

THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA.

Crl. Appeal No.D-07 of 2012.

PRESENT :

Naimtullah Phulpoto, J
Habib-u-Rehman Shaikh J.

Appellant Ghulam Mustafa @ Mushtaq Ali son of Allahdino by caste Sanjrani through Mr. Ghulam Ali A. Samtio, advocate.

Respondent :The State through Mr. Muhammad Yaqoob Dahani, advocate.

Date of hearing: 25.10.2012


J U D G M E N T .

Naimtullah Phulpoto, J- Appellant Ghulam Mustafa @ Mushtaq Ali son of Allahdino has been convicted and sentenced by learned Special Judge for CNS Larkana vide judgment dated 06.2.2012, whereby he was convicted and sentenced for an offence under section 9 (b) of the Control of Narcotic Substances Act, 1997 and was sentenced to suffer imprisonment for six months R.I and to pay fine of Rs.25,000/-, in case of default to suffer simple imprisonment for one and half month more. The appellant was extended benefit of section 382-B, Cr.P.C.

The case of prosecution as disclosed in the FIR is that on 22.4.2011, Inspector Mukhtiar Ahmed, SHO of Police Station Gereelo while patrolling along with other officials received information at Tharecha Bridge on Larkana-Gereelo road that one Ghulam Mustafa son of Allahdino, by caste Sanjrani was going to his village from Larkana with charas in his possession. On such information, he led the Police party and when reached near Dargah Mithal Shah, they saw one person coming along the gas pipeline, who on seeing them attempted to slip away. Where present accused was apprehended by the police party. Accused was found in suspicious manner. His personal search was conducted by the SHO in presence of other mashirs. During personal search, a shopper containing three pieces of charas was secured from the side pocket of his shirt, same were weighed and found to be 600 grams of charas. Out of them, 100 grams were taken as sample on the spot and sealed while the remaining charas was sealed separately.

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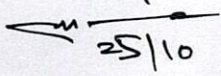
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The accused was arrested under a mashirnama attested by mashirs namely PC Ghulam Umer and HC Sanwal Khan and was brought to the Police Station where the case was registered under section 9(b), Control of Narcotic Substances Act, 1997. Copy of the FIR and case property and custody of accused were handed over to the Investigating Officer namely ASI Ghulamullah for conducting investigation. During investigation 161, Cr.P.C statement of P.Ws were recorded.

A formal charge against the accused was framed by the learned Special Judge, Larkana. Appellant pleaded not guilty and claimed to be tried. In order to prove its case, prosecution examined complainant Inspector Mukhtiar Ahmed at Ex-5, who produced attested copies of arrival and departure entries, mashirnama of arrest and recovery. Mashir HC Ghulam Umar was examined at Ex-6, who produced mashirnama of vardat at Ex-6-A. ASI Ghulamullah, Investigation Officer at Ex-7, who produced positive chemical report at Ex-7-A. Appellant/accused was examined under section 342, Cr.P.C, he denied the prosecution allegations and raised plea that he was called by SHO at Police Station for illegal gratification, he refused and present case was falsely lodged against him. On the conclusion of trial, accused was convicted and sentenced as stated above.

Mr. Ghulam Ali A. Samtio learned counsel for the appellant has mainly contended that there was delay of four days in sending charas to Chemical Examiner, as the alleged recovery was made on 22.4.2011 but the sample was received at Rohri laboratory on 26.4.2011 and for that there was absolutely no explanation with prosecution and the shopper in which the charas was found was also not shown as the case property. Learned counsel further contended that the case of prosecution is that three pieces were recovered from accused but he pointed out that the same were not separately weighed and though one piece was sealed as a sample and sent to Chemical Examiner but the report of the Chemical Examiner shows that in the sample packet five pieces were found in the parcel. He has also contended that the accused was arrested near Dargah/Tomb of Mithal Shah, where a large number of persons are always present during daytime, yet no private person was associated to attest the alleged recovery. He has also contended that there are material contradictions in the evidence of the complainant and mashirs and he has pointed out that complainant has stated that he used the scales of 500 grams and 100 grams in weighing the charas, while PW/Mashir Ghulam Umar has contradicted Inspector on above point. It is also argued that prior to this case, appellant was called by


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SHO at Police Station and demanded money, on refusal of accused, charas was foisted. He relied upon the case of Khalil Ahmed versus The State PLD 2008 Karachi 08 and Shafiullah versus The State 2007 YLR 3087.

