  
[Shahid Raza & another vs. The State]

**DATE**

**ORDER WITH SIGNATURE OF JUDGE**

**BEFORE:**

**MR. JUSTICE MUHAMMAD KARIM KHAN AGHA  
JUSTICE MRS. KAUSAR SULTANA HUSSAIN**

**Appellants :** Through M/s Om Parkash H. Karmani and Ghulam Shabbir Mari advocates

**The State :** Through Agha Abdul Nabi Special Prosecutor ANF

**Date of hearing:** 23.02.2023

**Date of judgment:** 07.03.2023

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

**KAUSAR SULTANA HUSSAIN, J:** Through instant appeal, appellants have impugned the judgment dated 08.05.2019, passed by learned Special Judge for Control of Narcotic Substance/MCTC Hyderabad in Special Case No.54 of 2014 [**Re: The State versus Shahid Raza & another**], outcome of Crime No.14 of 2014 registered at P.S ANF Hyderabad for offence punishable under Section 9(c) of CNS Act, 1997, whereby they have been convicted and sentenced to suffer Imprisonment for Life and to pay fine Rs.5,00,000/- each and in case of failure in payment of fine, they have been directed to suffer Simple Imprisonment for six months more, however, benefit of Section 382-B Cr.P.C has been provided to them.

2. The facts of the matter have sufficiently been disclosed in the impugned Judgment, therefore, there is no need to reiterate the same for the sake of brevity and to avoid repetition. However, the allegation against the appellants/accused, per FIR, is that on 16.09.2014 they were arrested on spy information by the raiding ANF officials, headed by Complainant Inspector Khalid Rasheed and from their possession they recovered 400 kilograms of Chars, hence aforesaid FIR was registered against them.

3. After registration of FIR, Complainant himself investigated the matter who on completion of investigation has submitted the challan before the concerned trial Court. Then copies of the case were provided to the

appellant/accused at **Ex.01** and Charge was framed against them at **Ex.02**, to which they pleaded not guilty and claimed trial vide their pleas at **Ex.03 and 04** respectively. In order to prove the Charge, the prosecution examined four witnesses, who produced and recognized certain documents at **Ex.05/A to 11/A**. Thereafter prosecution closed its side and the statements of appellants/accused under Section 342 Cr.P.C were recorded at **Ex.13 and 14** respectively wherein they denied the allegations leveled against them, however, neither they produced any witness in their defence nor examined themselves on Oath under Section 340(2) Cr.P.C. The learned Court finally after hearing the parties convicted and sentenced the appellants/accused, as noted above, vide impugned Judgment, hence they preferred captioned appeal.

4. Learned counsel for the appellants, inter-alia, contended that the impugned judgment is result of misreading and non-reading of the material available on record; that no private mashir was associated though Complainant had alleged prior spy information; that there are material contradictions in the evidence of prosecution witnesses; that Complainant himself investigated the matter, which is against the settled principle of law, because no one can be judge of his own cause; that appellant Shahid Raza has been falsely implicated in this crime by the Complainant due to quarrel over business of rent a Car, as appellant and Complainant are doing same business on same route, while the appellant Imran has been implicated on the influence of ruling government, as accused Imran is active member of MQM; that appellants had also moved application for verification of vehicle, whereby it transpired that there is no Suzuki Hi-Roof with registration No.KN-9421, which makes the prosecution case highly doubtful. They prayed for acquittal of appellants. In support of their arguments they relied upon the cases reported in (i) 1995 SCMR 127, (ii) 2009 PLD 191, (iii) 2016 P Cr.L.J Note 79, (iv) 2018 YLR 2358, (v) 2019 SCMR 608, (vi) 2019 SBLR 586, (vii) 2020 MLD 70, (viii) 2020 P Cr.L.J Note 39, (ix) 2021 SCMR 451, (x) 2022 MLD 150, (xi) 2022 P Cr.L.J 279, (xii) 2022 YLR Note 05, (xiii) 2022 PLD 84, (xiv) 2008 MLD 797, (xv) 2011 P Cr.L.J 90, (xvi) 2016 SCMR 621, (xvii) 2015 SCMR 1002, (xviii) 2010 P Cr.L.J 458 and (xix) 2017 YLR 712.

