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JUDGMENT SHEET

IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

Cr.A. No. 195-M/2014

JUDGMENT

Date of hearing: 20.04.2017.

Appellant (Mir Waiz) by Muhammad Yasir Khattak,
Advocate.

Respondent:- (the State) by Mr. Sabir Shah, A.A. G.

ABDUL SHAKOOR, J.- This appeal is directed against the judgment dated 19.7.2014 passed by learned Special Judge/Additional Sessions Judge/Izafi Zila Qazi-1 Chitral, whereby the accused/Appellant, Mir Waiz, was convicted under Section 9 (c) of the Control of Narcotic Substances Act, 1997, and sentenced him to imprisonment for life with payment of fine of Rs. 20,000/- or in default thereof to undergo simple imprisonment for two months. However, benefit under Section 382-B, Cr.PC was extended to him.

2. According to prosecution story, on 12.7.2013 at 0.130 hours Atta-ur-Rahman ASI

alongwith other police party were present at the place of occurrence known as Toop Khana near Eid Gha Shagoor. In the meanwhile, a person appeared from Latkhowa side on foot, he was holding a thing on his back. After some struggle he was apprehended. He disclosed his name as Mir Waiz a resident of Badakshan Afghanistan. This person was holding a plastic bag (پوری) and a bag on his back. Out of the plastic bag opium wrapped up in plastic bag was recovered, which on weighment come to 9,000 grams while from the bag four packets in shape of cloth bags were recovered weighing 11,700 grams. Thus huge quantity of opium weighing 20,700 grams was effected from the accused/Appellant. The accused was arrested in presence of PWs, since the accused could not produce any National Identity Card at the time of arrest, therefore being Afghan National he was trying to enter into Pakistan illegally. On the basis of 'Murasila' Ex. PW-2/1, FIR No. 69 (Ex. PW-2/2)

dated 12.7.2013 under sections 9 (c) CNSA & 14 F. Act was registered at Police Station Shaghoor against the accused/Appellant.

3. After registration of the case, investigation was handed over to Haider Ghazi SHO Police Station Shaghoor, who in presence of PWs taken into possession the opium weighing 20,700 grams vide recovery memo Ex. PW-1/3. Out of each bags 5/5 grams of opium were separated for chemical analysis while the rest was packed into separate parcel. He has also taken into possession a sale money of different denomination of Pakistani currency and Afghani currency. Murasila Ex. PW-2/1 was sent to Police Station Shaghoor and accused/appellant was formally arrested vide card arrest memo Ex. PW-4/2. Recovered contraband in shape of opium was sent for expert opinion vide Urdu docket Ex. PW-4/3. Application Ex. PW-4/4 was moved for custody of accused to the Court. He also recorded statements of the PWs under section 161 Cr.P.C. On receipt of

expert opinion it was placed on record as Ex. PW-5/4. After completion of investigation, he submitted complete *challan* Ex. PW-4/6 before the Court.

4. The appellant/convict was produced before the Court, where he was formally charge sheeted to which he pleaded not guilty and opted to face the trial.

5. The prosecution in order to prove charge against appellant produced four witnesses at trial. On conclusion of prosecution evidence, appellant was examined under Section 342, Cr.PC, in which he professed innocence, denied the charges and stated to have falsely been implicated in the case. He, however, neither opted to appear as his own witness in terms of Section 340 (2), Cr.PC, nor wished to produce evidence in defence. The learned trial Court, after hearing the parties and appraising the evidence, convicted and sentenced the appellant as stated above. Feeling dissatisfied with conviction

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and sentences, appellant has come to this Court with instant appeal.

6. Learned counsel for appellant contended that the prosecution story as advanced in shape of present proceedings are based on hear-say evidence, as neither the site plan was prepared nor it seems that the accused/appellant was arrested with huge quantity of contraband opium, thus with all probabilities it can be presumed that the contraband opium was planted one. He further added that it is not consumable to prudent mind that how such huge quantity of opium weighing 20,700 grams was carried by a single individual on foot. It was lastly argued that the marginal witnesses of the recovery memo are police officials and there is also delay in sending the sample for Chemical analysis and more so no independent or impartial witnesses have been associated with the recovery process.