Learned State Counsel has argued that evidence of police officials is as good as that of private persons. Delay in sending the charas to Chemical Examiner was not fatal to the prosecution. There was no evidence that there was any tampering with the case property. He has further submitted that at the time of recovery from the accused, the private persons were not available. Contradictions are minor in nature. He has supported the impugned judgment and prayed that the conviction awarded by the learned Special Judge may be maintained.

We have come to the conclusion that prosecution case is highly doubtful for the reasons that prosecution story appears to be unnatural and unbelievable and evidence of police officials does not inspire confidence. Appellant in his statement recorded under section 342, Cr.P.C has raised the specific plea that concerned SHO had called him at Police Station and demanded money, on the refusal charas was foisted upon him. In these circumstances, close scrutiny of prosecution evidence is required. From the scanning of the evidence of the complainant Inspector, it transpires that SHO had left Police Station vide Roaznamcha entry No.10 dated 22.4.2011 but such original entry has not been produced in the Court in order to satisfy that SHO along with his sub-ordinates had actually left on that date. It is the case of prosecution that appellant was arrested near Dargah Mithal Shah. It is the matter of the common knowledge that private persons are always present at Dargah during the daytime but there is nothing on record that any effort was made by SHO to call the independent and private persons to make them as mashir in this case. It is unbelievable that no private person was available according to the SHO and mashir, then question arises that to whom the appellant was selling charas when there was no body around the Dargah. Alleged charas was recovered from the possession of the accused as per SHO on 22.4.2011 but the same was sent to the Chemical Examiner at Rohri on 26.4.2011. Delay of four days in sending charas to the Chemical Examiner makes the entire prosecution case doubtful, particularly, in the circumstances when according to the prosecution case one piece of charas was sent to Chemical Examiner but in the report of Chemical Examiner, it is stated that he had received five pieces. Surprisingly, empty wrapper/plastic bag has also not been produced before the trial

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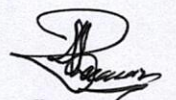
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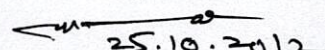
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Court. No doubt evidence of police officials is as good as that of any other person but in this case serious malafide has been alleged against the police officials. There is specific plea of the accused that he was called at Police Station by SHO where he demanded money from accused and on his refusal case was foisted upon him. In these circumstances, no reliance can be placed upon the evidence of the police officials without independent corroboration which is absolutely lacking in this case. Learned State Counsel has no reply to explain the material contradictions in the case of prosecution evidence. There are several circumstances in this case which create doubt in the prosecution case. Under the law a single circumstance throwing doubt in the prosecution case is sufficient to discard prosecution case. Apart from that, during investigation no solid material was collected against the appellant. I.O made absolutely no effort to collect any material regarding involvement of the accused in Narcotic cases. In this case investigation was nothing but only a formality.

It is high time for the Courts to ensure that proceedings of the recovery and seizure in the Narcotic cases are made in the most transparent and confidence inspiring manner so as to protect innocent citizens from the high handedness of the police and to save them from agony of uncalled for trials. Learned counsel has rightly relied upon the cases of Khalil Ahmed versus The State PLD 2008 Karachi 08 and Shafiullah versus The State 2007 YLR 3087. We have come to conclusion that prosecution case is highly doubtful, and extend benefit of doubt to accused.

The upshot of above discussion is that the appeal is allowed. Resultantly, impugned judgment recorded against the appellant/convict is set aside. He is present on bail, his bail bond stands cancelled and surety is hereby discharged.


Judge
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25.10.2012
Judge