5. On the other hand learned Special Prosecutor ANF vehemently opposed the appeal and argued that prosecution has fully established its case beyond any shadow of doubt; that though the witnesses were put to lengthy cross-examination, but they remained consisted; that safe custody as well as safe transmission of contraband is duly proved by examining the concerned witnesses and exhibiting the entries in this regard which lead to a positive chemical report;

that though appellants have alleged their false implication due to enmity, however, they have failed to produce any documentary and/or oral evidence in this regard; that there is no bar under the law that Complainant cannot investigate the matter and that association of private mashirs has been exempted by Section 25 of the CNS Act. He prayed for dismissal of captioned appeal. In support of his case he relied upon 2022 SCMR 1097.

6. We have heard the learned counsel for the appellants as well as learned Special Prosecutor ANF and have also gone through the material available on record including case laws cited by them.

7. Record reflects that accused were arrested on 16.09.2014 by the raiding Anti-Narcotic Force on spy information near Indus Cooperative Housing Society, National Highway and got recovered 400 kilograms of chars lying in 10 kattas.

8. Since the entire prosecution case hinges on the recovery of huge quantity of Chars from the appellants/accused, therefore, first of all it is to be seen whether the entire case property was examined by the Chemical Examiner and whether it was proved to be Chars or otherwise. In this regard we have before us a letter dated 17.09.2014 written by the Complainant/Investigation Officer to Chemical Examiner for examination of case property and report of Chemical Examiner, exhibited as **Ex.05/D** and **05/E** respectively. A careful perusal of letter (**Ex.05/D**) shows that 10 white colour nylon bags having number 1 to 10 total weighing 400 kilograms were sent for examination through PC Imtiaz Ali on 17.09.2014 in sealed condition. Receiving of said case property in sealed condition through above mashir on same day is duly seconded by the report of Chemical Examiner (**Ex.05/E**). Report (Ex.05/E) shows that 10 white nylon bag parcels, having seal of ANF, were received in the office of Chemical Examiner through PC Imtiaz Ali and each bag containing 40 packets weighing one kilogram each, total weighing 400 kilograms, chemical test of said packets was performed and it was resulted in positive. Accordingly it is established that entire case property was sent for chemical examination and it was proved to be contraband.

9. Now it is to be seen whether prosecution has proved chain of events and safe custody as well as safe transmission of recovered case property. Record reflects that on 16.09.2014 Complainant Inspector Khalid Rasheed had prior spy information that accused persons are smuggling a huge quantity of narcotic to Karachi through National Highway in Suzuki Hi-Roof bearing registration No.KN-9421. After receiving such information he left the police station under entry No.06 at about 1300 hours alongwith HC Sher Muhammad, HC Abdul

Razzaque, Hawaldar Rafique, A.D Nouman Hanif and 10 other ANF officials and reached at Indus Cooperative Housing Society situated at National Highway and started watching and at about 1430 hours they saw a Hi-Roof coming towards Karachi. Since they had prior information, as such they stopped the said Hi-Roof, which was being driven by accused Shahid Raza while accused Muhammad Imran was sitting beside him on front seat. They conducted search of said vehicle and got recovered 10 white nylon bags (kattas), each containing forty foil packets, lying on back seats of vehicle. Then the entire case property (contraband) was sealed at the spot and such memo of arrest and recovery was prepared, duly signed by the mashirs. Thereafter the case property and accused were brought at police station under entry No.07 at about 1700 hours and FIR was lodged against the accused persons. The above entries, FIR and memos of arrest and recovery have duly been exhibited by the Complainant/IO at **Ex.05/A to 05/C** and the same were recognized by the mashirs to be the same.