7. Learned A.A.G appearing on behalf of the State opposed the submissions so made by learned

counsel for appellant and contended that prosecution has proved its case against the appellant beyond reasonable doubt and supported the impugned judgment. He argued that the accused/Appellant being Afghan National was arrested from the area which is situated adjacent to Afghanistan border where such kind of cases do occur and even otherwise it is almost next to impossible that such huge quantity of opium can be planted by the police officials.

GH 8. We have considered the arguments of learned counsel for the parties and have gone through the record.

9. The perusal of record reveals that a huge quantity of narcotic substance has been recovered from personal possession of the appellant. The local police after arrest of the appellant fulfilled all the legal and codal formalities in line with the version taken by the prosecution. Sardar Ali, SI PS Shaghoor appeared as PW-1, who has conducted partial

investigation. He has obtained custody of the accused through an application Ex. PW-1/1 and accused was produced to the concerned court through an application Ex. PW-1/2 for recording confessional statement, on his denial he was sent to judicial lockup. PW-2 Ibrahim Shah ASI drafted the First Information Report on the basis of Murasila Ex. PW-2/1, which is placed on record as Ex. PW-2/2. PW-3 is Atta-ur-Rahman ASI PS Shaghoor, who in presence of other PWs at about 1.30 A.M at nighttime arrested the accused/Appellant with huge quantity of opium. In his presence the Investigating Officer taken into possession the recovered contraband vide recovery memo Ex. PW-3/1. PW-4 is the Investigating Officer, who has conducted the investigation and he too, supported the prosecution case as taken place in the mode and manner.

10. All the prosecution witnesses were cross-examined at length by the defence but nothing adverse could be extracted from them to doubt the

prosecution case. This Court is also not in compromising term with the submissions of learned counsel for the Appellant that in view of non-preparation of site plan the story advanced by the prosecution has lost its evidentiary value. In this respect, suffice it to say, that site plan is not a substantive piece of evidence, rather it is a corroborative piece of evidence and its non-preparation by no means dilute the whole version of prosecution, as in the case in hand there is huge recovery of contraband i.e. 20,700 grams. Even otherwise, the accused/Appellant could not justify his presence in the place of occurrence and that too at nighttime with such huge quantity of opium and above all being Afghan national who was illegally entered into Pakistani territory for the purpose of transportation of contraband. More so, it is not appealable to prudent mind that such huge quantity of contraband weighing 20,700 grams can be planted on behalf of the police officials, as admittedly the

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area where this occurrence had taken place is known for such kind of activities as drug peddlers do take advantage of the stiff terrains and huge mountains situated in the area (Chitral), where normally presence of the police officials are low due to harsh weather, so, the smugglers often used these stiff terrains for transportation of the narcotics.

11. We are not persuaded to agree with the learned counsel for appellant that there is violation of section 103 Cr.P.C, which could be considered fatal to the prosecution case. Provision of Section 103 Cr.P.C stand excluded in view of provision of Section 25 of Control of Narcotic Substances Act, 1997. Statements of police officials cannot be discarded merely on the ground that they belong to police force unless any animosity on their part for false involvement of an accused is established on record. Reliance can be placed on Naseer Ahmad v/s The State (2004 SCMR 1361), Riaz Ahmad v/s The State (2004 SCMR 988) followed in the case of

Ismaeel v/s State (2010 SCMR 27). No previous ill will or *mala fide* has been alleged by the appellant against the PWs.

12. The story of prosecution has further been corroborated by the positive FSL report, Ex-PW-4/5. Though, there is delay in sending the sample to Chemical Examiner, yet the same would be inconsequential as there is no evidence that the samples were tainted. The appellant was examined under section 342 Cr.P.C wherein he, though, denied the allegation but he neither appeared himself as his own witness nor led evidence to contradict what the prosecution had proved against him. All the prosecution witnesses have deposed in line to the prosecution story. The witnesses were subjected to a lengthy cross examination but the defence failed to shatter their testimony fatal to the prosecution case. The prosecution has been able to bring home guilt of the appellant keeping in view the ocular account, recovery of huge quantity of narcotic substance and

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positive report of chemical examiner, Ex.PW-4/5.

The judgment of conviction and sentence passed against the appellant is based on correct appreciation of evidence on record and there is nothing on record to indicate that the judgment is based on any error of law or the same is different to well-established principles of judicial approach or the same can in any manner be characterized as unjustified.

13. For what has been discussed above, this criminal appeal being shorn of merits stands dismissed.

Announced.
Dt: 20.04.2017


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