

IN THE SUPREME COURT OF PAKISTAN  
(APPELLATE JURISDICTION)

**PRESENT:**

MR. JUSTICE SAJJAD ALI SHAH

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**JAIL PETITION NO. 614 OF 2016**

*(On appeal against the judgment dated 19.10.2016 passed by the Peshawar High Court, Peshawar in Criminal Appeal No. 46-P/2014)*

Ajab Khan

... Petitioner

**VERSUS**

The State

... Respondent

For the Petitioner: Ms. Aisha Tasneem, ASC

For the State: Raja Muhammad Rizwan Ibrahim Satti, State Counsel

Date of Hearing: 28.10.2021

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** *Petitioner was proceeded against in terms of the case registered vide FIR No. 567 dated 29.05.2011 under Section 9(c) of the Control of Narcotic Substances Act, 1997, at Police Station Muhammad Riaz Shaheed, District Kohat as charas weighing 19 kilograms was recovered from him. The learned Trial Court vide its judgment dated 07.01.2012 convicted the petitioner under Section 9(c) of the Control of Narcotic Substances Act, 1997, and sentenced him to imprisonment for life. He was also directed to pay a fine of Rs.500,000/- or in default whereof to further undergo SI for five years. Benefit of Section 382-B Cr.P.C. was extended to him. In appeal the learned High Court maintained the conviction and sentences recorded against the petitioner by the learned Trial Court.*

2. The prosecution story as given in the impugned judgment is as under:-

"2. Brief and essential facts of the prosecution case according to the FIR are that Wali Bat Khan IHC along with Mubarik Hussain LHC, Tariq Ahmed LHC, Abrar No. 1369 and other police personnel were busy in checking of vehicles at Highway Check Post; that in the meanwhile a Suzuki motorcar of White colour bearing registration No. N-8704 coming from Darra Adam Khel side, was stopped for checking purpose; that

*on query the driver disclosed his name as Ajab Khan son of Aqal Khan, and on search of the motorcar 19 packets of charas gardha was recovered; that on weighment each packet came 1000 grams; that from each packet 4/4 grams were separated for FSL and sealed into separate parcels while the remaining was sealed into separate parcel. The recovered contrabands were taken into possession vide recovery memo (Exh.PC); that murasila (Exh.PW 5/1) was drafted and sent to the police station for registration of the case, upon which the case FIR was registered against the accused.*

3. *After completion of investigation, report under Section 173 Cr.P.C. was submitted before the Trial Court. In order to prove its case the prosecution produced as many as eight witnesses. When examined under Section 342 Cr.P.C., the petitioner stated that he is innocent and has been falsely implicated in the case.*

4. *Learned counsel for the petitioner contended that the petitioner has been falsely implicated in this case and the Police has planted a fake case upon him. Contends that the narcotic was allegedly recovered from the petitioner in the broad daylight in a busy thoroughfare but none from the public was associated in the case to depose against the petitioner. Contends that the confessional statement of the petitioner under Section 164 Cr.P.C. has no value as the same was recorded on a printed proforma and the certificate issued by the Magistrate clearly shows that the petitioner gave the statement in Pashto, which was translated into Urdu. Contends that Muhammad Iqbal (PW-3) who was supposed to send the parcels to KBI unit for its onward transmission to Forensic Science Laboratory did not mention the date as to when he transmitted the parcels to KBI unit whereas Samiullah (PW-8) stated that he had taken the samples to the FSL on 06.06.2011 i.e. after six days of the alleged occurrence, for which no plausible explanation has been given and the same shows that the safe chain of custody was compromised. She lastly contends that the petitioner is innocent and he may be acquitted of the charge.*

5. *On the other hand, learned Law Officer has supported the impugned judgment. He contended that the petitioner was caught red handed while transporting a huge quantity of narcotics and he also confessed his guilt after two days of the occurrence before the Judicial Magistrate and the fact that he gave his statement on a proforma or in Pashto is of no avail to him because it is on record that his statement was translated and read over to him. Contends that the Judicial Magistrate who had recorded petitioner's confessional statement had*

