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**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT**

Crl. Appeal No.51188 of 2022

(Shuja-ul-Haq Malik vs The State etc.)

JUDGMENT

Date of hearing: 09.01.2023.

Appellant by: M/s Muhammad Ahsan Bhoon and Muhammad Imran Sulehria, Advocates.

State by: Malik Muhammad Irfan, Special Prosecutor for ANF.

Aalia Neelum, J.- Shuja-ul-Haq Malik, son of Abdul Habib Malik, Caste Malik, resident of House No.16-B, Badar street, New Abadi, Garrhi Shahu, District Lahore, the appellant was involved in case F.I.R. No.79-2021, dated 25.08.2021, offence under Section 9 (C) of The Control of Narcotic Substances Act, 1997 and offence under Sections 420, 468, 471 PPC, registered at Police Station, A.N.F Lahore and was tried by the learned Judge Special Court (CNS), Lahore. The learned trial court seized with the matter in terms of the judgment dated 21.07.2022 convicted the appellant under Section 9 (C) of The Control of Narcotic Substances Act, 1997, and sentenced him to undergo **imprisonment for life/25 Years R.I** with the direction to pay Rs.1,00,000/- as fine and in case of default in payment of fine, the appellant would further undergo simple imprisonment for three months. The benefit of Sections 382-B was also extended in favor of the appellant. The appellant was acquitted of the charge under Sections 420, 468 & 471 PPC.

2. Being aggrieved by the judgment of the learned trial court, the appellant, Shuja-ul-Haq Malik, has assailed his conviction and sentence by filing above referred criminal appeal.

3. The prosecution story, as alleged in the F.I.R. (Ex. PA) lodged on the written complaint (Ex.PA/1) of Muhammad Usman Ayub, S.I (PW-3)-the complainant is that on 25.08.2021, the high-ups of A.N.F received a secret information that international smuggler, Tanveer Irshad had secretly concealed heroin in the cloth consignment, AWB number 235-2185-4302 in the name of Awais Fancy embroidery through A.S Global Logistic network (Pvt) Limited, Lahore while using the way air cargo Turkish Airline, AIIAP, Lahore booked for U.K, which was lying at Jerry Danta Cargo shed, AIIAP, Lahore and if a raid was conducted, the accused could have been apprehended after that, a raiding team consisted of the complainant (PW-3) and other officials of A.N.F was constituted. While riding on the official vehicles, the raiding team reached New Jerry Cargo Shed AIIAP, Lahore, where the said consignment of cloth airway bill number 235-2185-4302 was lying, which consisted of 118 boxes and a person who was standing near the consignment disclosed his name as Umer Daraz. The said person, Umer Daraz, told the raiding team that Tanveer Irshad is the owner of said consignment and said consignment was sent for clearance through him by the accused, Shuja-ul-Haq Malik, Chief Executive Officer of AS Global Logistic Network (Pvt) Ltd, Lahore. Upon checking 118 cartons, from six cartons No.41,50,51,58,60 and 65, one packet of heroin from each carton weighing 3.673 kilograms, total heroin weighing 22.038 Kilograms was recovered from the said cartons. The recovered substance was taken into possession by the complainant (PW-3) vide recovery memo (Ex. PB) after embossing a seal of U.A. Out of the recovered substance, a sample of 10 grams of heroin from each packet was separated for narcotic analysis. After that, the complainant (PW-3) drafted a complaint (Ex.PA/1) and sent the same to the police station for registration of formal F.I.R (Ex. PA).

4. After hearing the arguments advanced by the learned counsel appearing on both sides, the learned trial court, while evaluating the evidence available on record, found the version of the prosecution as correct beyond any shadow of a doubt, which resulted in the conviction of the appellant in the above-stated terms.

5. We have heard the arguments advanced by the learned counsel for the appellant and the learned Special Prosecutor for ANF and have minutely perused the record on the file.

