

JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Criminal Appeal No.D-14 of 2020

Date of hearing	Order with signature of Judge
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For hearing of main case.

Present:

Mr. Justice Muhammad Junaid Ghaffar
Mr. Justice Irshad Ali Shah

Date of hearing: 16.09.2020

Date of decision: 16.09.2020.

Mr.Asif Ali Abdul Razzak Soomro, Advocate for appellent.
Mr. Abdul Rasheed Abro, D.A.G for the State alongwith
Customs Inspector Shah Muhammad.

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IRSHAD ALI SHAH, J.- The facts in brief necessary for disposal of instant criminal appeal are that the police party of P.S Custom Sukkur, on advance information hold a "Nakabandi" at Indus Highway adjacent to Khanpur City, District Shikarpur, there they found coming a Car, it jumped the signal and was chased and the person sitting therein made his escape good leaving the Car behind by taking advantage of nearby village. On search from secrete cavities of Car, were secured 196 packets of Charas, each was weighed to be 01 K.G making total of 196 K.Gs, for that the FIR was lodged on behalf of the State by Custom Inspector Rahib Ali Abro, for the offence detailed below;

(i) Section 2(s) and Section 16 of Customs Act, 1969, read with SRO 566(1)/2005 dated 06.06.2005, punishable under Section 156(1) (89) and Section 157(2) of the Custom Act,1969,

(ii) Section 6, 7, 22 of Control of Narcotics Substances Act, 1997. Punishable under Section 9 (c) of Control of Narcotics Substance Act, 1997.

2. On conclusion of investigation, the challan of the case was submitted by Customs police before learned Civil Judge & J.M-VII, Shikarpur, who took the cognizance whereof in term of Section 190 (1) Cr.PC and then sent up the same in term of Section 190 (2) Cr.PC to learned Sessions Judge/Special Judge (CNS) Shikarpur for its trial in accordance with law.

3. The learned Sessions Judge/Special Judge (CNS) Shikarpur took the cognizance of the case in term of Section 193 (1) Cr.PC and then proceeded to record evidence of complainant Inspector Rahib Ali, PW/Mashir Sipahi Shabir Ahmed and PW Inspector/I.O Mehfooz Rehman under section 512 Cr.PC. In the meanwhile, the appellant joined the trial, denied the charge, and then was provided a chance to cross examine the witnesses already examined under section 512 Cr.PC, in his absence, which chance he availed, consequently, the prosecution after examining Customs Inspector Shah Muhammad Incharge of State Warehouse Sukkur closed its side.

4. In the meanwhile, case was transferred to the Court of learned 1st Additional Sessions Judge/MCTC, Shikarpur. The statement of the appellant u/s. 342 Cr.PC was recorded, wherein he

denied the prosecution's allegation by pleading innocence. He did not examine anyone in his defence or himself on oath.

5. On conclusion of trial, the learned 1st Additional Sessions Judge/MCTC, Shikarpur, found the appellant guilty for an offence punishable under section 9 (c) of the CNS, Act 1997 and convicted and sentenced him to undergo rigorous imprisonment for eight years and six months with fine of Rs.40,000/- and in case of default whereof to undergo simple imprisonment for seven months with benefit of Section 382-B Cr.PC, vide its judgment dated 29.01.2020, which is impugned by the appellant before this Court by preferring the instant criminal appeal.

6. There is nothing in record which may suggest that under what circumstances, the cognizance of penal section relating to Customs Act, 1969 was taken by the Courts below, which appears to be significant. On arrest, the appellant was charged only for the offence punishable under CNS Act, 1997. Again no justification was advanced by learned Sessions Judge/Special Judge (CNS) Shikarpur, as to why the penal sections relating to violation of Customs Act, 1969, have been dropped. Be that as it may, the appellant was provided a chance to cross examine the witnesses already examined under section 512 Cr.PC. It was contrary to the mandate contained by Section 353 Cr.PC, which prescribes that the evidence shall be taken in presence of accused. By not following the prescribed

procedure by learned Sessions Judge/Special Judge (CNS) Shikarpur, the appellant was prejudiced in his defence seriously, which is against the mandate contained by *Article 10 (A) of the Constitution of Islamic Republic of Pakistan, 1973*, which guarantees the right of fair trial for determination of criminal and civil obligation to every citizen.

7. Learned counsel for the appellant and learned D.A.G for the State, when were confronted with the above legal position, were fair enough to consent for remand of the case to learned trial Court for its *denovo* trial in accordance with law, after determining its jurisdiction.

8. In view of above, the impugned judgment is set aside with direction to learned trial Court to determine its jurisdiction first after providing chance of hearing to all the concerned and then to proceed with the case afresh *denovo* in accordance with law.

9. The appellant has already suffered the agony of protracted trial, therefore, it would meet the ends of justice, if he is released on bail subject to his furnishing surety in sum of Rs.200,000/- and P.R bond in the like amount to the satisfaction of learned trial Court. It is ordered accordingly.

10. The instant criminal appeal is disposed of accordingly.


JUDGE


JUDGE