

Judgment Sheet

**IN THE PESHAWAR HIGH COURT,
PESHAWAR**

(Judicial Department)

Cr.A. No. 875-P/2017


Faheem Khan Vs The State

JUDGMENT

Date of hearing 29.03.2018

Appellant(s) by: Mr. Muhammad Khalid, Advocate

State by: Malik Akhtar Hussain, AAG



ISHTIAQ IBRAHIM, J.- At a trial held by the learned Judge Special Court (CNS), Peshawar the appellant Faheem Khan, on being found guilty under section 9-C CNS, Act, in case FIR No.80 dated 25.12.2015, Police Station ANF, Peshawar was convicted and sentenced to rigorous imprisonment for thirty (30) months with benefit of Section 382-B Cr.PC extended to him vide judgment dated 21.11.2017.

2. The prosecution case depicted in the FIR is that on 25.12.2015 that there was information

that a person by the name of Faheem would smuggle considerable quantity of narcotics via motorway towards Punjab through GLI Car bearing Registration No.BB-7177/Peshawar. Upon this information the complainant along with other police personnel rushed to the spot and made barricade at the place of occurrence, when in the meanwhile the motorcar mentioned above coming from Peshawar side, was signaled to stop and the man who was on driving seat was overpowered with the help of other police officials, debarked and on query disclosed his name as Faheem Khan s/o Momin Khan. On cursory interrogation, the accused after some hesitation admitted the presence of narcotics in his vehicle concealed under the driver seat. In the presence of witnesses and the accused, a blue shopping bag was found beneath the driver seat and on checking it was having 03 packets charas and the contraband was weighed which came to 1200/1200 grams, the total of which is 3.600 Kgs. From each packet 10/10 grams were separated for chemical analysis while the remaining narcotics were sealed into separate parcels. Accused was arrested.

Murasila and recovery memos were drafted and were sent to the Police Station for registration of FIR.

3. On completion of investigation complete chalan against the accused was submitted. The provisions of 265-C Cr.PC were complied with and Charge was framed against the accused to which he professed his innocence and claimed trial. The prosecution to substantiate its charge against the accused produced and examined as many as 04 witnesses and after close of prosecution evidence, statement of accused was recorded u/s 342 Cr.PC, wherein he opted to be examined on oath and also wished to produce evidence in his defence. The learned Judge Special Court after holding a full dressed trial convicted and sentenced the accused/appellant through the impugned judgment, hence this appeal.

4. Having heard arguments of learned counsel for the appellant, learned AAG for the State and record with their valuable assistance gone through.


5. According to the prosecution case the occurrence is dated 25.12.2015 whereas the card of arrest of the appellant shows that he was arrested on

24.12.2015 which disturbs the mind of the Court. In addition to the defence which was taken by the appellant during trial which was suggested to the witnesses as well. The accused under section 342 & 342 (2) Cr.PC statement took the plea that he was taken by the ANF officials from Chughul Pura near Ring Road, Peshawar when he parked his motorcar in Patrol Station of Azim Afridi, when he was proceeding to house after parking his vehicle in the Filling Station. The appellant also exhibited his mobile Data as Ex.D1 and mobile Data of the complainant which negates the version of the prosecution. That at the time of arrest of accused he was not having any mobile with him as stated by PW-3 Hafiz Sohail Umer, even call Data of the complainant has also been placed on file which further belies the complainant that his mobile was switched off. Moreso, the location of mobiles is not supporting the time and place of arrest of the appellant, mobile Data was duly exhibited without any objection on the part of the prosecution which also belies the complainant (PW3) that he was present at spot for about 3/4 hours i.e. from 5:45 hours to 21:30 hours. In addition to above, defence

witness (DW-1) namely Zia-ul-Haq was produced, who was the Chowkidar of the Filling Station, deposed in the Court that the vehicle was taken from the Filling Station by the ANF officials which was being parked by the appellant on daily basis on payment of Rs.50/- per day, the register of Filling Station regarding parking of the vehicle was also produced by the said DW-1.

6. We have before us two versions, first is that of the prosecution and the other one is that of the defence and if both the versions are kept in Juxta position with each other keeping in view the circumstances of the case, the date of arrest mentioned in the card of arrest, defence evidence and mobile Data produced by the appellant during the course of trial which was never challenged by the prosecution, the version of the appellant appears to be more plausible and genuine. Since the case of the prosecution squarely rests on the statement of ANF officials and on the other hand the accused has led defence which has created a reasonable doubt in the case of prosecution, the appellant is entitled to get the benefit of the same.

7. It is also settled that if it appears to the Court that the defence taken by the accused might be true, even in that eventuality accused is entitled to its benefit. In this regard reliance is placed on the judgment of Honourable Supreme Court titled **Nadeem-ul-Haq Khan Vs The State 1985 SCMR 510**, wherein it is held that:



"In a criminal case, it is the duty of the Court to review the entire evidence that has been produced by the prosecution and the defence. If, after an examination of the whole evidence, the Court is of the opinion that there is a reasonable possibility that the defence put forward by the accused might be true, it is clear that such a view reacts on the whole prosecution case. In these circumstances, the accused is entitled to the benefit of doubt, not as a matter of grace, but as of right, because the prosecution has not proved its case beyond reasonable doubt."

8. For the reasons mentioned herein above, this appeal is allowed and the conviction and sentence awarded to the appellant by the learned Judge Special Court, Peshawar is set aside and the appellant is acquitted of the charges leveled against him. The order of the learned trial Court regarding the confiscation of vehicle is also set aside in the circumstances of the cases and the concerned authority is directed to hand over the vehicle bearing registration No. BB-7177/Peshawar to the appellant.

Announced.
29.03.2018


JUDGE


JUDGE

(DB) Hon'ble Mr. Justice Qalandar Ali Khan & Hon'ble Mr. Justice Ishtiaq Ibrahim

Ihsan