10. Record further reflects that on arrival at police station the recovered case property was deposited in Malkhana under entry No.55 (**Ex.11/A**) and on next day viz: 17.09.2014 it was taken out of the Malkhana and sent for chemical examination through PC Imtiaz Ali under entries No.5 and 10 (**Ex.10/A**). In order to prove safe custody of recovered contraband, the Incharge of Malkhana SI Ali Muhammad was examined at Ex.11, who produced entry No.55 at Ex.11/A with regard to deposit of case property in Malkhana by the Complainant/IO in sealed condition. As noted above, the deposit of case property in the office of Chemical Examiner on 17.09.2014 in sealed condition by PC Imtiaz Ali has duly been authenticated by the report of Chemical Examiner. Besides the report of Chemical Examiner also authenticated the description of contraband. Since the prosecution besides producing the relevant entries has also examined the Complainant/IO, mashir of arrest and recovery H.C Sher Muhammad, PC Imtiaz Ali, who transmitted the case property in the office of Chemical Examiner and Incharge of Malkhana SI Ali Muhammad, as such in view of the discussion in preceding as well as ongoing paragraphs, we find that prosecution has fully established the chain of event, safe custody and safe transmission of the recovered contraband from the time of its recovery until the time it was sent for chemical analysis.

11. Appellant Shahid Raza in his statement alleged that he has been falsely implicated by the Complainant due to quarrel on business of rent a car, as according to him, he and Complainant are doing same business, while accused Muhammad Imran alleged in his statement that he has been implicated in this case at the influence of ruling party, as he is active member of MQM. However, both

the appellants have neither examined any witness nor produced any documentary evidence in this regard.

12. As regards the contention of learned counsel that there are major contradictions in depositions of prosecution witnesses, we have carefully gone through the depositions of all prosecution witnesses and it appears that despite lengthy cross-examination they remained consistent, except some minor contradictions, which can be ignored while keeping in view recovery of a huge quantity of contraband and by taking guidance from the recent decision of Hon'ble Supreme Court reported in 2023 SCMR 190, whereby the Hon'ble Apex Court has held as under:

*“.....Minor discrepancies on trivial matters not affecting the material considerations of the prosecution case ought not to prompt the Courts to reject evidence in its entirety. Such minor discrepancies which do not shake the salient features of the prosecution case should be ignored”.*

13. The argument of learned counsel that Complainant himself cannot investigate the matter, has no force at all, for the reasons that the appellants have failed to prove any enmity with Complainant and/or they did not move any application for change of investigation at the time of trial, if at all they had no faith on Complainant. The Hon'ble Supreme Court of Pakistan in case reported as **STATE THROUGH ADVOCATE GENERAL, SINDH V. BASHIR and others (PLD 1997 Supreme Court 408)** has observed as under:-

*“There is no legal prohibition for a police officer to be a 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. The Court will have to apprise the evidence produced by the prosecution as a whole and will have to form the opinion after evaluating the same.”*

14. We have also perused the case laws relied upon by the learned counsel for the appellant, however, same are distinguishable from the facts and circumstances of present case.

15. For the foregoing reasons, we have come to the conclusion that the prosecution has successfully proved its case against the appellants, therefore, the impugned judgment dated 08.05.2019, passed by learned Special Judge for Control of Narcotic Substance/MCTC Hyderabad in Special Case No.54 of 2014 [**Re: The State versus Shahid Raza & Another**], outcome of Crime No.14 of 2014 registered at P.S ANF Hyderabad under Section 9(c) of CNS Act, 1997 is

strictly in accordance with law, hence requires no interference by this Court, as such same is hereby maintained and in consequence whereof the present appeal, having no merits, stands dismissed.

JUDGE

JUDGE

Sajjad Ali Jessar