6. After scrutiny of the material available on record, we conclude that the prosecution has failed to establish that the appellant associated, facilitated, and abetted in booking parcels by using fake documents (edited I.D. card of one, namely Tanveer Irshad) vide airway bill No.235-2185-4302 for the U.K from New Jerry Denata Cargo Shed, Allama Iqbal International Airport, Lahore. The raid was conducted by Muhammad Usman Ayub S.I. (PW-3)-the complainant and he (PW-3) took in possession 118 cartons, and from six cartons No. 41, 50, 51, 58, 60 and 65, one packet of heroin from each carton weighing 3.673 kilograms, total heroin weighing 22.038 Kilograms was recovered. There are severe discrepancies in the evidence of the prosecution. Muhammad Usman Ayub S.I. (PW-3)-the complainant-the investigating officer, deposed during his court statement that, on 25.08.2021, their high-ups received the information through spy sources about international drug smuggler Tanveer Irshad resident of Lahore. A person standing near the consignment was the clearing agent of AS Global Logistics Pvt. Ltd and disclosed his name as Umar Ijaz (PW-5). He informed him (PW-5) that the consignment belongs to Tanveer Irshad, son of Irshad Hussain, resident of Khanyki Jhugian post office, Rangeel Pur Lahore. The said 118 cartons were checked. As per the invoice, cartons numbers 1 to 32, 75 to 118 were comprised of ladies' suits of multi colors, while carton Nos.33 to 74, i.e., 42 cartons in which 1/1 fabric than of multi colors was found. All the cartons were checked minutely, and six cartons of fabrics than of Khaki color bearing Nos.41, 50, 51, 58, 60, and 65 were found suspicious. While opening the thaans, which were in the above said six cartons, 1/1 packet of heroin wrapped in polythene concealed secretly in the middle of the cloth of each than was recovered. At the same time, Shuja ul Haq Malik C.E.O of A.S. Global Logistic Network Pvt. Ltd. (the appellant), reached the place of recovery. He (the appellant) also provided the same information that Umar Ijaz (PW-5) provided to him (the complainant). Muhammad Usman Ayub S.I.

(PW-3)-the complainant-the investigating officer deposed during examination-in-chief as under: -

“On disclosure of Shuja ul Haq Malik dated 27.08.2021 I alongwith Shuja ul Haq Malik went to the shop located at Anarkali Bazar Muskan Fabrics which was disclosed by Tanveer Irshad and met with Hamza Shahid there, on asking, he disclosed his name Hamza Shahid s/o Shahid Sajjad resident of Rajgarh Lahore and disclosed himself as an owner of said shop Muskan Fabrics Muqadas Plaza new Anarkali Lahore. He further disclosed that he is running this shop for the last ¾ year, and on asking about the Tanveer Irshad, he disclosed that Tanveer Irshad is one of his customer, who came/visited first time at his shop 8/9 month before, he asked/inquired about the rates of the cloth and said that he will purchase the fabric in bulk so, I offered him best rates and he purchased one roll/THAAN of fabric. And said that he is purchasing this fabric as a sample and if it is found suitable then he will purchase huge quantity of fabrics. Shop owner Hamza Shahid further disclosed that Tanveer Irshad was used to place order regarding the articles/fabrics through whatsapp number 0307-9594276. On 21.08.2021, Tanveer Irshad asked about the placed order through his whatsapp number then it was replied to him that his order of fabrics is ready and he can take it on 23.08.2021. on 23.08.2021 Tanveer Irshad came on Auto Rickshaw at about 12:00/01:00 P.M (day), 06/six Thaans/cartons were already loaded in the rickshaw which he placed at my shop and requested that he is in hurry so he is going to load articles/36 thaans of fabrics along with this 06 thaans/fabrics and then he shall load them in the pickup/vehicle of representator of AS Global Logistic company thereafter Tanveer Irshad made complete payment in cash and went away. On arrival of pickup from the office of AS Global Logistic Company 42 carton of fabrics (36 purchased from my shop and 06/six brought by Tanveer Irshad on rickshaw) were loaded in the said van as per instructions of Tanveer Irshad.

During cross-examination, Muhammad Usman Ayub S.I. (PW-3)-the complainant-the investigating officer deposed as under: -

*“No narcotic was recovered from the personal search, on the pointation of the accused or on the disclosure of the accused. PW volunteered that narcotics was recovered from the consignment and accused was present at airport at relevant time. It is correct that company of the Shuja ul Haq Malik was not the owner of the consignment but his company was only dealing with the forwarding of the consignment. It is correct that as per my investigation Shuja ul Haq Malik was not aware from the fact of the presence of narcotics in the consignment. As per my investigation the company of the accused has no previous criminal record. ----
----- It is correct that the thaans of fabric from which the narcotics was recovered, transported/loaded from the shop of Hamza Shahid (Muskan Fabrics Anarkali) to the office of AS Global Logistic Network Pvt. Ltd for further forwarding the same. It is correct that as per statement of Hamza Shahid said 06/six Thaans/rolls were delivered at the shop of Hamza Shahid by Tanveer Irshad.” (Underline for emphasis)*

