

Ph: 9082235
Fax: 9224406

REGISTERED
No. CrI.A.208/2016- SCJ
SUPREME COURT OF PAKISTAN
Islamabad, 23 Feb 2018

(2)

From The Registrar,
Supreme Court of Pakistan.
Islamabad.

To The Registrar,
Peshawar High Court.
Peshawar.

Subject: **CRIMINAL APPEAL NO. 208 OF 2016**
Zakirullah s/o Rowidad Gul
Versus
The State

P.1268

On appeal from the Judgment/Order of the Peshawar High Court,
Peshawar dated 17/11/2015 in Cr.A.639/2013 in case FIR No.511/2012
dated 28/05/2012 registered at Police Station Badber, Peshawar

Dear Sir,


In continuation of this Court's letter of even number dated 25.04.2016, I am directed to enclose herewith a certified copy of the Order/Judgment of this Court dated 22/02/2018 allowing the above cited case in the terms stated therein for information and further necessary action.

I am further directed to return herewith the original record of the High Court received under the cover of your letter No.167 dated 04/05/2016.

Please acknowledge receipt of this letter along with its enclosure immediately.

Encl: Order/Judgment:
2. O/Record of High Court:

348
27/2

Yours faithfully,


(MUHAMMAD MUJAHID MEHMOOD)
ASSISTANT REGISTRAR (IMP)
FOR REGISTRAR

@CFMS

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Asif Saeed Khan Khosa
Mr. Justice Dost Muhammad Khan
Mr. Justice Syed Mansoor Ali Shah

Criminal Appeal No. 208 of 2016

(Against the judgment dated 17.11.2015 passed by the Peshawar High Court, Peshawar in Criminal Appeal No. 639-P of 2013)

Zakirullah

...Appellant

versus

The State

...Respondent

For the appellant:

Mr. Babar Awan, Sr. ASC
Chaudhry Akhtar Ali, AOR

For the State:

Mr. Zahid Yousaf Qureshi,
Additional Advocate-General,
Khyber Pakhtunkhwa


Date of hearing:

22.02.2018

JUDGMENT

Asif Saeed Khan Khosa, J.: Zakirullah appellant had allegedly been apprehended while driving a tractor-trolley and from some secret cavities of the said vehicle *Charas Pukhta* weighing 62 kilograms contained in 62 separate packets had been recovered whereafter 62 samples taken from the recovered substance were tested positive by the Chemical Examiner. With the said allegations the appellant was booked in case FIR No. 511 registered at Police Station Badaber, Peshawar on 28.05.2012 and after a regular trial he was convicted by the trial court for an offence under section 9(c) of the Control of Narcotic Substances Act, 1997 and was sentenced

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Court Associate
Supreme Court of Pakistan
Islamabad

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to imprisonment for life and to pay fine. The appellant challenged his conviction and sentence before the High Court through an appeal which was dismissed and his conviction and sentence recorded by the trial court were upheld and maintained. Hence, the present appeal by leave of this Court granted on 22.04.2016.

2. Leave to appeal had been granted in this case in order to reappraise the evidence and with the assistance of the learned counsel for the parties we have undertaken that exercise.

3. We have straightaway noticed that the *Moharrir* of the relevant Police Station to whom the recovered substance had been handed over for safe custody soon after its recovery had neither been produced before the trial court as a prosecution witness nor his statement under section 161, Cr.P.C. had been recorded by the investigating officer and this was so confirmed by Liaqat Ali, S.I. (PW3) before the trial court. The said investigating officer had also deposed before the trial court that one Ihsan Ullah, F.C. had taken the samples of the recovered substance to the office of the Chemical Examiner for analysis and it is not denied that even the said Ihsan Ullah, F.C. had not been produced before the trial court as a prosecution witness and even his statement under section 161, Cr.P.C. had not been recorded during the investigation. The name of Ihsan Ullah, F.C. did not even find any mention in the report of the Chemical Examiner brought on the record of this case. It is, thus, obvious that neither safe custody of the recovered substance nor safe transmission of the samples of the recovered substance had been established by the prosecution before the trial court. It has already been held by this Court in the cases of Amjad Ali v. The State (2012 SCMR 577) and Ikramullah and others v. The State (2015 SCMR 1002) that in a case where safe custody or safe transmission of the recovered substance or samples is not established there it cannot be concluded with any degree of certainty that the prosecution had succeeded in establishing its case against an accused person. The case in hand is not different from the above mentioned precedent cases in this respect.

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4. For what has been discussed above this appeal is allowed, the conviction and sentence of the appellant recorded and upheld by the courts below are set aside and he is acquitted of the charge by extending the benefit of doubt to him. He shall be released from the jail forthwith if not required to be detained in connection with any other case.




Islamabad:
22.02.2018

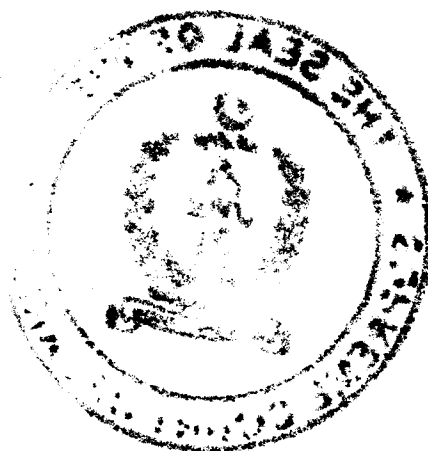
Not approved for reporting.

Ari OM
23/2/18

Sd/- Asif Saeed Khan Khosa, J
Sd/- Dost Muhammad Khan, J
Sd/- Syed Mansoor Ali Shah, J

Certified to be True Copy


Court Associate
Supreme Court of Pakistan
Islamabad



Abstract

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