

## **Judgment Sheet**

IN THE PESHAWAR HIGH COURT,  
PESHAWAR.

**JUDICIAL DEPARTMENT**

**Cr.A No. 680-P of 2014.**

### **JUDGMENT**

Date of hearing.....13.09.2017.....

Appellant(s)...(Tariq Mehmood etc) by Ms. Farhana Marwat,  
Advocate.

Respondent(s)/State/ANF by Mr. Tariq kakar, Advocate, Standing  
Counsel for ANF.



**QALANDAR ALI KHAN, J:-** This criminal appeal under Section 48 CNSA, 1997, by Tariq Mehmood and Imran Haider, appellants, is directed against the judgment/order dated 03.12.2014 of learned Judge, Special Court (CNS), Peshawar, whereby the appellants were convicted and sentenced to life imprisonment and fine of Rs.2,00,000/-, 'to each one', or in default of payment of fine to further two years

S.I, while extending them the benefit of Section 382-B Cr.PC.

2. The case under Section 9 ( C ) CNSA was registered against both the appellants/accused in Police Station, Anti Narcotics Force, Peshawar, vide FIR No.56 dated 20.08.2013, on the report of Waqar Ahmed, Sub Inspector, Police Station ANF, Peshawar, who, while acting on a prior information about smuggling of narcotics in vehicle No.WA-433/Islamabad from tribal territory to Punjab via Motorway by the appellants/accused, laid a picket near Motorway Tool Plaza Peshawar; and, in the meantime, the aforementioned vehicle appeared from Peshawar side and was stopped for checking. According to the FIR, out of the two accused, who disclosed their names to the complainant/S.I, Tariq Mehmood was on the driving seat, while Imran Haider was occupying the front seat. They, allegedly, further revealed presence of narcotics in the secret cavity of floor of the vehicle, which was opened and on

checking 59 packets of chars (*Gardah*), 13 packets of chars (*Pukhta*) and 17 packets of opium in the shape of *tikkis* were recovered wrapped in coloured plastic wrapper and solution tape and also a packet of heroin, brown colour, in white cloth and a plastic envelop were recovered, which, on weighment, were found 70.800 kilograms chars (*Garda*), 15.600 kilograms chars (*Pukhta*), opium in packets of 1200/1200 grams, total weighing 20.400 kilogram and packet of heroin weighing 1 kilogram. The complainant/SI separated samples of 10/10 grams from the recovered contraband, which were sealed, and the remaining contraband were also sealed in separate sacks. The further search of the vehicle led to recovery of registration book of the vehicle in the name of Syed Mazhar Hussain, which was taken into possession along with the vehicle and contraband vide recovery memo EXPW4/1; and the accused/appellants were arrested, and *murasila* (EXPW4/2) was drafted

by the complainant/S.I, whereupon case was registered vide FIR (EXPW4/1). The site plan was prepared by the complainant/S.I; who also dispatched the samples to the FSL, Peshawar, which were received there on the following day of the recovery i.e. 21.08.2013; and report of the chemical examiner in respect of all the samples was in the affirmative. After completion of investigation, complete challan against the accused/appellants was submitted by the SHO P.S ANF, Peshawar.

3. On the receipt of complete challan in the Court, the learned trial Court/Judge, Special Court (CNS), Peshawar, framed formal charge against both the accused/appellants under Section9 (C) CNSA, 1997, to which the accused/appellants pleaded not guilty, and claimed trial.

4. In support of its case, the prosecution produced as many as five PWs, including complainant/S.I, Waqar Ahmed (PW.4), and marginal witness of the recovery memo, Feroz

Khan S.I (PW.5); where-after, the prosecution closed its evidence; and statements of the accused/appellants were recorded under Section 342 Cr.PC, wherein, they refuted allegation of the prosecution, and also opted to be examined on oath under Section 340 (2) Cr.PC. Their statements were, accordingly, recorded under Section 340 (2) Cr.PC; and they also produced Mst. Ruqia Kausar (DW3) and Mst. Shama (DW.4). Thereafter, the learned trial Court/Judge Special Court (CNS), Khyber Pakhtunkhwa, Peshawar, rendered the impugned judgment dated 03.12.2014; hence appeal by both the appellants/accused.

