

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

JAIL APPEAL. NO. 346 OF 2019

Yaqoob Khan
Vs.
The State

Appellant by : Mr. Faisal Bin Khurshid.

Respondents by : Mr. Sadaqat Ali Jahangir, State Counsel.
Haider, Inspector, CIA.

Date of hearing : 03.03.2020.

LUBNA SALEEM PERVEZ, J. This Criminal Jail Appeal has been filed by the appellant Yaqoob Khan through Superintendent, Central Jail Adyala, Rawalpindi against the judgment dated 18.06.2019, passed by the learned Additional Sessions Judge, West-Islamabad, whereby appellant was convicted u/s 9-C of Control of Narcotic Substances Act, 1997 (CNSA) and sentenced to undergo three years R.I with a fine of Rs. 30,000/- and in default whereof to further undergo one month S.I in case FIR No.602, dated 23.11.2018, registered at P.S Industrial Area, Islamabad. Benefit of section 382(B) Cr.PC was also extended to the Appellant.

2. The above jail appeal is accompanied with application for condonation of delay as the jail appeal could not be filed within the prescribed time under the law. In this regard, learned Counsel for the appellant relied on Rule 90 of Jail Manual of the Prison Rules, 1978, and stated that it is the duty of Superintendent to inform the prisoner regarding facilities for filing appeals. Learned counsel prayed for condonation of delay as not being willfully caused by the appellant.

3. It is observed that the Jail Appeal was received through Jail Superintendent, Central Jail Rawalpindi, along with application for condonation of delay bearing CM No.1/2019 on 25.10.2019. Considering the arguments of the learned counsel and the reasons mentioned in the application, the delay in filing this appeal is hereby condoned.

4. Facts, as per complaint are that the CIA staff Islamabad, were on the routine patrolling on the instructions of SP Investigation and DSP/CIA,

against drug dealers. On 23.11.2018, on spy information they apprehended the appellant/convict and recovered three packets containing charas kept in shopper sealed with yellow solution tape, weighing 1020 grams, 1030 grams and 1250 grams, respectively, i.e. 3300 grams in total. Out of recovered narcotics, 10 grams from each packet were separated for chemical examination and the remaining was sealed and handed over to the police officer. As a consequence thereof the above said FIR was chalked out the above officers of CIA against the appellant/convict and he was handed over to judicial custody vide order dated 24.11.2018. The samples of contraband were sent to the laboratory on 30.11.2018, i.e. after the delay of seven days, however, examination report was positive. After the trial, the appellant was convicted in the terms mentioned at para-1 above.

5. Learned counsel for the appellant while highlighting the discrepancies and contradictions in the prosecution case, *inter-alia*, contended that there are glaring discrepancies found in the testimonies of witnesses who were the members of raiding team of the CIA staff; the officer who took the written complaint for registration of FIR was not produced as witness; there is a delay of about seven days in sending sample to the laboratory despite that the laboratory is in the same city; legal requirement of associating independent witnesses under section 103 Cr.P.C are not complied with and that CIA staff has no power of investigation under section 156 / section 4 (p) of Cr.P.C read with Chapter XXI of the Police Rules, 1934. Learned counsel in support of his above contentions placed reliance on the case law reported as **Minhaj Khan Vs. The State (2019 SCMR 326)**, whereby, the Hon'ble Court while taking notice of the discrepancies in the testimonies of two witnesses observed that prosecution has failed to establish their case against the petitioner beyond reasonable doubt; **Adil Hussain Vs. The State (2003 YLR 1901)** wherein it was held that "these contradictions to say at least are too

glaring to be ignored, more so, when acceptance of one statement would necessitate the rejection of another and this difference is not of dawn and day but of night and day and as such is incapable of being reconciled with each other; **Hamza Vs. The State (2000 PCr.LJ 1360) and Hussain Ali Vs. The State (2020 MLD 70)** whereby the Court observed that there is an unexplained delay in sending the case property; therefore, the safe custody of the recovered narcotics is a serious issue and the prosecution is duty bound to establish that the recovered narcotics remained in safe custody during the intervening period; **Mumtaz Vs. The State (2018 PCr.LJ Note 204, Shaukat Ali Vs. The State (2004 YLR 356) and Sarwar alias Ghulam Sarwar Vs. The State (2018 MLD 193)**, whereby the Court observed that non production of daily police diary showing the movement of police party cut the roots of the entire prosecution case.

