

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Crl. Jail Appeal No. D- 23 of 2015.

Aalam Gul Pathan.

.....Appellant.

Versus

The State.

.....Respondent.

Mr. Shahzad Asghar Khan Rind, Advocate for appellant.

Mr. Khadim Hussain Khooharo, D.P.G.

Date of hearing: 20.12.2016.

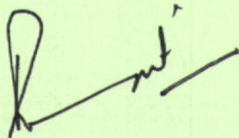
Date of Judgment: 20.12.2016.

J U D G M E N T

Zaffar Ahmed Rajput, J- This appeal is directed against judgment dated 19.06.2015, passed in CNS Case No.12/2015, arisen out of Crime No.02/2015 registered at Excise P.S Jacobabad, under Section 9 (c) of the Control of Narcotic Substance Act, 1997, whereby the learned Special Judge (CNS) Jacobabad convicted the appellant under Section 9 (c) of the Control of Narcotic Substance Act, 1997 and awarded him sentence to suffer R.I for ten years and to pay fine of Rs.100,000/-, in default of payment of fine to suffer S.I for six months.

2. As per the allegations, the appellant was found on 26.3.2015 in possession of five kilograms of charas in a bag, while travelling in a wagon bearing registration No.BMA-312 by Excise Inspector Muhammad Iqbal Arbani.

3. After completing investigation, the challan was submitted against appellant; thereafter formal charge was framed against him, to which he pleaded not guilty and claimed to be tried vide plea Ex.4-A.

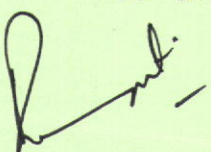




4. To substantiate the charge, the prosecution examined complainant Excise Inspector Muhammad Iqbal at Ex.5. He produced memo of arrest, memo of recovery, F.I.R and memo of venue of occurrence, chemical report and daily diary entries at Ex.5-A to 5-F respectively. Prosecution also produced mashir/ ED Rafique Ahmed at Ex.6. The statement of appellant was recorded under Section 342 Cr.P.C at Ex.8; wherein he denied the allegation of prosecution and pleaded to be innocent, however he did not examine himself on oath and also did not produced any witness in his defence.

5. On the assessment of the evidence, the learned trial Court convicted the appellant and awarded the sentence in terms mentioned above.

6. Learned counsel for appellant has mainly contended that the appellant is innocent and he was falsely implicated in this case by the complainant. He has further contended that the material witnesses i.e. the excise official who had weighed the case property at the spot and who had taken the case property to Chemical Expert have not been examined by the prosecution, which has rendered, the case of the prosecution against the appellant doubtful. He has also invited our attention towards the charge (Ex.2) and submitted that the charge has been framed against the appellant for possessing five grams charas only, hence he cannot be convicted for having possession of five kilograms charas. He has also submitted that only 500 grams charas from each parcel was separated as sample and total 2500 grams charas was sent for chemical analysis, hence appellant cannot be convicted on charge of five kilograms. In support of his contentions, he has relied upon case of *Akhtar Iqbal v. The State* (2015 SCMR 291),



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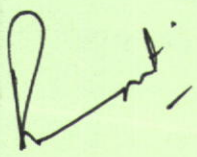
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Ikramullah and others v. The State (2015 SCMR 1002) and *Daulat Khan v. The State* (2007 SCMR 1437).

7. On the other hand learned D.P.G. has fully supported the impugned judgment. He has submitted that though only five grams charas is mentioned in the charge but this is due to typographical mistake and the same is curable under Section 537 Cr.P.C. He has invited our attention towards statement of accused (Ex.8), which shows that a specific question was asked to the appellant in respect of having in possession of five kilograms charas. Learned D.P.G. has further contended that the prosecution has examined two witnesses in support of its case and evidence of both the witnesses on the point of recovery of five kilograms charas from possession of the appellant with regard to time, place and quantity is consistent and there is no contradiction in the statement of the prosecution witness on any material point. He has also contended that it is prerogative of the prosecution to examine the witnesses amongst list of witnesses given in the charge-sheet. He has also contended that the case property was weighed in presence of both the witnesses who have been examined by the prosecution and the name of the excise official, who has taken case property to the Chemical Expert is mentioned in the chemical report, therefore, there is no necessity of their production before the trial Court for examination.

8. We have heard the learned counsel for the appellant and perused the material available on record.

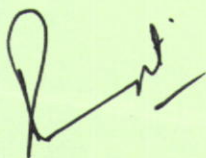
9. It has come on record in the shape of evidence of two prosecution witnesses namely, Excise Inspector Muhammad Iqbal Arbani and PW/Mashir E.D Rafique Ahmed that on the eventful day viz. 26.3.2015 at 04.30 p.m. during snap checking they alighted the

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accused alongwith a bag from a van bearing registration No.BMB-312 and on his personal search secured 400 rupees and on opening the bag, they found five packets of charas lying in it. They weighed the charas; each packet became one kilogram, total five kilograms. They separated 500 grams charas from each packet, total 2500 grams for chemical analysis, wrapped in white colored cloth and sealed the same. The remaining 2500 grams of charas were also put in black colored bag and sealed separately. Such memo of arrest and recovery was prepared on the spot in presence of mashirs. The accused alongwith property was brought at police station and case was registered accordingly. Record reveals that the alleged recovery of charas was effected on 26.3.2015 and the property was sent to Chemical Examiner on very next day i.e. 27.3.2015 through letter of Excise Inspector by the hand of Excise Inspector Muhammad Aslam, hence there is no delay in sending the case property to Chemical Examiner. As regard the contention of learned counsel for appellant for non production of police constable who had weighed the case property on the spot and one, who had deposited the case property with the Chemical Examiner, it is sufficient to mention here that the case property was weighed in presence of complainant and mashir, who have been produced by the prosecution in evidence their evidence on this point is consistent; so also the name of the excise constable who had deposited the case property with the Chemical Examiner is also mentioned in the chemical report. The counsel for the appellant failed to point out any provision of law under which production of the said officials as witness is mandatory.

10. For the foregoing reasons we found the impugned judgment a well reasoned judgment, which requires no interference as far as declaration of the appellant as guilty is concerned. However, we have noticed that the appellant has been sentenced to suffer R.I for ten years with fine of Rs.100,000/-, for having in possession of five kilograms of charas, which is not as per sentencing policy provided in the case of *Ghulam Murtaza and another v. The State (PLD 2009 Lahore 362)*, as the quantum of punishment provided in the said



judgment for the charas exceeding four kilograms and upto five kilograms is R.I for seven years and six months and fine of Rs.35,000/- or in default S.I for six months and fifteen days. We therefore, while dismissing the instant appeal maintain the judgment of the trial Court with modification in sentence of the appellant to R.I for seven years and six months with fine of Rs.35,000/- and in default thereof S.I for six months and fifteen days.

[Signature]
20/12/2016
JUDGE

M. Mahas
JUDGE

Ansari*