

ORDER SHEET
**IN THE HIGH COURT OF SINDH,
CIRCUIT COURT, HYDERABAD.**

Cr. Appeal No.D-26 of 2023

DATE ORDER WITH SIGNATURE OF JUDGE(s)

25.04.2024.

Mr. Mian Mumtaz Rabbani, Advocate for appellant.

Mr. Nazar Muhammad Memon, Addl. Prosecutor General, Sindh.

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We have heard the learned counsel for the appellant and the learned
A.P.G. Reserved for judgment.


JUDGE


JUDGE

Hafiz Fahad

**HIGH COURT OF SINDH, CIRCUIT COURT
HYDERABAD**

Cr. Appeal No.D-26 of 2023

[Kaleemullah versus The State]

Before:

MR. JUSTICE MUHAMMAD KARIM KHAN AGHA

MR. JUSTICE OMAR SIAL

Appellant : Through Mian Mumtaz Rabbani advocate

The State : Through Mr. Nazar Muhammad Memon
Additional Prosecutor General Sindh

Date of hearing : 25.04.2024

Date of decision : 08.05.2024

J U D G M E N T

MUHAMMAD KARIM KHAN AGHA, J.- Appellant has challenged the Judgment dated 02.03.2023 passed by the learned IIIrd Additional Sessions Judge/Special Judge Control of Narcotics Substances Hyderabad in Special Case No.193 of 2022 (*Re: The State versus Kaleemullah*), outcome of Crime No.225 of 2022 registered at P.S Qasimabad Hyderabad under Section 9-C of CNS Act 1997, whereby he has been convicted and sentenced under Section 6/9(1) 3(c) of CNS Amended Act 2022 to suffer rigorous imprisonment for nine (09) years with further directions to pay Rs.80,000/- as fine and in case of non-payment of fine he has to further suffer S.I for two years, however benefit of Section 382-B Cr. P.C has been extended to him.

2. The brief facts of the prosecution case, as per FIR lodged by complainant SIP Ayaz Hayat Baladi, are that on 29.08.2022 he left the Police Station under entry No.31 at 1925 hours for patrolling duty alongwith his subordinates; that they were conducting snap checking at Zardari Mor during which at about 2100 hours he saw a motorcyclist coming towards them, who on seeing the police party

attempted to escape away by turning his motorcycle but he was apprehended on suspicion; that the said person disclosed his name as Kaleemullah S/o Hidaytullah by caste Hoat Baloch resident of Goth Manthar Shoro Qasimabad Hyderabad; that a black shopper was lying on the handle of said motorcycle, which was taken into custody and on checking seven pieces of Charas were found in said shopper; that the said Charas was weighed which became 2500 grams; that four currency notes of one hundred rupees were also recovered from apprehended accused; that recovered charas was sealed at the spot in presence of mashirs H.C. Ali Ahmed and PC Khamiso Khan, then the accused and case property were brought at Police Station and subject FIR was lodged on behalf of the State.

3. After usual investigation police submitted the challan before the Court concerned and after completing necessary formalities, learned trial Court framed the charge against the appellant, to which he pleaded not guilty and claimed trial.

4. In order to prove its case the prosecution examined three (03) witnesses, who exhibited numerous documents and other items. Then statement of accused under Section 342 Cr.P.C was recorded whereby he denied the allegations leveled against him and claimed his false implication on political basis. However, he neither examined himself on Oath nor led any evidence in his defense.

5. After hearing the parties and appreciating the evidence on record the trial Court convicted and sentenced the appellant as stated in the opening paragraph of this Judgment, hence the appellant has preferred this Jail Appeal against his conviction.

6. Learned counsel for the appellant has contended that the appellant is innocent and has falsely been implicated in this case; that appellant has been implicated in this false case on political basis since he belongs to PTI; that there are material contradictions in the evidence of prosecution witnesses but same have been ignored by the trial Court; that complainant himself investigated the matter and it is well settled law that no one can be judge of his own cause; that

no private person was associated as mashir; and that for all or any of the above reasons he be acquitted of the charge. In support of his contentions he placed reliance on the cases of (i) NAZAR MUHAMMAD alias NAZROO vs. The STATE [2018 YLR 1992], (ii) The STATE vs. WARIS KHAN [2016 MLD 920] and (iii) NAZEER AHMED vs. The STATE [PLD 2009 Karachi 191].

