

Order Sheet

IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD

Cr. Appeal No. D- 145 of 2019

DATE	ORDER WITH SIGNATURE OF JUDGE
18.09.2019	

For hearing of MA 6780/19

Mr. Zaman Zanur, advocate for appellant
Mr. Nazar Muhammad, Addl. P.G.

Appellant was arrested on 14.10.2017 at about 1330 hours on spy information by police party of police station Tando Jam headed by SIP Siraj Ahmed Shaikh from a Coaster at Workshop Bus stop situated at Hyderabad Mirpurkhas main road and from her possession a black plastic bag containing two pieces of charas weighing 1050 grams was recovered. Necessary documentation was done at the spot and she was brought at police station along with recovered property where FIR in the present case was registered against her.

In the trial a formal charge was framed against appellant which she denied and consequently prosecution examined as many as four witnesses who produced all the necessary documents including FIR, Report of Chemical Examiner, etc. Her Statement under Section 342 Cr.P.C. was recorded in which she has denied the prosecution case against her. Finally by means of impugned judgment she has been convicted to suffer R.I for four (04) years and to pay fine of Rs.20,000/- and in case of failure to suffer S.I for 01 month more. Benefit of Section 382-B Cr.P.C. has, however, been extended to her.

Today an application (MA No. 6780 of 2019) under Section 426 Cr.P.C., is fixed for hearing. However, with the consent of learned defence counsel as well as A.P.G. we have taken up the main appeal and heard it because the R&Ps is available. We with the assistance of learned counsel have gone through the evidence and have seen that on few material points the witnesses have contradicted each other. Although the prosecution case is that from appellant a black shopper in which charas was available was recovered and so is reflected from the

report of chemical examiner and evidence of other witnesses but in cross examination P.W Rubeena who had conducted search of the appellant has stated that a white colour shopper was recovered from her. The complainant has stated that he had weighed the charas through manual scale, whereas mashir P.W-3 namely Anmb in his cross examination has stated that the charas was weighed through electronic scale. Further we have noted that private person namely Muhammad Idrees was made witness of arrest and recovery from the appellant but no effort was made by the prosecution to bring this independent witness in court for his evidence to support its case. The incident took place on 14.10.2017 and chemical report shows that the property was received there on 16.10.2017 but there is no record to show that at what place of police station the property for those two days was kept. PC Sajjad who is shown to have taken the property to the Chemical Examiner has not been examined by the prosecution to establish its safe custody and safe transportation to the Chemical Examiner.

In these circumstances, we are of the view that the case against the appellant is not free from doubt. Consequently while extending benefit of doubt to the appellant, we allow this appeal and acquit the appellant of the charge she shall be released forthwith if not required in any other custody case.

The appeal is disposed of accordingly.

JUDGE

JUDGE