

JUDGMENT SHEET
PESHAWAR HIGH COURT, BANNU BENCH
(Judicial Department)

Cr. A No. 07-B/2020.

Haris Malik
Vs
The State

JUDGMENT

Date of hearing: 02.3.2020.

For Appellant: Ms. Nosheen Ahmad, Advocate.

For State: Mr. Shahid Hameed, Addl: A.G.

SAHIBZADA ASADULLAH, J.- This appeal under Section 48 of the Control of Narcotic Substances Act, 1997, is directed against the judgment dated 19.11.2019, rendered by learned Additional Sessions Judge/Model Criminal Trial Court, Lakki Marwat, in case FIR No.696 dated 06.9.2017, police station Naurang, whereby appellant Haris Malik was convicted under Section 9(C) CNS Act and sentenced to imprisonment for life with fine of Rs.1,00,000/- (rupees one hundred thousand) or in default thereof to further undergo six months simple imprisonment. Benefit of Section 382-B, Cr.P.C. was extended to him.

2. The prosecution story as disclosed in the FIR Ex. PW 1/1, registered on the basis of murasila Ex. PW 2/1, is that on 06.9.2017, Arif Khan SHO (PW-2) alongwith police personnel made a *Nakabandi* on metal road, within limits of Tarkha Bazi Khel, meanwhile, a motorcar bearing registration

No.ZJ-210/ICT was stopped. During search of the said motorcar, 14 packets containing charas were recovered from its secret cavities. On weighment, each packet came out to be 1000/1000 grams, in toto, the recovered Charas stood 14 kilogram. The accused disclosed his name as Haris Malik, who was arrested and booked in the captioned FIR.

3. On completion of investigation, challan was submitted against the accused before the learned trial Court where accused was charged for the offence to which he claimed trial. In order to prove its case, the prosecution examined as many as six witnesses, whereafter, accused was examined under section 342 Cr.P.C, wherein he professed innocence and false implication, however, neither he opted to be examined under section 340(2) Cr.P.C., nor produced evidence in his defence. Learned trial Court, after hearing arguments of learned counsel for the parties, vide impugned judgment dated 19.11.2019, convicted the appellant and sentenced him, as mentioned above, which has been assailed by the appellant through the instant appeal.

4. Arguments heard and record perused.

5. It was on 06.9.2017, that Arif Khan SHO (PW-2) alongwith police personnel had laid *Nakabandi* on the spot when a motorcar bearing registration No.ZJ-210/ICT was stopped and during its search 14 packets containing Charas were recovered from its secret cavities, which on weighment stood fourteen (14) kilograms. The prosecution witnesses were

cross-examined at length regarding the mode and manner of recovery, but the defence failed to create dents as all the witnesses remained consistent on material aspects of the case. The defence alleged *mala fide* to the seizing officer, who even failed to convince us that why the police would plant such a huge quantity against the accused and that why an attempt was made to implicate the appellant if innocent. The appellant and the police officials had nothing in common which could persuade us to hold otherwise. The manner in which the recovery was effected, the process of weighment, the case property sealed and the investigation conducted tells that the case was investigated on proper lines with strict adherence to the law and procedure. The defence failed to point out major discrepancies in the statements of witnesses, which could prove fatal for the prosecution case. It was argued for the appellant that no efforts were made to associate private witnesses to witness the recovery but his this submission holds no ground as Section 29 of The Narcotic Substances Act, 1997, has done away with such formalities. Even otherwise, police officials are as good witnesses as others are that too when no *mala fide* was either alleged or proved against them.

In case titled *Abdul Rasheed Vs. The State (2009*

SCMR 306), it was held that:

"The prosecution witnesses being members of the raiding party were the natural witnesses and their testimony cannot be discarded merely on the ground that they were the employees of the police force".

In case reported as Gul Alam Vs. The state through Advocate General N.-W.F.P. (2011 SCMR 624), it was held that:

"No enmity, or grudge has been alleged against the prosecution witnesses to falsely implicate the petitioner and despite lengthy cross-examination, their veracity could not be shattered and nothing favourable to the defence could be extracted from their statements. A large quantity of about 11 Kgs of 'charas' could not be thrust upon the petitioner in absence of any tangible and concrete enmity, which has not been proved by the defence".

6. There is no denial to the fact that it was the accused who was driving the motorcar at the time of arrest, that the recovery was effected from the secret cavities of the car and that the accused could not dislodge himself from the motorcar. This is admitted on record that it was none else but the accused who was driving the car at the time of arrest and recovery, so it can safely be presumed that he had the knowledge and that he was in exclusive control of the motorcar and the contraband therein. Though the defence tried its best to convince this Court in respect of the contradictions so made and to reap its benefits, but the contradictions pointed out were not only minor but trivial in nature which could not shake the structure so raised. The complainant who was examined as PW-2, stood the test of cross-examination, but noting disadvantageous could be brought from his mouth. The Investigating Officer was examined as PW-5, who conducted the investigation and interrogated the accused. This witness was thoroughly cross examined on material aspects of the case, but nothing detrimental could be brought out to favour the appellant. He

went on to say that during investigation, he recorded the statement of the Moharrir in respect of the safe custody of the case property and that he also recorded the statement of constable Imdad Ullah, who took the samples to the office of Chemical Examiner and in both the cases i.e. in respect of the case property certificate No.784/21 and in respect of the test samples route certificate bearing No.909/21 was placed on file. The Investigating Officer further stated that he collected the daily diaries No.34 dated 06.9.2017 and No.48 dated 07.9.2017, showing the departure and arrival of the complainant (SHO) to the Police Station. The record depicts that the evidence collected by the prosecution has fully connected the accused with commission of the offence and it was then the accused to prove his innocence as is held in case reported as Kashif Amir Vs. The State (2010 SCMR 1052(b)), that:

"Another aspect of the case is that once the prosecution has prima facie established its case then under section 29 of the CNSA burden shifts upon the accused to prove contrary to the plea of the prosecution".

7. In offences under the Control of Narcotics Substance Act, 1997, the prosecution is duty bound to prove the safe transmission of test samples and that the case property was in safe custody, furthermore, the witnesses were produced who explained that how the test samples were transmitted and the case property was retained in safe custody. In the present case, the prosecution made all efforts to do complete justice with the case and as such all efforts were made to collect the

material evidence in this respect. The Moharrir, in whose custody the remaining case property was lying was produced alongwith the police constable, who took the test samples to the office of the Chemical Examiner, they were put to searching cross-examination, but their veracity could not be shattered.

8. The prosecution witnesses remained consistent on all aspects of the case and even the safe custody of the case property in the police station has been established as in that respect, the concerned Moharrir was produced and examined. Even the prosecution produced one Imdad Ullah, who took the test samples to the Forensic Science Laboratory, who was thoroughly cross examined but nothing was brought from this witness to favour the appellant.

9. For the reasons mentioned hereinabove, we feel no hesitation to hold that the learned trial Court after scrutinizing the prosecution evidence has rightly convicted the appellant, therefore, the impugned judgment, being based on sound reasons asks for no interference. Resultantly, this appeal being devoid of merit stands dismissed.

Announced:
Dt: 02.3.2020.
Kifayat/*


JUDGE


JUDGE

(D.B)

Hon'ble Ms. Justice Musarrat Hilali
Hon'ble Mr. Justice Sahibzada Asadullah