6. Conversely, learned State Counsel supported the impugned judgment dated 18.06.2019, and submitted that the appellant was caught red handed with the huge quantity of narcotics; the commission of offence have been proved beyond any doubt and as such he has been rightly awarded the sentence. Learned State Counsel prayed for dismissal of appeal.

7. We have heard the learned counsel for appellant as well as learned State Counsel and have also perused the record with their able assistance.

8. Perusal of the record confirmed the contentions of the learned counsel for the appellant that there are glaring contradictions in the statement of witnesses such as PW-3 in his cross examination stated that "the spy informer was not present at the place of occurrence" whereas, the I.O/PW-4 in his examination in chief stated that "*on the pointation of the spy informer, the man was carrying blue shopping bag in his right hand was going on the side of the road*" no private witness was associated by the prosecution, whereas, the official, who forwarded the complaint for registration of the FIR, was not produced as witness and the samples of charas were sent for chemical examination with a considerable delay.

Examination of the record produced by the I.O revealed that the charas was weighed at the time of recovery, however, there is no mention of the form of the charas recovered from the appellant as to whether it was in the form of littar or garda. This lapse on prosecution's part has neither been questioned during the course of trial nor the learned Trial Court, has given any finding on this issue. Further it has been observed that no reason has been given regarding delay in sending samples for chemical examination. It has now been well settled by the Apex Courts that such delay causes serious doubts regarding safe custody and safe transmission of the samples, and the benefit of doubt goes in favour of the appellant. Reliance in this regard is placed on the judgments of the Hon'ble Supreme Court reported as **Abdul Ghani Vs. The State (2019 SCMR 608), The State Vs. Imam Bakhsh (2018 SCMR 2039), IkramUllah Vs. The State (2015 SCMR 1002) and Amjad Ali Vs. The State (2012 SCMR 577)**, wherein it has been held that *cases where the safe custody of recovered substance or safe transmission of samples of the recovered substance is not proved by the prosecution through independent evidence there, it cannot be concluded that prosecution is succeeded in establishing the case against the appellant beyond reasonable doubt.*

9. Another issue vehemently argued by the learned counsel for the appellant is the power and jurisdiction of CIA in the matters relating to section 9 of CNSA. In this regard he referred para 21.35 of Chapter XXI, of Police Rules, 1934, section 4(P) of Cr.PC as well as section 156 of Cr.PC and relied on the case titled as **Rashid Hussain versus The State and another reported as (2018 PCr.LJ 590)**. The Hon'ble High Court while deciding the case has extensively discussed the role of CIA by relying on various judgments of the superior courts of the country. The relevant paras of the above said judgment are as under:-

"A perusal of the above provision indicates that only an officer in-charge of the police station having jurisdiction over the local area within the limits of a police station can investigate a cognizable offence or any other person covered by the definition of the officer-in-charge of a police station given in above clause (p) of section 4, Cr.P.C. which in the absence of officer incharge of a police station includes officer-in-charge present at the station house who, is next to the officer incharge of the police station and is above the rank of the constable or when the Provincial Government so directs, any other police officer so present. The above provision does not include C.I.A. personnel,

therefore, they have no power to investigate a cognizable offence and the investigation so conducted by Nasir Mehmood, S.I of C.I.A. Staff was illegal. We have fortified our view from the dictum laid down by this Court in "Iftikhar Ahmad alias Dani v. The State" (PLD 1995 Lahore 606), wherein it has been held as under:-

"The members of the CIA Staff are subordinates of the Superintendents of Police of the District which S.P. has the powers of an Officer-in-Charge of a police station in view of the provisions of section 551 of the Cr.P.C. Therefore, the members of the CIA Staff, irrespective of their rank and status, can investigate, cases only when they have been entrusted to them by an Officer-in-Charge of the Police Station to whom they are subordinate i.e. in case of CIA Staff, the S.P. of the District. Therefore, no member of the CIA Staff has any authority or power to investigate a case of their own motion in the absence of such an investigation having been entrusted to him by the S.P. of the District as abovementioned."

The Central Intelligence Agency (CIA) is one of the Preventive and Detective Organizations created under Chapter XXI of the Police Rules, 1934. It is, in fact, established in order to assist the Superintendent of Police and his supervising staff in coordinating preventive and detective work of the District Police and in order to act as clearing house for criminal intelligence for the use of investigating officers in the district as envisaged under rule 21.35. Besides specifying its constitution, it has been clearly laid down that its primary function is to assist Station House Officers and their staff

It has been repeatedly held not only by this Court but also by the Hon'ble Supreme Court of Pakistan that CIA personnels have no power under section 156 of The Code of Criminal Procedure, 1898 to investigate any cognizable offence. The apex Court in the case of "The State v. Bashir and others" (PLD 1997 SC 408), while taking a very serious view of the alleged illegal practice observed as under:-

"It is unfortunate that a Government functionary which is entrusted with the enforcement of law should be guilty of breach of a provision of law. It is high time that efforts should be made to establish the supremacy of law instead of relying upon an illegal practice."

