

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

Mr. Justice Maqbool Baqar
Mr. Justice Mazhar Alam Khan Miankhel
Mr. Justice Qazi Muhammad Amin Ahmed

Jail Petition No. 508 of 2016

*(Against the judgment dated 30.08.2016
passed by the High Court of Sindh in Crl.
Jail Appeal No.S-160 of 2011)*

Zubair Khan

...Petitioner(s)

Versus

The State

...Respondent(s)

For the Petitioner(s): Qari Abdul Rasheed, ASC

For the State: Mr. Zafar A. Khan,
Addl. Prosecutor General

Date of hearing: 21.01.2021.

JUDGMENT

Qazi Muhammad Amin Ahmed, J.- A contingent of Naushahro Feroze police, after a hot pursuit, intercepted a suspicious truck bearing registration No.E-5318, ostensibly transporting a cargo comprising 100 bags of potatoes with 80 packets of cannabis, surreptitiously concealed in the secret cavities thereof, at 4:00 p.m. on 21.4.2010; the petitioner was on the wheel; the vehicle and the contraband, weighed as 80 K.G, were secured vide inventories; forensic analysis of the samples, separated from the each packet, confirmed narcotic character thereof. As the investigation progressed, one Abdul Latif Gul, since P.O., was identified as the man behind the scene. The petitioner claimed trial, pursuant whereto, prosecution produced two witnesses as well as case property consisting the impounded vehicle and the contraband, confronted by the petitioner with denial; he was returned a guilty verdict with imprisonment for life vide judgment dated 02.04.2011, upheld by the High Court of Sindh vide impugned judgment dated 30.08.2016, vires whereof, are being assailed on the ground that in the face of prosecution's failure to establish safe custody as well as transmission of the samples to the office of

Chemical Examiner with a duplicate forensic report, in circumstances, there was no occasion for petitioner's conviction. The learned Law Officer has defended the impugned judgment though without much enthusiasm.

2. Heard. Record perused.

3. Prosecution produced two witnesses, namely, Basharat Hussain, Inspector as (PW-1) and Abdul Ghani as (PW-2); the former furnished comprehensive details regarding interception of vehicle along with the contraband and investigative steps taken thereafter whereas the former corroborated his deposition, however, the prosecution unredeemingly failed to establish the essential link of safe transmission of samples to the office of Chemical Examiner as despite opportunity Abdul Hakeem, EC/B-131 who had delivered the samples failed to enter the witness box, leaving the entire case in the lurch. The last straw is prosecution's reliance on a duplicate forensic report Ex.15 to confirm narcotic character of the contraband. Appalling inaptitude of the functionaries tasked to prosecute the crime, awfully heinous in nature, has occasioned the failure to establish a most vital link to drive home the charge, irreversibly vitiated by a duplicate forensic report, inadmissible in evidence, leaving no juridical possibility to maintain petitioner's conviction. Petition is converted into appeal; same is allowed; the impugned judgment is set aside; the appellant is acquitted of the charge and has been ordered to be released if not required to be detained in any other case vide short order of even date. Findings recorded hereinabove shall cast no bearings on the trial of absconding co-accused, to be dealt with independently, after his arrest on the strength of available evidence. The impounded vehicle statedly owned by the absconding co-accused, with no rival claimant till date, shall be disposed of in the manner provided under section 88 of the Code of Criminal Procedure 1898.

Judge

Judge

Judge

Islamabad, the
21st January, 2021
Not approved for reporting
Azmat/-