

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR.
Special CrI. Jail Appeal No. D - 02 of 2020

Present;

Irshad Ali Shah,J
Zulfiqar Ali Sangi,J

Appellant: Shafique Ahmed s/o Muhammad Haroon
Soomro (Confined in Central Prison,
Sukkur)
Through Mr. Achar Khan Gabole,
Advocate.

The State: **Through** Mr. Asif Hussain Chandio,
Special Prosecutor Customs, Sukkur and
Karim Bux Janwari, Assistant Attorney
General, Pakistan.

Date of hearing: 28-02-2024.

Date of decision: 28-02-2024.

JUDGMENT

IRSHAD ALI SHAH, J. It is the case of the prosecution that appellant was found in possession/transporting 188 Kilograms of charas duly kept by him in secrete cavities of Toyota Hilux Pickup by Inspector Manzoor Ahmed of Anti-Smuggling Organization, Customs Office Sukkur, for that he was booked and reported upon. The appellant denied the charge and prosecution to prove the same, examined in all four witnesses and then closed its side. The appellant in his statement recorded u/s 342 Cr.P.C denied the prosecutions' allegation by pleading innocence. He did not examine anyone in his defence or himself on oath. On conclusion of trial, he was convicted u/s 9 (C) of CNS Act, 1997 and sentenced to suffer Imprisonment for life and to pay fine of Rs. 100,000/- (One lac) and in default in payment whereof to undergo Simple Imprisonment for one year with benefit of section 382 (b) Cr.P.C by learned Ist Additional Sessions Judge/Special Judge (CNS)/(MCTC), Sukkur vide judgment dated 05-12-2019, which the appellant has impugned before this Court by preferring the instant Special CrI. Jail Appeal.

2. It is contended by learned counsel for the appellant that appellant being innocent has been involved in this case falsely by the Customs Officials by foisting upon him the charas and vehicle; there is no independent witness to the incident and there is discrepancy with regard to the parcels secured and deposited with ware house incharge; the appellant has not been confronted with every circumstance appearing in evidence during course of his examination u/s 342 Cr.P.C and evidence of the PWs being doubtful in its character has been believed by learned trial Court without assigning cogent reasons. By contending so, he sought for acquittal of the appellant by extending him benefit of doubt. In support of his contention he has relied upon cases of *Subhanullah Vs. The State* (2022 SCMR 1052) and *Muhammad Aslam Vs. The State* (2011 SCMR 820).

3. Learned Special Prosecutor Custom and learned Assistant Attorney General, Pakistan by supporting the impugned judgment have sought for dismissal of instant Special Crl. Jail Appeal by contending that the prosecution has been able to prove its case against the appellant beyond shadow of doubt by leading cogent and reliable evidence. In support of their contention, they relied upon cases of *Liaquat Ali and others Vs. The State* (2022 SCMR 1097) and unreported order dated 28-10-2021 passed by Hon'ble Apex Court in *Crl. Appeal No. 46-P/2014 Re. Ajab Khan Vs. The State*.

4. Heard arguments and perused the record.

5. It is stated by complainant Inspector Manzoor Ahmed that on 16-08-2018 he was posted as Inspector at Anti-Smuggling Organization, Customs Office Sukkur; on the same date secret information was provided to him by the Collector Model Customs Collectorate Hyderabad that a foreign Narcotic was/is to be smuggled from Baluchistan through a Toyota Hilux Pickup having registration No. PAA-632; in consequence of such information the Collector Customs Hyderabad directed the Deputy Collector Customs Sukkur to keep an eye over the running traffic; whereupon

the Deputy Collector Customs (Preventive) Sukkur directed the Incharge Customs Anti-Smuggling Organization Sukkur to form a team for the purpose; consequently a team was formed consisting upon him and others, they left the Custom Office in Govt. vehicle bearing Registration No.GP-098 and detailed in their duty adjacent to Taj Petrol Pump Sukkur and started checking. At about 1130 am time, the pointed vehicle was found coming from Shikarpur side, it was signaled to stop; the driver was taken into custody; the vehicle was searched upon therein were found four cavities; three cavities were filled with packets of the charas while forth cavity was found empty. From first cavity were taken out 64 packets of charas, the second cavity was found empty, from third cavity were taken out 65 packets of charas and from fourth cavity were taken out 59 packets of the charas. In all 188 packets of charas were secured. Each packet of the charas was weighed to be one kilogram. Notice u/s 171 of the Customs Act, 1971 was served upon the appellant and then from each packet of charas was taken out 200 grams of charas for Chemical Examination; charas so secured and separated then were sealed at the spot; a memo of arrest and recovery was prepared; the appellant who disclosed him to be Shafique Ahmed and property so secured were taken to Customs Office Sukkur; the charas so secured was handed over to Inspector Shamim Ahmed incharge *State* ware house; a formal FIR of the incident was lodged on behalf of the *State* and further investigation of the case was conducted by Inspector Asif Ali. PW/mashir Sepoy Wajid Ali has supported the complainant on all material points. It was confirmed by Inspector Muhammad Shamim that the charas so secured was handed over to him by Inspector Manzoor Ahmed in shape of 14 cloth parcels consisting of 188 kilograms, which he seized under memo. It was stated by I.O/ Inspector Asif Ali that on investigation he recorded 161 Cr.P.C statements of the PWs; himself took the samples of charas to Chemical Examiner; ascertained the ownership of vehicle, which was found to be owned by Khan Muhammad the absconding accused and after usual investigation submitted the challan of the

