

Judgment Sheet

**IN THE PESHAWAR HIGH
COURT, PESHAWAR**
Judicial Department

Cr.A No. 786-P/2016
Shahid Khan Vs the State

Date of hearing: 19.09.2019.

Mr. Khalid Anwar Afridi, Advocate, for
the appellant.

Mr. Waqas Khan Chamkani, Special
Prosecutor ANF.

J U D G M E N T

AHMAD ALI, J. Through appeal in hand,
the appellant (Shahid Khan) has impugned
the judgment dated 22.11.2016, whereby he
was convicted and sentenced to life
imprisonment with fine of Rs.200,000/- or in
default of payment of fine to undergo 06
months S.I. with benefit u/s 382-B, by the
Court of learned Judge, Special Court (CNS),
Peshawar, in case FIR No.30 dated
21.04.2012, u/s 9(c)-13 CNSA 1997, Police
Station, ANF (Peshawar).

2. Brief facts of the case are that
complainant/Mumtaz Hussain, Sub-
Inspector/PW4 along with other officials of

ANF, pursuant to information from their high-ups regarding smuggling, was present on the spot. In the meantime, a Suzuki Pick-Up was seen coming from Karkhano Market, which was stopped. On query, the driver disclosed his name as Shahid Khan. On preliminary inquiry, the accused-appellant/driver disclosed about the narcotics concealed in the right door and the backside of the seat. On his pointation, search of vehicle led to recovery of 24 packets of charas from its left side door and 7 packets from the back of the seat. On weighment the total contraband turned out to be 20.100 kgs. 31 samples of 10/10 grams sample from each packet were separated for the purpose of chemical analysis of FSL and sealed into parcels No. 1 to 31 whereas the remaining quantity was also sealed into a separate plastic bag. Accused-appellant was arrested. The Contraband and vehicle were taken into possession vide recovery memo. On the basis of murasila, FIR ibid was registered against the accused-appellant.

2. On completion of investigation, challan was submitted in Court where the

appellant was charge-sheeted to which he pleaded not guilty and claimed trial.

3. The prosecution in order to prove its case, produced and examined as many as five witnesses whereafter statement of the accused was recorded, wherein, he professed his innocence. The learned Trial Court, after conclusion of trial, found the appellant guilty of the charge and, while recording his conviction, sentenced him as mentioned above. Feeling aggrieved, the appellant has filed the instant appeal before this Court.

4. Arguments heard and record gone through.

5. Perusal of record shows that the prosecution's case against the appellant hinges on evidence furnished by five witnesses. Complainant of the case, namely, Mumtaz Hussain Sub-Inspector appeared before the court as PW-4, who deposed that on 21.04.2012, there was information to the high ups that narcotics smuggler Shahid Khan will transport narcotics through Suzuki pick up No. B-8018-Mardan from tribal territory via Jamrod Road to Punjab, so he alongwith other ANF personnel was present on the spot/Nakabandi where he signaled the

vehicle in question driven by the appellant to stop, which was searched and 24+7 packets of *charas*, concealed in its left door and in the back of the seat, were recovered, which on weighment, turned out to be 20.800 kgs in total. He separated 10/10 grams *chars* from each packet and packed the remaining stuff in a separate plastic bag. He prepared recovery memo Ex.PW4/1 in presence of marginal witnesses and also drafted murasila Ex.PW4/2. The application for sending samples to FSL is Ex.PW4/4. Accused and contraband were then taken to police station by him and handed over to Moharrir of the police Station for safe custody. Moharrir sent the samples to FSL through constable Tariq who handed over the same in FSL and his statement to this effect was also recorded by him. The report of FSL Ex.PW4/10 is in positive.

6. The recovery process was witnessed by PW-5. This witness has deposed that in his presence, the complainant had recovered 24 packets *chars* concealed in left door of the vehicle and 7 packets hidden in the back of the seat. He further deposed that the

complainant had separated 10/10 grams *chars* from each packet in parcels No.1 to 31 for the purpose of FSL and sealed the remaining stuff in a plastic bag duly monogrammed by the complainant.

7. PW-3 is Tariq Afridi FC P.S. ANF, Peshawar, who deposed in his statement before the learned Trial Court that, after handing over samples to him by the Moharrir of the police station concerned, he took the same to FSL in sealed parcels No.1 to 31 alongwith application of the I.O., English docket and rout permit and obtained an acknowledgement receipt from the concerned official of FSL.

8. Moharrir of the police station, namely, Shafiq Hussain, ASI, PS, ANF, Peshawar, was examined being PW-1, who affirmed the stances of Seizing Officer/PW4, witness to the recovery memo PW-5 and PW-3 to whom he handed over the sealed parcels No.1 to 31 for taking to FSL. This witness also confirmed the safe custody of contraband being dumped in the warehouse/ malkhana of PS concerned. In the situation, the very chain, from recovery to safe custody

and transmission of samples to FSL, has obviously been established by the prosecution without any shadow of doubt.