*appeared as PW-7 and has duly explained and verified the statement made by the petitioner. Contends that the defence counsel did not cross-examine PW-8 as to why he sent the samples to the FSL after six days, therefore, this ground cannot be taken at this stage. Lastly contends that the petitioner is guilty of the offence, therefore, he does not deserve any leniency by this Court.*

6. *We have heard learned counsel for the parties at some length and have perused the evidence available on record.*

*The petitioner was caught red handed by the Police and 19 packets of charas garda, each packet weighing 1000 grams (total 19 kilogram), was recovered from beneath the rear seat of the car, which was being driven by the petitioner. From each packet, 4 grams of charas was separated in 19 separate parcels for the purpose of chemical examination and the remaining was sealed into separate parcel. The prosecution's case hinges upon the statements of Tariq Ahmed, LHC, (PW-4) and Wali Bat, IHC (PW-5). Both these witnesses have narrated the prosecution story in a natural manner and remained consistent throughout and their testimony could not be shattered by the defence despite lengthy cross-examination. The said witnesses had no enmity with the petitioner to falsely implicate him in the present case as a huge quantity of 19 kilograms of charas cannot be foisted upon the petitioner to fabricate a fake case. This Court in a number of judgments has held that testimony of police officials is as good as any other private witness unless it is proved that they have animus against the accused. However, no such thing could be brought on record by the petitioner in this case. This Court in Salah-ud-Din Vs. State (2010 SCMR 1962) has held that "reluctance of general public to become witness in such like cases has become judicially recognized fact and there was no way out to consider statement of official witness, as no legal bar or restriction has been imposed in such regard. Police officials are as good witnesses and could be relied upon, if their testimony remained un-shattered during cross-examination." The police officials separated the samples from each packet in a prescribed manner and sent the same to the office of Forensic Science Laboratory. The report of the Forensic Science Laboratory shows that all the 19 samples were subjected to chemical and instrumental analysis and the same were found to be narcotic substance. So far as the argument of learned counsel for the petitioner that the samples were sent to the Forensic*

Science Laboratory after a period of six days, therefore, the safe transmission of the samples is not proved is concerned, we have noticed that Muhammad Iqbal (PW-3) and Samiullah (PW-8) who were responsible for transmission of the samples to FSL were never cross-examined on this point by the defence, therefore, this ground cannot be taken at this stage. We could not find anything from the record, which could suggest that the safe chain of custody of the samples was compromised. We have noticed that just after two days of the occurrence, the petitioner had made a confessional statement before the Judicial Magistrate-VI, Kohat in which he confessed his guilt and stated that because of poverty he has committed the crime. The printed proforma was only a memorandum of enquiry through which some basic questions were asked from the petitioner. The confessional statement of the petitioner was separately recorded and not on a printed proforma. The certificate issued by the Magistrate in this regard clearly shows that although the petitioner gave the statement in Pashto but the same was translated and read over to him. The petitioner was also given 30 minutes time to think over before recording his confessional statement. The learned Judicial Magistrate who had recorded the statement of the petitioner has also appeared before the Trial Court as PW-7 and has duly testified the same. He was cross-examined at length but nothing favourable to the petitioner could be brought on record. Even otherwise, the close analysis of the whole prosecution evidence coupled with the confessional statement, the recovery of huge quantity of narcotics and the happening of the occurrence in broad daylight when evaluated conjointly, there is no other option left with the Court except to rely on the statements of the prosecution witnesses for the purpose of conviction as recorded by the two courts below. Consequently, this petition being devoid of any force, the same is dismissed and leave to appeal is refused.

JUDGE

JUDGE

Islamabad, the  
28<sup>th</sup> of October, 2021  
Approved For Reporting  
**Khuram**