10. As explained in the above judgment, the CIA staff are not the authority defined under section 4(p) Cr.PC thus, cannot investigate the cognizable offences in terms of section 156 Cr.PC independently, without being assigned any task of investigation by the Superintendent/Deputy Superintendent of Police. It would be advantageous to reproduce the rule 21.35 of Chapter 21 of Police Rules, 1934, which describes the functions of the CIA:-

- (a) *The preparation of crime maps relating to offences against property classified under the methods employed by the criminals.*
- (b) *The receipt, consideration and filing according to classification, of information received from investigating officers.*
- (c) *The comparing of the data collected under (a) and (b) and the communication of any deduction therefrom to the investigation officers concerned.*

- (d) *The preparation of a crime index of cases from the materials collected under (a) and (b) classified according to: (1) methods employed by the criminals, and (2) various clues provided by the criminals such as nick-names used; special clothing worn; peculiarities of the culprits noticed by witnesses; special weapons used; special signals used etc. etc.*
- (e) *The preparation of a crime index of criminals. This shall normally be in two parts-*
 - (i) *an index of names of known criminals classified according to their methods of operating;*
 - (ii) *an index of known criminals classified according to their peculiarities of appearance, gait, speech, nicknames, etc.*
- (f) *The provision of information by means of which the Superintendent of Police may be assisted in controlling the crime of his district, forestalling outbreaks of crime and directing preventive operations.*
- (g) *The publication of weekly Criminal Intelligence Gazette.*
- (h) *To co-ordinate and guide the efforts of police station staff throughout the district in securing the arrest of absconders and proclaimed offenders and in locating absentee bad characters, criminal tribesmen and other untraced persons and to maintain close co-operations with the C.I.As of other districts in this work.*
- (f) *When information received from records or otherwise indicates that a series of cases, whether in the jurisdictions of one or of several police stations, is the work of the same criminal or of a gang to co-ordinate or, under the orders of the Superintendent of Police, direct the investigation of such cases.*

11. Careful perusal of the above provision reveals that the scope of duties assigned to the CIA staff and in terms of clause (i) of rule 21.35 clearly shows that investigation in the cases by the CIA would be on the directions of the Superintendent of Police. However, in the case under consideration, the case has been initiated on the spy information on 23.11.2018, after recording the *ishtagasa* by Inspector CIA, the FIR was registered in the P.S Industrial Area and as per the statement on oath of the I.O/Inspector CIA as PW-4 recorded on 16.05.2019 that *"after completing all the proceedings on spot I shifted the accused to the police station CIA, Islamabad"*. Thus, in view of the foregoing, the CIA staff has acted contrary to the role/functions assigned to the CIA under rule 21.35 of Chapter 21 of the Police Rule, 1934, which provides for assistance to the Superintendent of Police and its supervising staff in coordinating the preventive and detective work of the district police. Hence, the investigation conducted by I.O is without due authorization of Superintendent of Police, therefore, the same is illegal.

12. The CIA staff in the present case has acted beyond its jurisdiction by bypassing the specific provisions of Police Rules, 1934 *supra* and stepping in the specific domain of local police, without any directions of concerned authority. Moreover, there are other discrepancies like contradictory statements of PWs,

delay in transmitting the sample for chemical analysis, non-mentioning of form of recovered charas, non-associating of independent witness etc create reasonable doubt on the credibility of the prosecution. The learned Trial Court, therefore, has legally erred in ignoring these significant issues while convicting the appellant.

13. In the light of what has been discussed above, the appeal is **allowed**. Appellant is **acquitted** of the charge while giving him benefit of doubt and in consequence whereof, his conviction and sentence, vide judgment dated 18.06.2019, is set aside. The appellant in jail, be released forthwith, if not required in any other case.

(MOHSIN AKHTAR KAYANI)
JUDGE

(LUBNA SALEEM PERVEZ)
JUDGE

Announced in the Open Court on : 19th March 2020 .

JUDGE

JUDGE

Junaid Usman