

*Judgment Sheet*

**IN THE PESHAWAR HIGH COURT,**  
**ABBOTTABAD BENCH**  
**JUDICIAL DEPARTMENT**

**J U D G M E N T**

*Cr.A No.61 /2007*  
*Date of hearing...09.04.2015*

**State Vs Waris Khan.**

*Appellant(s) by.....*

*Respondent(s) by.....*

**ABDUL LATIF KHAN, J:-** This appeal has been preferred by State through Advocate General, KPK, Peshawar against the judgment/order dated 15.02.2007, passed by learned Special Judge, Haripur whereby he acquitted the accused/respondent from the charges leveled against him, in case FIR No.71 dated 26.01.2004 u/s 9-C CNSA r/w 3/4 PEHO, P.S. Kot Najibullah, Haripur.

**2.** As per prosecution case, the complainant Babar Khan ASI on receiving spy information regarding selling of charas by the accused/respondent, rushed to the spot accompanied by other police officials where the

accused/respondent on seeing the police party, starting decamping from the spot who was chased and overpowered by the police party whereas two persons sitting with the accused decamped from the spot. On search of jacket of accused/respondents eight Patay (slabs) Charas were recovered which on weighing came out to be 2 Kg 35 grams. 5/5 grams were separated from each slab and sealed into parcel for chemical analysis while remaining quantity was sealed into separate parcel. Consequently the accused/respondent was arrested and a case vide FIR mentioned above was registered against him.

**3.** After completion of investigation complete challan against accused was submitted in the trial Court where in order to prove its case against accused, the prosecution examined 4 witnesses. At conclusion of trial, the learned trial Court acquitted the accused/respondent vide impugned judgment hence the instant Criminal appeal has been preferred by State.

Arguments hear and record perused.

**4.** Perusal of record reveals that the recovery of alleged Charas of 2 Kg 35 grams was

effected from possession of accused by PW.4 Babar Khan ASI, who is Seizing Officer, complainant as well as Investigation Officer in the instant case meaning thereby that he is three in one. Under the law, complainant and accused are two opponent parties. In other words, they are two contesting parties. Role of an Investigating Officer is of a neutral authority whose object is to unearth the truth. The Investigating Officer cannot be a part or a member of a party in a case which he is investigating. In this regard, guidance may be sought from Chapter 25 of Investigation from Police Rules, 1934. Rule 25.2(3) reads as under:---

***"It is the duty of an Investigating Officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."***

The language of Rule 25.2 above noted clearly requires of an Investigating Officer not to commit

himself prematurely to any view of the facts for or against any person. This cannot be expected from an Investigating Officer who himself is a party. As a matter of fact, concept of honest investigation is based on non-partisanship and neutrality. The reason and spirit of separating investigation wing from the operation wing of police also emanates from the same fact which reflects in Article 18 of the Police Order, 2002, therefore, we feel that element of honest, transparent and fair investigation lacks in the instant case. The same point has been discussed by the learned **Sindh High Court reported in Nazir Ahmad v. The State PLD 2009 Kar. 191.** The Honourable Supreme Court has analyzed the above point from another angle also. According to the Honourable Supreme Court, Investigating Officer is an important witness for the defence also and in case he acts as a complainant and raiding officer, the defence is deprived of his very precious right at the same time and is forced not to depend upon the same. The Federal Shariat Court also observed that such an investigation is biased investigation. **(Ashiq alias Kaloo v. State 1989 PCr.LJ 601).** In **State v.**

**Bashir and others 1998 SC 408**, the Honourable Supreme Court observed that "as observed above, Investigating Officer is as important witness for the defence also and in case the head of the police party also becomes the Investigating Officer, he may not be able to discharge his duties as required of him under the Police Rules".

5. Apart from above, despite receiving spy information, PW.3 being an ASI did not bother to inform his highups so that the proceedings could be conducted in accordance with law as according to Section 21 of CNSA, the officer below rank of Sub-Inspector of Police, has no power of entry, search, seizure and arrest without warrant. He was required at least to inform an official having rank of Sub Inspector of his Police Station but he straight away went to the spot and also not conducted any test purchase regarding allegation of selling narcotics by the accused/respondents which creates doubt in the prosecution case. Though two persons have been shown to be sitting with the accused/respondent, who decamped from the spot, while accused was over powered but even then no recovery of sale amount of

contraband was recovered from possession of the accused which could depict that accused was actually selling contraband especially when two customers were present with him at the relevant time nor any scale etc, was recovered from the appellant which could strengthen the allegation of prosecution regarding selling of narcotics by the accused/respondent.

6. The type of charas has also not been mentioned in the FIR as to whether the recovered contraband were Charas Garda or Charas Pukhta which makes the recovery doubtful. Besides, the alleged recovery of contraband was effected on 26.1.2004 but the samples sent by the I.O, were received in the FSL on 7.2.2004, after delay of about 12/13 days which delay has not been explained by the prosecution nor any statement of concerned official in whose presence the contraband were lying during those period, was recorded creating doubt in the recovery of contraband.

7. Despite prior information about selling of charas by the accused, no independent witness has been associated by PW.3 which could support the

prosecution case. Though police officials are as good as witnesses as other private person could be but when the complainant, I.O are same and marginal witnesses are also his subordinate/colleagues then there is no chance of fair investigation especially when the accused was already known to PW.3 as per contents of FIR so there is every possibility of false involvement of accused in the instant case wherein the whole proceedings were conducted by one person who being below the rank of SI, having no power to seize, search and arrest the accused.

**8.** So far as registration of other FIRs against the accused/respondent are concerned, the prosecution failed to bring on record any history of conviction of the accused in those cases so mere registration of other FIRs against an accused cannot be made a ground for his conviction. Besides, there are material contradictions in the statements of prosecution witnesses which have been discussed by the learned trial Court in detail and repetition of the same would be wastage of time, therefore, the learned trial Court has rightly acquitted the accused from the charges leveled against him through

impugned judgment, which needs no interference by this Court.

In view of what has been discussed above, this Criminal appeal being without force is dismissed.

Announced.  
*Dt.09.04.2015.*

***J U D G E***

***J U D G E***

***“A.Qayum”***