

Judgment Sheet

PESHAWAR HIGH COURT, PESHAWAR.

(JUDICIAL DEPARTMENT)

Cr.A.No.999-P/2019.**J U D G M E N T**

Date of hearing ----- 31/03/2022.

Appellant by --- Malik Nasr-um-Minallah, Advocate.

State by --- Mr.Muhammad Waqas Chamkani,
Special Prosecutor for ANF.

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LAL JAN KHATTAK, J:- Impugned herein is the judgment dated 24.07.2019 of the learned Judge Special Court (CNS) Peshawar delivered in case FIR No.23 dated 24.11.2017 under sections 9 (c)/15 of the Control of Narcotic Substances Act, 1997 of police station ANF, Kohat whereby the appellant has been convicted and sentenced to imprisonment for life with fine of Rs.1,000,000/- or in default whereof to further suffer simple imprisonment for one year with benefit under section 382-B Cr.P.C.



2. On 24.11.2017, pursuant to a spy information, received by the high-ups of Anti-Narcotic Force regarding the smuggling of Acetic Anhydride, a chemical used in the process of heroin, Inspector Shafique Ahmad, SHO of police station ANF, Kohat arranged a

nakabandi at Old Toll Plaza, Karak when in the meantime a truck bearing registration No.C-2575/Lower Dir reached there from D.I.Khan side which was signaled to stop and on its search 10 cane containing 16 Kg Acetic Anhydride were recovered. Driver of the vehicle disclosed his name as Abdul Jalil. From the recovered chemical, the complainant separated 10/10 ml for chemical analysis through 10 sealed parcels while the rest were sealed in separate 10 parcels.

3. On completion of investigation, challan was put in court which indicted the accused for the offence to which he pleaded not guilty. In order to prove its case, prosecution examined 04 witnesses whereafter statement of the accused was recorded wherein he professed his innocence. After conclusion of the trial, the learned trial court found the appellant guilty of the charge and while recording his conviction sentenced him as mentioned above.

4. Arguments heard and record gone through.

5. Perusal of the case record would show that the seizing officer had separated 10/10 ml of Acetic Anhydride through recovery memo (Ex.P.W.3/2) from the recovered 16 Kg of



chemical for the purpose of chemical analysis and as per the FSL report, which is available on the case file as (Ex.P.W.3/17), the representative samples were subjected to chemical and instrumental analysis wherein Acetic Anhydride was detected. So the prosecution has only proved the recovered chemical had contained Acetic Anhydride. Now the question would arise that what was the percentage of Acetic Anhydride in the recovered chemical? Prosecution case is totally silent in this respect and when a known quantity of some forbidden and illegal item, chemical or contraband is not known then on no count, the culprit charged for its trafficking etc. can be convicted.



6. The Hon'ble Supreme Court of Pakistan in its judgment reported as **PLD 2019 S.C.669** has held as under:-

"The reports of the chemical examiner hopelessly fail to mention the percentage of morphine found in the intoxicating substance, leaving it uncertain whether it passes for a narcotic drug. This fatal omission makes the Reports of the Chemical Examiner inconclusive and unreliable to support conviction under the Act."

7. As the report of the chemical examiner is inconclusive because no known percentage of Acetic Anhydride has been given therein, therefore, following the principle laid down in

the ibid judgment of the Apex Court, no conviction can be maintained.

8. For what has been discussed above, this appeal is allowed, the impugned conviction and sentence is set aside and the appellant is acquitted of the charge leveled against him. He be set free forthwith, if not required to be detained in any other case.

9. Above are the detailed reasons for our earlier short order of even date.


JUDGE


JUDGE

Announced.
Dt. 31/03/2021.

HON'BLE MR. JUSTICE LAL JAN KHATTAK &
HON'BLE MR. JUSTICE ISHTIAQ IBRAHIM

(A-K-KHAN Court Secretary)