

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Crl. Appeal No.06/2021

The State

Versus

Syed Muhammad Shiraz

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	13.09.2021.	Mr. Muhammad Sohail Khurshid, State Counsel. Tajammal, S.I, P.S. Shamas Colony, Islamabad.

MOHSIN AKHTAR KAYANI, J: Through this criminal appeal, the State/appellant has assailed the judgment dated 29.09.2020, passed by learned Additional Sessions Judge-IX/Judge Special Court CNS, Islamabad, whereby respondent Syed Muhammad Shiraz was acquitted in case FIR No.34, dated 15.03.2019, under Section 9-C/15 CNSA, P.S. Shamas Colony, Islamabad.

2. Learned State Counsel contends that respondent is nominated accused in the above mentioned FIR, the said FIR was lodged on the complaint of Syed Farhat Abbas, S.I/PW-6; that on 15.03.2019 at about 06:30 p.m. respondent was arrested by police while in possession of 1240 grams, which was found positive from the report of chemical examiner but learned trial court has acquitted the respondent/accused on hyper technical ground that blue colour shopping bag was not available when the contraband was opened in the court

during trial, although this aspect is a minor contradiction in the prosecution case; that judgment of acquittal is perverse, illegal and contrary to record, therefore, impugned judgment may be set aside and respondent be convicted in terms of CNSA, 1997 for transportation of narcotics.

3. Arguments heard, record perused.

4. Perusal of record reveals that the entire case of prosecution against respondent/accused is based upon the testimony of PW-6/I.O and recovery witness PW-5 Tanveer Ahmed Constable who has signed the recovery memo Ex.P-2 qua the recovery of contraband weighing 1240 grams charas. PW-5 categorically stated in his evidence that "a person came from Paracity towards Minar Masjid, who was stopped by us on suspicion basis. Said person picked a blue colour shopping bag in his right hand. He disclosed his Muhammad Shiraz. I.O opened said shopper and recovered two packets of charas upon opening said packet charas was found Ex.P1." Similarly, I.O/PW-6 has also narrated the story that "the person was holding blue colour shopping bag in his right hand. The shopping bag was checked, within which two packets of charas were recovered Ex.P1. I weighed the recovered charas which became 1240 grams."

5. During the course of cross-examination I.O has confirmed that "I have digital scale in the investigation bag. Its colour is blue. I do not know the company of the said digital scale. Shopping bag was of blue colour. It was containing two packets of charas."

The charas was wrapped with the blue colour plastic. I weighed the charas at the place of occurrence. After checking the shopping bag I weighed that with the digital scale." However, during cross-examination recovered charas Ex.P1 was weighed and found 1282 grams, therefore, learned trial court on the request of defence counsel de-sealed the parcel and noted the following facts:-

Total weight of both packets of charas Ex.P1 alongwith printed plastic sheet: 1222 grams.

First packet of charas Ex.P1 alongwith printed plastic sheet: 716 grams.

After removing printed plastic sheet, first packet was wrapped in transparent polythene bag.

Net weight of first packet of charas is 700 grams which containing 41 big and small pieces and semi powder form.

Second packet of charas Ex.P1 alongwith printed plastic sheet: 506 grams After removing printed plastic sheet, second packet was wrapped in transparent polythene bag.

Net weight of second packet of charas is 494 grams which containing 20 big and small pieces and semi powder form.

(Court observation: Colour of charas is dark brown: (Parcel again re-sealed) Ex.P1 is the same parcel with my seal and signature which I prepared at the place of occurrence and is now produced before the Court. It is correct that inside the parcel after opening it before the Court no blue colour shopping bag is found.

6. While going through the above referred evidence, the blue colour shopping bag was missing which is the foundation of entire prosecution case. In

such scenario we have been guided by the principles settled by the superior courts in 2012 SCMR 577 (Amjad Ali vs. State), 2017 P.Cr.L.J 14 (Abrar Hussain vs. State), whereby it was held that non-production of case property in the mode and manner in which it was recovered is fatal to the prosecution case, hence, created serious dent in the prosecution case. It is also admitted position of law that I.O has to be very careful in stating the facts of recovery and if he has taken specific plea that charas was recovered in particular shopping bag of blue colour, he should prove his stance in the same manner. Such discrepancy in the evidence is considered to be major contradiction in the narcotics case as held in 2014 P.Cr.L.J 22 (Muhammad Imran Sheikh vs. State), whereby accused was acquitted from charge. All these aspects affect the prosecution case and made the entire recovery of contraband highly doubtful.

7. In view of above, learned trial court has rightly appreciated the legal position and acquitted the accused/respondent in this case, as such no illegality has been found in the judgment of trial court, therefore, instant appeal is not made out and the same is hereby dismissed in limine.

(BABAR SATTAR)
JUDGE

(MOHSIN AKHTAR KAYANI)
JUDGE