In the similar manner, Muhammad Sohail/C (PW-4)-the recovery witness deposed in his examination-in-chief. During cross-examination, Muhammad Sohail/C (PW-4) deposed as under: -

“It is correct that the accused Shuja ul Haq Malik helped out the I.O to trace the actual culprit of this case during investigation. It is correct that accused Shuja ul Haq Malik submitted the documents related to the accused Tanveer Irshad to Muhammad Usman Ayyub/S.I (I.O of this case). It is correct that accused Shuja ul Haq Malik submitted a DVD of conversation (recorded on whatsapp) between the accused Shuja ul Haq Malik and Tanveer Irshad and also submitted the previous GDs of the consignment related to Tanveer Irshad. It is correct that accused Shuja ul Haq Malik on call appeared at AIIAP at the place of occurrence.”

Admittedly, the prosecution witnesses, i.e., Muhammad Usman Ayub S.I. (PW-3)-the complainant-the investigating officer, and Muhammad Sohail/C (PW-4), made a statement revealing that during the investigation, no

connection of the appellant was found with Tanveer Irshad or he was aware of the presence of any narcotics substance concealed in the consignment. These witnesses have not supported the prosecution version. Admittedly, in the presence of the Prosecutor for ANF, the statements of the witnesses, i.e., Muhammad Usman Ayub S.I. (PW-3)-the complainant-the investigating officer, and Muhammad Sohail/C (PW-4), were recorded, and these witnesses were not declared hostile by the learned trial court. Section 150 of Qanun-e-Shahadat Order, 1984 does not in terms or by necessary implication confine the exercise of the power by the Court to any particular stage of the examination of the witness to permit the person who calls a witness to put any question to him which might be put in cross-examination by the adverse party. It is wide in scope, and the discretion is entirely left to the Court to exercise power when the circumstances demand. To confine this power to the stage of examination-in-chief is to make it ineffective in practice. Muhammad Usman Ayub S.I. (PW-3)-the complainant-the investigating officer in his examination-in-chief, also stated that Hamza Shahid (PW-8) disclosed himself as an owner of Muskan Fabrics and said that Tanveer Irshad was one of his customers, who came/visited first time at his shop 8/9 month before, he asked/inquired about the rates of the cloth and said that he would purchase the fabric in bulk so, I offered him best rates. He bought one roll/THAAN of fabric. Tanveer Irshad came by Auto Rickshaw at about 12:00/01:00 P.M (day); 06/six Thaan/cartons were already loaded in the rickshaw, which he placed at my shop and requested that he was in hurry so he was going to load articles/36 thaans of fabrics along with this 06 thaans/fabrics and then he would load them in the pickup/vehicle of representator of AS Global Logistic company thereafter Tanveer Irshad made complete payment in cash and went away. The flow of the examination-in-chief reveals that during the investigation, the appellant cooperates with the investigating agency, and one Tanveer Irshad (Fake name) brought 06 thaans/fabrics, which were loaded in the pickup/vehicle of a representative of AS Global Logistic company and Tanveer Irshad made complete payment in cash and went away. Hamza Shahid (PW-8) also deposed similarly. A smart witness in his examination-

in-chief faithfully conforms to what he stated earlier to the police, but in the cross-examination, he introduces statements contradicting what he said in the examination-in-chief. In the instant case, the evidence against the appellant remains the same. We observed that the prosecution witnesses deposed similar about the appellant's role, which was found during the investigation. Otherwise, if the prosecution witness's design was obvious, we do not see why the trial court cannot, during the course of the prosecution witness's cross-examination, permit the person calling him/them as a witness/witnesses to put questions to him/them which might be put cross-examination by the adverse party. In the course of cross-examination, when favorable answers had been elicited, the same would be considered by the learned trial court while passing the final judgment. The learned trial court, while passing the judgment, whereby conviction and sentence of the appellant were recorded, has not considered the above evidence of the prosecution witnesses. In addition, Umar Ijaz (PW-5), clearing agent AIIAP, Lahore, deposed during cross-examination, **"It is correct that I received the complete documents related to the consignment. I was not advised by anyone to jump over any step in the clearing procedure. The consignment was a console consignment, which comprised upon the articles related to the different parties."** Ghulam Nabi (PW-6)-the owner of Awais Fancy embroidery, Lahore, through his examination in chief stated that E-Form numbers MBL2021-56615, MBL2021-56620, MBL2021-56617, which were attached with the consignment, were not in his knowledge and he had no concern with them. He has no article in the said consignment, and by taking summersault, he (PW-6) stated that the appellant used his documents without permission. During cross-examination, he (PW-6) deposed that, **"In routine the documents for clearing any consignment are usually signed by my staff/employees. Whenever it is requested by AS Global Logistic Network (Pvt) Ltd, I sent my relevant employee to sign the document for further proceedings in respective export of consignment."** He (PW-6) admitted that in so many times in the export issues, he handed over all the documents in advance for clearance purposes. Whenever AS Global Logistic Network