5. Arguments of learned counsel for the appellants/accused and Standing counsel for ANF heard; and record perused.

6. During arguments, it was urged on behalf of the appellants that they, according to their statements on oath and also defence evidence adduced by them, had visited Peshawar for purchasing some house hold

articles from *Karkhano* market for marriage of daughter of appellant, Tariq Mehmood; and that they had hired the vehicle going to Islamabad for Rs.1500/- and also that they had no knowledge of presence of narcotics in the said vehicle. The learned counsel for the appellants, in support of these contentions referred to **2016 SCMR 806, 2016 SCMR 909, 2016 SCMR 707, 2014 SCMR 1165, PLD 2012 S.C 369, PLD 2015 Peshawar 157, 2014 P.Cr.L.J 22 (Islamabad), 2016 P.Cr.L.J Note 79 (Sindh (Hyderabad Bench), 2014 P.Cr.L.J 1295 (Sindh).**

7. The appellants/accused, in other words, admitted presence of the narcotics in the vehicle and recovery of the same while they were present in the vehicle. As such, there would be a presumption of possession of illicit articles under Section 29 of the CNSA, 1997, unless and until the contrary was proved. In order to prove the contrary, the appellants/accused tried to discharge this

burden, but vainly; as, initially, they tried to develop story of marriage of daughter of Tariq Mehmood, appellant, and their visit to Peshawar along with female DWs namely Mst. Ruqia Kausar (DW.3) and Mst. Shama (DW4) for purchase of articles from *Karkhano* market; where-from, they hired the vehicle for Rs.1500/- to Islamabad, after purchasing the articles, but they were, allegedly, taken to the Police Station, where they were falsely implicated in the case. It was, however, not made clear that when the appellants/accused had come to Peshawar from Lahore, then why they hired the vehicle going to Islamabad. They also failed to prove their journey from Lahore to Peshawar for the alleged purpose as they produced no evidence like tickets etc for the purpose. Apart from the undisputed time of occurrence i.e. 0645 hours, when *Karkhano* markets are admittedly, not yet open what to speak of purchase of article and then returning for return journey, the line of defence during

cross examination of the marginal witness (PW5), whereby in his answer to a suggestion from the defence, the PW denied that the accused/appellants were waiting for passenger's vehicle on the road near *Karkhano* Markets when the ANF officials came, asked them about their presence in *Karkhano* Market and later on took them to the Police Station and that both the ladies were let free and the accused were implicated in the case; clearly contradicts statements of the accused and their defence witnesses to the effect that after hiring the vehicle to Islamabad on fixation of fare of Rs.1500/-, they boarded the vehicle, and after covering some distance in the vehicle, they were taken to the Police Station, while according to DW.4, the driver turned the vehicle to an unknown place near the motorway; where the recovery of huge quantity of narcotics was made by the staff of ANF; which, admittedly, neither had previous acquaintance with the appellants/accused nor



any ill will or grudge for their false implication in the case and substitution for the real culprits.

8. The prosecution, on the other hand, brought overwhelming evidence on the record to bring home charge of possession and trafficking huge quantity of narcotics i.e. 70.800 kilograms chars (*Garda*), 15.600 kilograms chars (*Pukhta*), 20.400 kilograms opium and 1 kilogram heroin. The recovery of narcotics was not only proved through the testimony of complainant/SI (PW4) and marginal witness (PW.5), and witnesses to the safe custody of the samples i.e. Constable Shakir Zaman (PW2) and Ashfaq Hussain ASI (PW3); but also prompt dispatch of the samples to the FSL on the following day of the recovery; and positive report of the FSL; which cannot be dislodged by the mere fact that the PWs belonged to ANF, as police officers/officials are as good witnesses as any other witnesses, keeping in view facts and circumstances of the case, unless malice was proved against them, which was not even

alleged, let alone proved by the defence. Likewise, the minor discrepancies in the prosecution case, as pointed out by the defence, would not be that much fatal for the case of prosecution in the light of consistent and confidence inspiring evidence of the prosecution; which, certainly led to the conclusion that the prosecution had proved case against the appellants/accused, who were accordingly awarded the sentence of life imprisonment, which was the bare minimum sentence the learned trial Court could award to the appellants/accused, keeping in view huge quantity of narcotics. The conviction of the appellants/accused and sentence of life imprisonment awarded to them, therefore, do not suffer from any legal infirmity, which are upheld; and appeal of the appellants dismissed, accordingly.

Announced. .  
13.09.2017  
(Ayub)

**J U D G E**

**J U D G E**

