

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

Criminal Appeal No.D-08 of 2020

Present:

Mr. Justice Mahmood A. Khan

Mr. Justice Zulfiqar Ali Sangi

Appellant : Muhammad Habib s/o Bashir Ahmed Siddiqui through Mr. Mazhar Ali Laghari, Advocate

Respondent : The State through Mr. Shahid Ahmed Shaikh, Additional Prosecutor General, Sindh.

Date of hearing : **10.08.2023.**

Date of decision : **10.08.2023.**

JUDGMENT

ZULFIQAR ALI SANGI J.– Through instant Criminal appeal, the appellant has assailed the judgment dated 27.01.2022, passed by learned Model Criminal Trial Court-I / Special Judge for Control of Narcotics Substance Act, Hyderabad, in Special Case No.61 of 2021 (Re-The State Vs. Muhammad Habib) arising out of FIR No.22 of 2021, offence U/S. 9 (B) of Control of Narcotic Substance Act, 1997, registered with P.S Sakhi Pir Hyderabad, whereby he has been convicted and sentenced to suffer rigorous imprisonment for one year and six months with fine of Rs.11,000/-(Rupees Eleven Thousand) and in default whereof, to suffer Simple Imprisonment for four months more, however he has been extended benefit of Section 382-B Cr.PC.

2. The brief background of the case is that on 23.03.2021 complainant ASI Arshad Ali Jatt proceeded to patrol in the area along-with his staff namely PC Ayaz Khan, PC Abdul Aleem and PC Shaharyar reached at Sattar Shah graveyard, where they found a suspected person who was trying to flee after looking at to police but apprehended him. Police party recognized the said person to be Muhammad Habib (present appellant) as he remained challan in various offences. On his

bodily search besides cash of Rs.800/- a black colour plastic thaili recovered it was checked containing two pieces of chars. Complainant then weighed the recovered chars which became 230 grams and then sealed it in a white colour cloth bag parcel for chemical analysis, as such, memo of arrest and recovery in presence of said mashirs namely PC Ayaz Khan and PC Abdul Aleem was prepared at spot due to non-availability of private mashirs thereafter the appellant was booked in the present crime punishable under section 9 (b) of CNS Act on behalf of the State.

3. After registration of FIR investigation was conducted then the I.O of the case submitted report under section 173 Cr.P.C against the appellant before the competent Court of law and thereafter the case papers were supplied to the accused under receipt at Ex.01.

4. The formal charge was framed against the appellant at Exh.2, to which he pleaded not guilty and claimed trial vide his plea recorded at Exh.3.

5. To establish the charge against the appellant, the prosecution examined P.W-01 ASI Arshad Ali Jatt at Exh.4, who was complainant of the case produced **entries in respect of departure and arrival, memo of arrest and recovery and FIR of the present case** at Ex.04/A to Ex.04/C; PW-02 PC Ayaz Khan at Exh.05, he was mashir of the case produced **memo of place of incident, entries in respect of collecting case property and then depositing the same to the chemical examiner at Karachi** at Ex.05/A to Ex.05/C; P.W-03 SIP Rao Muhammad Javed at Ex.06, he was Investigating Officer to whom custody of accused, mashirnama and sealed parcel was handed over and he produced **entries in respect of leaving the police station to visit the place of incident as well as arriving at police station, letter addressed to CRO Branch Hyderabad, CRO of accused, letter addressed to SDPO Market Hyderabad with regard to getting permission to send**

case property to chemical examiner, lettered addressed to chemical examiner and its report at Ex.06/A to Ex.06/F respectively and finally PW-04 WHC Mushtaq who recognized the signature of WHC Abid Sodhar being incharge of Malkhana and produced **entry in respect of keeping the case property in Malkhana by WHC Abid Sodhar** at Exh.07/A. Thereafter, learned State Counsel closed the side of the prosecution vide statement kept on record at Ex.08.

6. The accused in his statement recorded in terms of Section 342 Cr.PC, denied the allegations leveled against him by pleading his innocence. However, he neither examined himself on oath nor led any evidence in his defence.

7. The learned trial Court on assessment of the evidence and after hearing the counsel for the parties convicted and sentenced the present appellant/accused vide impugned **Judgment dated 27.01.2021**, which he has impugned before this Court by way of filing the instant Criminal Appeal.

8. Per learned defence counsel, the appellant being innocent has been falsely implicated in this case; that the alleged Charas has not been secured from the physical possession of the appellant but has been foisted against him; that the requirement of ingredients of Section 21 of C.N.S Act has not been complied with in letter and spirit; that the Chemical Examiner's report is not with protocol of the test, hence it has lost its sanctity in the eye of law; that there are material contradictions in the evidence of prosecution witnesses; that safe custody/transmission of Charas to the Chemical Examiner has also not been established; that no private person has been associated by the complainant to witness the alleged arrest and recovery, hence the evidence of such interested witnesses requires independent corroboration which is also lacking in present case, which was in clear violation of the mandatory provision of Section 103 Cr.PC. He

lastly contended that the prosecution has failed to prove its case against the appellant and thus he is entitled to his acquittal.

9. On the other hand, learned Additional Prosecutor General, Sindh while supporting the impugned judgment has submitted that the prosecution has successfully proved its case against the present appellant/accused in whose possession Charas was recovered; that the police officials had no enmity to foist narcotics substance against him of its own, as such, he prayed for dismissal of the instant Criminal Appeal.

10. We have given due consideration to the arguments advanced by learned counsel for the parties and have minutely gone through the material made available on record.

11. The deeper appraisal of the material brought on record is entailing that

JUDGE

JUDGE

Muhammad Danish*