requested for issuance of any E-Form for authority, the appellant, before using the password of Weboc, sent/CC to me via email a letter of request along with relevant documents. The admission of Ghulam Nabi (PW-6) that any E-Form for authority cannot be used or downloaded without a password reveals that the witness (PW-6) gave his password to the appellant for using the same. It is admitted fact that during the investigation, the investigating officer has not sent the relevant documents, i.e., E-Form numbers MBL2021-56615, MBL2021-56620, MBL2021-56617 for comparison with the signatures of Ghulam Nabi (PW-6) to connect the appellant for preparing forged and fictitious documents. On the other hand, the owner of Muskan Fabrics, i.e., Hamza Shahid (PW-8), deposed during cross-examination that, **“I did not prepare any separate inventory for the six thaans which were not purchased from my shop. It is correct that I did not mark the 6 thaans which were not purchased from my shop. It is correct that a common person cannot get separate the 6 thaans from the rest of 36 thaans which were purchased from my shop. It is correct that previously I dispatched different articles on behalf of the Tanveer Irshad in the past. PW volunteered that in the previous situation he was used to purchase cloth but not ever off loaded his articles from the wagon at my shop. It is incorrect to suggest that my volunteered statement is false and afterthought. The CCTV footage viewed by the ANF officials was not showing the presence of Tanveer Irshad. The registration of rickshaw number was also not reflected on that footage. The thaans were off loaded by my servant from the rickshaw. It is correct that I did not show any piece of evidence before the ANF official to the effect that 6 thaans were delivered by someone else at my shop. It is correct that I signed the delivery of 42 thaans from my shop when a person of Global Courier Service arrived at my shop. PW volunteered that 36 thaans were purchased from my shop while the 6 were placed on my shop by Tanveer Irshad.”** In the present case, the prosecution has badly failed to establish that the appellant associated, facilitated, and abetted in booking parcels by using fake documents (edited I.D. card of one, namely Tanveer Irshad) vide airway

bill No.235-2185-4302 for the U.K from New Jerry Denata Cargo Shed, Allama Iqbal International Airport, Lahore. But despite the same, the learned Judge recorded findings holding the appellant guilty for the offense charged with placing strong reliance on the perception. The method adopted by the learned Judge is not in conformity with the settled principles of burden in proof of criminal jurisdiction. Hence, this court has no hesitation in holding that the findings recorded by the learned Judge suffer from legal infirmity and are liable to be set aside in the light of the evidence available on the record, especially the admission made by the PW-3 the investigating officer that the appellant was not aware of the presence of the narcotics substance in the consignment. In the instant matter, the prosecution did not choose to assail the appellant's acquittal from the charge under Sections 420, 468, and 471 PPC. There is no acceptable evidence before the Court. Hence, the prosecution miserably failed to establish the appellant's guilt under section 9-C of The Control of Narcotic Substances Act, 1997; accordingly, the appellant deserves to be given the benefit of the doubt, and findings in this regard are required to be set aside, and the same are set aside.

7. Given the above, instant appeal bearing Crl. Appeal No.51188 of 2022 is **accepted**, and Shuja ul Haq Malik, the appellant, is ordered to be **acquitted** of the charge in case FIR No.79 of 2021, dated 25.08.2021, offence under Section 9 (C) of The Control of Narcotic Substances Act, 1997 and offenses under Sections 420, 468, 471 PPC, registered at Police Station, A.N.F Lahore. He (the appellant) is directed **to be released forthwith** if not required in any other criminal case.

(Farooq Haider)
Judge

(Aalia Neelum)
Judge

Approved for reporting

Judge

Judge