7. Learned Additional Prosecutor General Sindh supported the impugned judgment by arguing that accused was arrested at the spot with large quantity of contraband; there are no material contradictions in the evidence of prosecution witnesses who despite lengthy cross-examination remained consistent; that safe custody and safe transmission of the contraband had been proven and as such the prosecution had proved its case against the appellant beyond a reasonable doubt and the appeal be dismissed. In support of his contentions he relied upon the case of LIAQUAT ALI and another vs. The STATE [2022 SCMR 1097].

8. We have considered the submissions of the parties, perused the material available on record and considered the relevant law.

9. After our reassessment of the evidence we find that the prosecution has proved its case beyond a reasonable doubt against the appellant for the following reasons:-

- (a) That the FIR was lodged with promptitude giving no time for concoction and the S.161 Cr.PC statements of the witnesses were also recorded promptly which were not significantly improved upon by any PW at the time of giving evidence.
- (b) That the accused was apprehended on the spot riding his motor bike. The recovery of the narcotics was made from the motor bike on the spot and as such the **appellant was caught red handed with the narcotics** on the spot by the police whose evidence fully corroborates each other in all material respects as well as the prosecution case. It is well settled by now that the evidence of a police witness is as reliable as any other witness provided that no enmity exists between them and the accused and in this case no enmity was even suggested by the accused against any of the PW's. Thus we believe the police evidence which is

corroborative in all material respects. Reliance in this respect is placed on the case of **Mustaq Ahmed V The State** (2020 SCMR 474)

- (c) That there are no material contradictions in the evidence of the PW's and it is well settled by now that minor contradictions which do not effect the materiality of the evidence can be ignored. In this respect reliance is placed on **Zakir Khan V State** (1995 SCMR 1793).
- (d) **Most significantly** the narcotics were recovered from appellant whilst he was on his motorbike which he was driving **thus there is no doubt that the appellant had actual knowledge** of the narcotics which were being transported. In this respect in the similar case of **Nadir Khan V State** (1998 SCMR 1899).
- (e) Furthermore, Under Section 29 CNSA 1997 once the recovery has been proven as in this case the onus shifts to the accused to show his innocence in that at least he had no knowledge of the narcotics. The appellant has not been able to do this in this case. In this respect reliance is placed on the case of **Mehboob-Ur-Rehman V State** (2010 MLD 481).
- (f) That it would be extremely difficult to foist such a large amount of charas as mentioned in **Mustaq Ahmed's** case (Supra) and **The State V Abdali Shah** (2009 SCMR 291).
- (g) That there was no delay in sending the chemical report for analysis which turned out to be positive with the requisite protocols being followed.
- (h) That the recovered narcotics were kept in safe custody from the time of their recovery to the time when they were taken for chemical analysis and no suggestion of tampering with the same has even been made. The narcotics were sealed on the spot, remained sealed in the malkhana before being transported to the chemical examiner in a sealed condition as per the chemical report and the witnesses.
- (i) That although no independent mashir was associated with the arrest and recovery of the appellant and narcotics S.103 Cr.P.C is excluded for offenses falling under the Control of Narcotic Substances Act 1997 by virtue of Section 25 of that Act. In this respect reliance is placed on the case of **Muhammad Hanif V The State** (2003 SCMR 1237). Even otherwise it was held in **Ibrar Ullah v The State** (2021 SCMR 128), that due to public apathy most citizens are not prepared to act as independent mashirs in such like cases.

- (j) That in dealing with narcotics cases the courts are supposed to adopt a dynamic approach and not acquit the accused on technicalities. In this respect reliance is placed on **Ghualm Qadir V The State** (PLD 2006 SC 61).
- (k) It is also settled by now that there is no bar against the complainant also being the IO.
- (l) No doubt it is for the prosecution to prove its case against the accused beyond a reasonable doubt but we have also considered the defense case which is one of false implication simpliciter. That the appellant did not give evidence on oath or call any DW to rebut the prosecution case in the face of overwhelming prosecution evidence as discussed above we disbelieve the defence case of false implication.

10. Thus, for the reasons mentioned above, we find that the prosecution has proved its case beyond a reasonable doubt against the appellant and as such his conviction and sentences in the impugned judgment are upheld and his appeal is **dismissed**.

Hafiz Falad