

## **Judgment Sheet**

IN THE PESHAWAR HIGH COURT,  
PESHAWAR

**JUDICIAL DEPARTMENT**

**Cr.A No. 131-P of 2016.**

### **JUDGMENT**

Date of hearing.....13.10.2017.....

Appellant(s)...(Daulat Khan): By Mr. Amjad Noor, Advocate.

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



**QALANDAR ALI KHAN, J:-** Daulat Khan, appellant, moved this appeal under Section 410 Cr.P.C read with Section 48 CNSA, 1997, against the judgment/order dated 17.02.2016 of the learned Additional Sessions Judge-V, Peshawar, whereby the appellant was convicted under Section 9 ( c ) CNSA and sentenced to one year R.I with fine of Rs.10000/- and in default of payment of fine to further one month S.I; while extending him the benefit of Section 382-B Cr.P.C.

2. The case under Section 9 ( c ) CNSA was registered against the appellant/accused vide FIR No.1001 dated 13.12.2011 in Police Station, Khazana, Peshawar, on the report of Nawaz Khan S.I (complainant), who had, allegedly, received complaints about selling of narcotics/chars by the accused/appellant; and while acting on a spy information, he along with police party comprising constables Aurangzeb No.231 and Fazal Rehmanullah No.784 proceeded to the thoroughfare leading to Khurasan Camp and found the appellant/accused there, who tried to flee, but was overpowered, and a black colour shopping bag containing 15 *puri* chars *Garda* weighing 60 grams and two kilograms chars *pukhta* was recovered from the appellant. After separating 5/5 grams from both chars *pukhta* and chars *Garda*, the samples and the remaining chars were separately sealed on the spot, and amount of Rs.3000/-, allegedly, earned by the appellant/accused by selling chars was also taken into possession, and the

appellant/accused was arrested for commission of the offence. The *murasila* drafted on the spot by the complainant/SI was dispatched to the P.S, where case was registered, leading to investigation, and submission of complete challan to the learned trial Court after completion of investigation.

3. In the trial Court, the appellant/accused was formally charged under Section 9 ( c ) CNSA, to which he pleaded not guilty and claimed trial. In order to prove its case against the appellant/accused, the prosecution produced a total of five PWs, including, the seizing officer and complainant in the case, Nawaz Khan SI (PW.1); investigating officer in the case, Nasir Khan Inspector (PW2); marginal witness to the recovery memo EXPW1/1; Aurangzeb Constable No.231 (PW3), Yaseen Khan DSP (PW4) submitted complete challan in the case; and Zarwali Khan DSP CTD (PW5) registered FIR (EXPW5/1) on the receipt of *murasila* (EXPA/1). The prosecution,

thereafter, closed its evident; where-after, statement of the appellant/accused was recorded under Section 342 Cr.PC, wherein, he refuted allegation of the prosecution but declined to be examined on oath or produce defence evidence. Having heard arguments of learned counsel for the State and learned defence counsel, the learned trial Court/ASJ-V/Judge, Special Court, Peshawar, convicted the appellant/accused under Section 9 ( c ) CNSA and sentenced him to one year R.I and fine of Rs.10000/-; hence the instant appeal.

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

5. The prosecution case against the appellant is that there were complaints against him regarding his involvement in selling of narcotics/chars and that the complainant/SI acting on a spy information found him in possession of a black colour shopping bag containing chars *pukhta* weighing two kilograms and 15 *puri* chars

*garda* weighing 60 grams, which were recovered from him in the presence of the marginal witnesses to the recovery memo (EXPW1/1); and samples separated on the spot by the complainant/SI were confirmed as that of chars in the report of chemical examiner to whom the samples were sent for chemical analysis.

6. It is, however, noteworthy that despite so-called complaints against the appellant/accused of his involvement in selling narcotics/chars, neither any such complaint was brought on the record, nor statement of a complainant or a witness from the general public was recorded to that effect; and, likewise, no test purchase was conducted in order to lend credence to the aforesaid version of the prosecution. Similarly, no warrant under section 22 P.O was obtained by the complainant/SI inspite of his receiving prior information regarding involvement of the appellant/accused in the unsavoury business. At least, the complainant/SI could

have procured presence of witnesses from the general public in view of the fact that the reported place of recovery was situated in the midst of populated area. No doubt, police officials are as good witnesses as any other witness may be; but when evidence of the prosecution comprise only of police officials, and both marginal witnesses to the recovery memo were police constables and subordinates to the complainant/SI, then their testimony was to be accepted with extreme care and caution for making the same a basis for conviction of the accused and awarding him sentences of imprisonment and fine.

7. The PWs in the instant case, namely, Nawaz Khan complainant/SI (PW1) and Aurangzeb Constable No.231 (PW3), one of the two constable and marginal witnesses to the recovery memo, were not consistent in their statements before the Court, as the former stated that he recovered Rs.3000/- from pocket of the accused/appellant, while

the latter stated that currency notes of Rs.3000/- were lying in the shopping bag. It may be added here that the parcel containing Rs.3000/- was not produced in the Court. Likewise, the complainant/SI stated that he first prepared the recovery memo and then drafted the *murasila*, while the marginal witness (PW.3) stated that the complainant/SI first drafted the *murasila* and then prepared the recovery memo.

8. In such a situation, when contradictions/discrepancies appeared in the statement of the PWs with regard to material aspect of the case, it was not safe to rely on such evidence for conviction of the accused. As such, there was no convincing and confidence inspiring evidence before the learned trial Court to warrant conviction of the appellant/accused. Consequently, the appeal is accepted and the impugned judgment of the learned trial Court/ASJ-V, Peshawar, dated 17.02.2016, together with conviction of the appellant and sentences awarded to him, are

set aside, . Resultantly, The appellant/accused is acquitted of the charges levelled against him by the prosecution. The appellant is on bail vide order of this Court dated 02.03.2016, therefore, his sureties shall stand discharged of the liability of the bail bond.

Announced.  
13.10.2017.

**J U D G E**

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