

Order Sheet

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Cr. Acquittal Appeal No.D-04 of 2021

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
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For hearing of main case

Present:
Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Amjad Ali Sahito.

11.04.2023

Mr. Israr Ahmed Chang Special Prosecutor ANF for appellant.
Syed Muhammad Waseem Shah advocate for respondent.

MUHAMMAD IQBAL KALHORO,J- Respondent was arrested by Anti Narcotic Force on 30.09.2019 on spy information from under fly-over Latifabad Hyderabad and from him 2000 grams of charas was recovered. The recovery and arrest were duly recorded in the police docket, which were duly exhibited in the evidence. In the trial, prosecution examined three witnesses including complainant and PC Muhsin Ali who had taken the sample to the office of chemical analyzer for examination. After the conclusion of prosecution evidence, statement of respondent was recorded in which he has simply denied the prosecution case without offering himself for examination under oath. At the conclusion of the trial, trial Court pronounced the impugned judgment dated 20.11.2020 acquitting the respondent on the ground of non-compliance of section 103 Cr.P.C ; the fact that I.O. had acted as complainant in this case; and further that moharrir of the malkhana in whose custody the property was kept till sent to chemical analyzer was not examined by the prosecution.

We have heard learned counsel for the parties and perused the material available on record. It is settled that I.O in the narcotic cases can act as complainant and there is no legal bar for the complainant keeping him from acting so. And this fact alone would not prejudice the case against the accused in any manner. Non-compliance of section 103 Cr.P.C is no ground to acquit the accused in narcotic cases either because in terms of section 25 of CNS Act 1997, applicability of section 103 Cr.P.C has been excluded in such cases. In-so-far as non-examination of muharrir by prosecution is concerned, the complainant in his evidence has clarified that he himself was incharge of 'Malkhana' and had kept the property in his custody. And his assertion has not been shattered by the defence in any manner.

We, therefore, are of the view that the trial Court without properly appreciating the material available on record in the light of judgments of

superior Courts has wrongly acquitted the respondent / accused. We, therefore, with the consent of both the learned counsel set aside the impugned judgment and remand the case back to the trial Court with direction to hear the parties afresh and pass a judgment in accordance with law after properly appreciating the material available on record in the light of dictas laid down by the superior Courts qua appraisal of the evidence. Accordingly, in view of above this acquittal appeal is disposed of.

JUDGE

JUDGE