

Judgment Sheet

IN THE PESHAWAR HIGH COURT,  
PESHAWAR

**JUDICIAL DEPARTMENT**

**Cr.A No. 664-P of 2014.**

**JUDGMENT**

Date of hearing..... 16.10.2017.....

Appellant(s)...(Hidayat Ullah): By Mr. Noor Alam Khan,  
Advocate.

Respondent(s)/State: By Mian Arshad Jan, AAG.....



**QALANDAR ALI KHAN, J:-** Hidayat Ullah, appellant, has assailed his conviction under section 9 (c) CNSA and award of sentences of imprisonment for life and fine of Rs.100000/- and in default thereof to further six months simple imprisonment, while extending him benefit of Section 382 (b) Cr.P.C; by the learned Additional Sessions Judge-XII/Judge, Special Court, Peshawar, vide impugned judgment/order dated 22.11.2014, in case registered against the appellant/accused

under section 9 (c) CNSA in Police Station, Pishtakhara, Peshawar, vide FIR No.840 dated 17.09.2012.

**2.** The case/FIR was registered on the report of Syed Naveed Jamal, Inspector Excise Department, Peshawar, who had prior information about transportation of narcotics from tribal territory to settled area in Motorcar No.LEE-6335 and had laid a barricade on Ring Road opposite *Shesho* Mosque along with officials of the Excise Department, mentioned in the FIR, and stopped the said vehicle at 18:40 hours on 17.09.2012. The driver of the vehicle disclosed his name as Hidayat Ullah son of Amanullah, the appellant/accused and checking of the motorcar led to the recovery of 7/7 packets, each packet weighing 1/1 kilograms, total 21 kilograms, from three doors of the vehicle, with the exception of door on the driver side. According to the complainant/Inspector Excise Department, 5/5 grams samples were separated from each packet of chars *garda*

and separately sealed, affixed with 3/3 seals bearing the impression E&T, whereas the remaining chars *garda* was also separately sealed, and the appellant/accused was arrested. The complainant/Inspector Excise Department drafted *murasila* and sent the same to the Police Station, where the case was registered.

**3.** Investigation in the case was entrusted to Naurooz Khan SI Police Station, Pishtakhara, who proceeded to the spot and prepared the site plan on the pointation of the complainant and eyewitnesses. The samples separated on the spot after recovery of the contraband on 17.09.2012 were received in the office of chemical examiner to Government of Punjab, Rawalpindi, on 20.09.2012; and report of the Biochemist, endorsed/countersigned by the chemical examiner to Government of Punjab, Rawalpindi, showed the 21 packets containing chars *garda* which could "be used to cause intoxication". After completion of investigation,

complete challan was submitted in the case by SHO Police Station Pishtakhara, Peshawar.

4. After receipt of complete challan, the learned trial Court/Additional Sessions Judge-XII, Peshawar, framed formal charge against the accused/appellant under section 9 (c) CNSA, to which he pleaded not guilty and claimed trial. In order to establish its case against the accused/appellant, the prosecution examined five PWs, namely, Sabz Ali Khan SHO/Inspector (PW-1); Syed Naveed Jamal Inspector Excise Department, Peshawar (PW-2); Arshad Khan Inspector Excise Department (PW-3); Naurooz Khan SI, Police Station Pishtakhara (PW-4); and Saiful Malook SI (Retired) (PW-5); and, thereafter, closed its evidence; whereafter, statement of the accused/appellant was recorded under section 342 Cr.P.C, wherein, he denied allegations of the prosecution. The accused/appellant himself appeared and recorded his statement on oath under section

340 (2) Cr.P.C; and also produced two DWs, namely, Alamgir Khan (DW-1) and Sher Zada (DW-2). Following arguments of learned SPP for the State and learned defence counsel, the learned trial Court/Additional Sessions Judge-XII/Judge Special Court, Peshawar, rendered judgment dated 22.11.2014 and thereby convicted the appellant/accused and awarded him the sentences, mentioned hereinabove; hence the instant appeal.

