*Judgment Sheet*

**IN THE PESHAWAR HIGH COURT, PESHAWAR**
**JUDICIAL DEPARTMENT**

*Cr.Appeal No. 84-A/2017*

***JUDGMENT***

Date of hearing.....**31.07.2018**.....

Appellant (Mst. Farzana) By Ms. Zohra Durrani, Advocate.

Respondent. (State) By Mr. Arshad Ahmad Khan, AAG.

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**LAL JAN KHATTAK, J.-** This criminal appeal is directed against the judgment dated 19.01.2019 of the learned Additional Sessions Judge-II / Judge Special Court Takht Bhai delivered in case FIR No. 140 dated 04.04.2014 under Section 9 (c) of the Control of Narcotic Substances Act, 1997, registered at Police Station Sher Garh District Mardan, whereby the appellant has been convicted and sentenced to undergo imprisonment for life with a fine of Rs.1,00,000/- or in default whereof to suffer further simple imprisonment of six (06) months. Benefit under Section 382-B Cr.P.C has been given to her.

2. Brief facts of the case are that on 04.04.2014 complainant / SHO Fazal Sher Khan (PW-3) received a spy information that huge quantity of contraband will be

transported from Khyber Agency to Dargai, Malakand Agency in motorcar bearing Registration No. JMB-19. In order to foil the bid, he arranged a *Nakabandi* on the spot. In the meantime, police came across the car, parked at Sher Garh Bazar, driver whereof had left for purchase of some commodities. The police party came nearer to the spot and found three (03) persons sitting in the car, who disclosed their names as Mst. Farzana i.e. the appellant, Abid-ur-Rehman and Murad while the name of their absent co-accused was disclosed as Shahid-ur-Rehman (All the three absconders). On search of the vehicle two plastic bags containing seven (07) and eight (08) kilograms packets of chars were recovered which were lying on floor of the rear seat. On weighment, the contraband turned out to be15000 grams. The Seizing Officer separated 5 / 5 grams *chars* from each packet for the purpose of chemical analysis while rest of the contraband was concealed in a separate parcel.

3. On completion of investigation, challan was put in court, which indicted the

accused for the offence, to which she pleaded not guilty and claimed trial. In order to prove its case, prosecution examined five (05) witnesses in all, whereafter statement of the appellant was recorded wherein she professed her innocence. The learned trial court, after conclusion of the trial, found the appellant guilty of the offence and while recording her conviction, sentenced her as mentioned above.

4. Arguments heard and record gone through.

5. Perusal of the case record would show that there is no evidence on record to show that who had sighted the vehicle parked in the Bazaar of Sher Garh near the bargain of motorbikes, who had searched it, who had recovered contraband from the floor of rear seat and who had opened the packets of the contraband. Failure on part of the prosecution to produce evidence to the above aspects of the case has caused cracks in its case, benefit of which must go to the accused as it is a cardinal principle of law that in order to bring home guilt to an

accused the prosecution is bound to prove its case through worth reliable and confidence inspiring evidence which is not the case in hand. Besides, there is no evidence that the Seizing Officer had weighed each packet of the recovered *chars* independently, which act, in the considered opinion of this court, was must as when more than one packets are recovered then the prosecution must weigh each packet independently.

6. Apart from the above, according to the FIR, the time of occurrence has been shown as 16:00 hours while the complainant appearing in the witness box has deposed that he had received information about the transportation of contraband at 01:15 hours whereas the distance between the spot and Police Station has been shown 700 / 800 meters by PW-4, which could be covered hardly within ten (10) minutes, moreso, when the complainant himself stated that he was having his own car and went to the spot in it, thus, ibid aspect of the case has caused dents in the prosecution case. Furthermore,

though the complainant received information about the narcotics four hours prior to the raid with the knowledge that the culprits would be four (04) including a female, but even then neither he could obtain permission from the court nor associated a lady constable with him.

7. No doubt, the appellant, as per the prosecution case, was found sitting in the car at the relevant time but there is no material on the case file to show that she had a conscious knowledge that the case contraband was being smuggled in the car. Mere sitting in a vehicle wherefrom some contraband is recovered would not be enough to hold the seater liable for conviction unless it is shown by the prosecution through reliable evidence that she had conscious knowledge qua the activity of smuggling which is not the case in hand.

8. Thorough and careful examination of the case record would show that the prosecution has not established and proved its case against the appellant beyond any shadow of doubt. The learned trial court

has not appreciated the case evidence in its true perspective qua the appellant and has fallen in legal error to record her conviction, for which its judgment is not sustainable.

9. For what has been discussed above, this appeal is accepted, the impugned judgment to the extent of the appellant is set-aside and she is acquitted of the charge levelled against her. She be set at liberty forthwith if not required to be detained in any other case.

Above are the detailed reasons of our short order of even date.

Announced:
31.07.2019.

JUDGE

JUDGE

/*Saif*/

*Justices Lal Jan Khattak and Muhammad Ibrahim Khan.*