

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Spl. Cr. Appeal No. D – 49 of 2023

(Mushtaque Ahmed Chandio versus The State)

Present:

Mr. Muhammad Iqbal Kalhoro, J.

Mr. Arbab Ali Hakro, J.

Date of hearing : **28.11.2023**

Date of decision : **28.11.2023**

Mr. Ghulam Rasool Chandio, Advocate for appellant.

Mr. Zulfiqar Ali Jatoi, Additional Prosecutor General.

J U D G M E N T

Muhammad Iqbal Kalhoro, J. – By this appeal, appellant Musthaque Ahmed S/o Qabool Ahmed Chandio has impugned judgment dated 19.08.2023, passed by learned Sessions Judge/Special Judge (CNS), Khairpur, in Special Case No.26 of 2023 (*Mushtaque Ahmed and another versus The State*), convicting and sentencing him to suffer imprisonment for four years and six months with fine of Rs.20,000/- (Rupees twenty thousand), or in case of default, to undergo SI for five months more, however, while extending benefit of Section 382-B CrPC.

2. Appellant was arrested by ASI Ghulam Sarwar during patrolling along with his team from in front of gate of Sachal Sarmast's shrine, and from his possession, 2000 grams of *charas* in shape of three slabs lying in a shopper held by him was recovered. From each slab, 10 grams of *charas* was segregated for sending as sample to the chemical lab for a report. Such memo of arrest and recovery was prepared at the spot, and applicant and recovered *charas* were brought at Police Station Ranipur, District Khairpur, where FIR, bearing Crime No.156 of 2022 under Section 9(c) of Control of Narcotic Substances Act, 1997, was registered against him.

3. After the FIR, investigation was entrusted to Inspector Abdul Ghafoor, who recorded statements of the witnesses, deposited samples with the lab of chemical examiner and submitted the Challan after a due process. When the trial commenced, a formal charge was framed against the appellant, but he pled not guilty and invited prosecution to lead evidence. Prosecution has examined four witnesses viz. complainant, *mashir* in whose presence the arrest and recovery from the appellant was effected, Investigating Officer of the case and *Malkhana* In charge WHC

Abdul Sattar. The statement of appellant was recorded U/S 342 CrPC, and he denied all the incriminating evidence against him. Resultantly, on the culmination of trial, through impugned judgment, the appellant has been convicted and sentenced as above.

4. Learned Counsel has argued that appellant is innocent, has been falsely implicated in this case. There are material contradictions in the evidence of the witnesses, and it is settled law that once a circumstance introducing a doubt in the case has crept in, its benefit has to be extended to the accused not as a matter of grace but as a matter of a right. He has further stated that there is a discrepancy in weight of retrieved samples at the spot and the samples received by the chemical examiner.

5. Learned Additional Prosecutor General has opposed the arguments of learned defence Counsel, but has conceded that there is a discrepancy in the weight of samples, and it is a matter of record.

6. We have considered the pleas of both the parties and are of the view that prosecution's evidence is not up to the mark. Prosecution papers including evidence of the witnesses show that there were three (03) slabs of *charas* recovered from the appellant, and from each slab, 10 grams were separated as a sample for examination by chemical lab, but the report of chemical lab available at Page 71 (Ex.6/F) shows that net weight of 03 samples received was only 22 grams and not 30 grams. This weight clearly does not match with the weight prescribed by the prosecution to have been retrieved from the slabs as samples. Therefore, the prosecution's onus to prove that the samples, which were sent to the chemical lab, are the same samples retrieved from the slabs, has not been discharged. Further, the report of chemical lab shows that the samples were brought by HC Ghulam Raza, however, Investigating Officer, in his evidence, has stated that on 28.11.2022, he had taken out the parcel of samples and had himself under *roznamcha* entry No.40 deposited the same in the lab for inspection. Such a contradiction and discrepancy has not been explained by prosecution during the arguments, and it is not clear as to who had taken the property to the chemical lab. If we consider the document viz. lab report, the evidence of the IO on this aspect becomes doubtful.

7. Then the only witness viz. *mashir* namely PC Naib Ali (Ex.4) was declared hostile by the pleader on the ground that he had not supported sealing of the case property at the spot. And then only in cross-examination by the pleader, he had confirmed such fact, which will

further dent the prosecution case's veracity regarding the course of events as alleged by the witnesses.

8. We, therefore, are of the view that evidence against the appellant is sketchy and it cannot be made a basis of conviction to him. Hence, while giving benefit of a doubt to the appellant in view of above discrepancies, this appeal is **allowed**. The conviction and sentence awarded to appellant vide impugned judgment are **set aside**. Consequently, he is **acquitted** of the charge and shall be released forthwith by jail authorities, if not required in any other custody case.

Above are the reasons of short order dated 28.11.2023.

J U D G E

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Abdul Basit