5. Arguments of learned counsel for the appellant and learned AAG heard; and record perused.

6. The case was registered against the appellant/accused under section 9 (c) CNSA on the report of complainant/Inspector, Excise Department, despite the fact that the complainant had received prior information about transportation of the narcotics from the tribal territory to the settled area and had more than one hour to inform the nearby police of Police Station, Pishtakhara, hardly at a distance of 2/3 kilometers or 10/15 minutes in

a vehicle from the place of occurrence; as information, according to his own admission, was received by the complainant at about 05:00 PM, whereas the time of occurrence/alleged recovery has been shown as 18:40 hours. No doubt, the officials of Excise Department have been legally authorized to make the recovery of contraband and initiate a criminal case against the person from whom the recovery is made, but in a situation where the local police is available at a very short distance, the recovery made by the officials of Excise Department, in the absence of either officials from the police department or witnesses from the general public, would raise serious questions about the alleged recovery of narcotics. Needless to say that both the recovery witnesses and marginal witnesses to the recovery memo are officials of the Excise Department, therefore, highly interested; and as such, their testimony liable to close scrutiny.

7. The deliberate omission on the part of the complainant/Inspector, Excise Department, to also hand over samples of the recovered narcotics to the local police along with the vehicle, remaining contraband and the accused/appellant left much to be desired, thus casting serious doubt about result of the chemical examiner; which, indeed, was a critical piece of evidence in the case of recovery of narcotics. The samples were, admittedly, sent to the office of chemical examiner, Government of Punjab, Rawalpindi, and not to the FSL, Peshawar, for the reasons best known to the complainant/Inspector, Excise Department, not only in violation of the relevant rules but also in questionable circumstances, as neither Sher Muhammad, Inspector Excise and Taxation Department, who took the samples to the aforementioned FSL was produced nor evidence was adduced with regard to safe custody of the samples with the Excise Department during the intervening period from the date of recovery

i.e. 17.09.2012 and receipt of the same in the office of chemical examiner to Government of Punjab, Rawalpindi, on 20.09.2012. In these circumstances, the report of chemical examiner to Government of Punjab, Rawalpindi, became more vulnerable, which was already under serious attack from the defence on the basis of the same emanating from a Biochemist and simply endorsed/countersigned by the chemical examiner. It is, indeed, note worthy that both in the FIR and throughout in the case of the prosecution, the recovered chars was mentioned as *garda* (in powder shape), but the seizing officer (PW-2) himself deposed to the effect that the contraband were in the shape of slabs.

8. Notwithstanding the fact that no recovery of contraband was alleged from the door of the vehicle on the driver side, there is nothing on the record to establish nexus of the appellant/accused with the vehicle/motorcar wherefrom the alleged recovery was made, as



he is neither owner nor proved as driver of the motorcar; and inspite of recovery of the registration book from the vehicle, for unknown and unexplained reasons, the owner was not made an accused or, at least, a PW in the case.

9. On the other hand, the appellant/accused not only recorded his statement on oath under section 340 (2) Cr.P.C to the effect of his arrest after a person made good his escape through his house when he was present there; and also established this fact on the basis of statements of two DWs, namely, Alamgir Khan (DW-1) and Sher Zada (DW-2).

10. In short, there was nothing on the available record to establish recovery of contraband from the possession of the appellant/accused, warranting his conviction in the case, and award of sentence of life imprisonment with fine of Rs:100000/- to him by the learned trial Court/Additional Sessions Judge-XII/Judge Special Court, Peshawar,

vide impugned judgment/order dated 22.11.2014. The appeal is, therefore, accepted; and the impugned judgment as well as the sentences awarded to appellant are set aside. The appellant is acquitted of the charges, and be set free forthwith, if not required in any other case.

Announced.  
16.10.2017.

**J U D G E**

**J U D G E**

*\*M.Iqbal\**

*(D.B) Hon'ble Mr. Justice Lal Jan Khattak.  
Hon'ble Mr. Justice Qalandar Ali Khan.*