9. All the prosecution witnesses are consistent and coherent in their statements qua stopping the car, search of the vehicle, recovery of case contraband there-from, its weighment and separation of samples from the recovered stuff, its transmission to the FSL for chemical analysis and safe custody of the remaining contraband in the Malkhana. The defence did not succeed in bringing anything from the witnesses' mouth, which could shatter their evidence. They were unanimous in all major aspects of the case and there is nothing on record, which could cast any doubt on the prosecution case.

10. By producing worth reliable and confidence inspiring evidence, the prosecution has successfully discharged the burden, which lay on its shoulder, whereafter it was for the appellant to disproof the prosecution's case set up against him as per Section 29 of the Control of Narcotic Substances Act, 1997. He could not produce any reliable defence to show that either he

was not driving the vehicle at the relevant time when same was stopped and he was arrested or that the case contraband was foisted upon him by the complainant. Though he did examine two DWs but testimony of these witnesses is not sufficient to dislodge the prosecution case against him.

11. Learned counsel for the appellant also contended with vehemence that the samples were sent to FSL with a considerable delay of 2 days, therefore, the prosecution case against the appellant has lost its legal worth as the very chain in it is missing.

12. We are not in agreement with the learned counsel for the appellant on his *ibid* proposition. Though there is a minor delay of two days in sending the samples to FSL, but the rules to that effect are directory and not mandatory. There is nothing on record to establish that the said parcels were ever tampered with rather the evidence led by the prosecution established that the parcels received by the said laboratory, remained intact. The arguments regarding applicability of section 103, Cr.P.C. has no force as section 25 of the Act had ousted the

applicability of section 103, Cr.P.C. in the cases of narcotics. Reliance could be safely placed on **2017 SCMR 1874**. Further, said Rules had placed no bar on Investigating Officer to send samples beyond seventy-two hours of the seizure, receive the F.S.L. report after fifteen days and report so received to place before Trial Court, as the same were directory and not mandatory and could not control the substantive provisions of Control of Narcotic Substances, Act, 1997 and to be applied in such a manner that its operation would not frustrate the purpose of the Act under which those Rules were framed. Failure to follow R-4 & 5 of Control of Narcotic Substances (Government Analysts) Rules, 2001 would not render search, seizure and arrest under Control of Narcotic Substances Act, 1997 an absolute nullity and make entire case doubtful, except for the consequences provided in the Rules. Case laws referred to **2006 YLR 340 & 2006 YLR 2925**. Substantial compliance was sufficient in directory provisions and even where there was no compliance at all, act was not invalidated by such non-compliance if act

otherwise was done in accordance with law. Delay otherwise in sending incriminating articles to concerned quarter for expert opinion could not be treated fatal in absence of objection regarding same having been tampered with or manipulated.

13. Moreover, in the present case prosecution has proved the custody of parcels No.1 to 31 in the Malkhana of the police station concerned prior to their dispatch to FSL. Be that as it may, such omission on their part would not be enough to cause any cracks in the prosecution case against the appellant as it was not the appellant's case that samples other than the separated one were dispatched to FSL by the Investigating Officer.

14. Furthermore, the time consumed would not be taken into account for washing out the prosecution case against the appellant coupled with the fact that huge quantity of narcotic cannot be foisted upon the appellant by the police official to whom no malafide or ill-will had been attributed by the appellant. Delay in sending the samples to laboratory due to rush of work is of no consequences in view of huge quantity recovered from the

secret cavity of the vehicle under the direct possession of the appellant. Reference can be made to **PLD 2009 SC 39**. Besides, wisdom can be also drawn from the judgments reported in **2007 YLR 1962, 2007 YLR 1799, 2006 MLD 747, 2005 YLR 529, 2006 YLR 2925, 2006 YLR 2504, 2006 MLD 361, 2006 YLR 340, PLD 2006 Peshawar 176, 2005 PCrLJ 254, PLD 2008 Lahore 243, 2015 PCrLJ 30, 2013 PCrLJ 557, 2014 MLD 837, 2015 PCr.L.J 143 & 2010 MLD 1453.**

15. Thorough and careful examination of the case record shows that the prosecution has successfully proved its case against the appellant beyond any shadow of doubt through worth reliable and convincing evidence. The impugned judgment of the learned trial court is based on proper appreciation of the case evidence to which no exception could be taken by this court, which is hereby maintained.

16. For what has been discussed above, this appeal, being bereft of any merit, is hereby dismissed.

Announced on;
19.09.2019

CHIEF JUSTICE

J U D G E