case before the Court having jurisdiction. The complainant and his witnesses have stood by their version on all material points with regard to the arrest of the appellant and recovery of Charas and vehicle made from him, despite lengthy cross examination by learned counsel for the appellant; they could not be disbelieved only for the reason that they are Customs Officials and have not associated with them any independent person. The independent are oftenly found reluctant to extend help to the officials in case like the present one because of possible retaliation at the hands of accused involved therein. The complainant and his witnesses indeed were having no enmity or ill will with the appellant to have involved him in this case falsely by foisting upon him the huge quantity of the charas and a vehicle. The appellant during course of his examination under section 342 Cr.P.C has been confronted with all the material circumstances relating to the present case and nothing has been left which could have suggested that he has been prejudiced in his defence. The appellant has failed to examine anyone in his defence or himself on oath to prove his innocence; therefore, his simple plea that he has been involved in this case falsely by the Customs officials could be ignored as an afterthought. In these circumstances learned trial Court was right to conclude that the prosecution has been able to prove its case against the appellant beyond shadow of doubt by leading trustworthy and cogent evidence.

6. In case of *Zafar Vs. The State* (2008 SCMR-1254), it has been held by the Honourable Apex Court that;

*“---S. 9(c)---Evidence of police officials---
Competence---Police employees are competent
witnesses like any other independent witness
and their testimony cannot be discarded merely
on the ground that they are police employees”.*

7. In case of *Muhammad Noor and others Vs. The State* (2010 SCMR-927), it has been held by the Honourable Apex court that;

“The above section expressly cast a duty upon the Court to presume in a trial under the Act that the accused has committed the offence under the Act unless contrary is proved. If the case is of possession of narcotic drugs then first prosecution has to establish the fact that the narcotic drugs were secured from the possession of the accused then the Court is required to presume that the accused is guilty unless the accused proves that he was not in possession of such drugs. Therefore, it is necessary for the prosecution to establish that the accused has some direct relationship with the narcotic drugs or has otherwise dealt with it. If the prosecution proves the detention of the article or physical custody of it then the burden of proving that the accused was not knowingly in possession of the article is upon him. The practical difficulty of the prosecution to prove something within the exclusive knowledge of the accused must have made the Legislature think that if the onus is placed on the prosecution the object of the Act would be frustrated. It does not mean that the word ‘possess’ appearing in the section 6 of the Act does not connote conscious possession. Knowledge is an essential ingredient of the offence as the word “possess” connotes in the context of section 6 possession with knowledge. The Legislature could not have intended to mere physical custody without knowledge of an offence, therefore, the possession must be conscious possession. Nevertheless it is different thing to say that the prosecution should prove that the accused was knowingly in possession. It seems to us that by virtue of section 29, the prosecution has only to show by evidence that the accused has dealt with the narcotic substance or has physical custody of it or directly concerned with it, unless the accused proves by preponderance of probability that he did not knowingly or consciously possess the article. Without such proof the accused will be held guilty by virtue of section 29, Act 1997. Reliance is placed on cases of Inder Sain v. State of Punjab (AIR 1973 SC-2309)”

8. In case of *Kashif Amir Vs. The State* (PLD 2010 SC-1052), it has been held by the Honourable Court that;

“---S. 9(c)---Transportation of narcotics--- Driver of the vehicle to be responsible---Person on driving seat of the vehicle shall be held

responsible for transportation of the narcotics, having knowledge of the same, as no condition or qualification has been made in S.9(6) of the Control of Narcotics Substances Act, 1997, that the possession should be an exclusive one and can be joint one with two or more persons--- When a person is driving the vehicle, he is incharge of the same and it would be under his control and possession, hence whatever articles lying in it would be under his control and possession”.

9. The case law which is relied upon by learned counsel for the appellant is on distinguishable facts and circumstance. In case of *Subhnullah (supra)* the main reason for acquittal of the accused was that the prosecution has failed to establish safe custody of samples in *Malkhana*. In the instant case safe custody of the samples, the prosecution has been able to prove by examining the incharge of the Ware house. In case of *Muhammad Aslam (supra)* the main reason for the acquittal of the accused was that the sack of Narcotics substance was belonging to some other person, who slipped away. In the instant case none has slipped away.

10. In view of the facts and reasons discussed above, it is concluded safely that no illegality/irregularity or mis-reading or non-reading of evidence is noticed which may justify this Court to interfere with the impugned judgment.

11. In view of above instant Special Crl. Jail Appeal fails and it is dismissed accordingly.

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