

**PRESENT:**

MR. JUSTICE IJAZ UL AHSAN

MR. JUSTICE MUNIB AKHTAR

MR. JUSTICE SAYYED MAZAHAR ALI AKBAR NAQVI

**JAIL PETITION NO. 637 OF 2016**

(On appeal against the judgment dated  
16.11.2016 passed by the High Court of Sindh,  
Karachi in Criminal Appeal No. 196/2015)

Liaquat Ali and Shad Muhammad

... Petitioners

**VERSUS**

The State

... Respondent

For the Petitioners:

Mr. Liaquat Ali Tareen, ASC  
(For petitioner Liaquat Ali)

Syed Qalb-e-Hassan, ASC  
Mr. Zahoor ul Haq Chishti, ASC  
(For petitioner Shad Muhammad)

For the State:

Dr. Faiz Shah, P.G. Sindh  
Mr. Zafar Ahmed Khan, Addl. P.G.  
Mr. Khadim Rind, DIGP  
Mr. Abdul Qayyum Patafi, SSP

Date of Hearing:

09.03.2022

**JUDGMENT**

**SAYYED MAZAHAR ALI AKBAR NAQVI, J.-** Petitioners were tried by the learned Special Judge for CNS, Naushero Feroz in terms of the case registered vide FIR No. 145 dated 04.11.2013 under Section 9(c) of the Control of Narcotic Substances Act, 1997, at Police Station Bhiria City, District Naushero Feroz as contraband charas weighing 59 kilograms was recovered from them. The learned Trial Court vide its judgment dated 04.08.2015 convicted the petitioners under Section 9(c) of the Control of Narcotic Substances Act, 1997, and sentenced them to imprisonment for life. They were also directed to pay a fine of Rs.500,000/- each or in default whereof to further undergo SI for one year each. Benefit of Section 382-B

*Cr.P.C. was also extended to them. In appeal the learned High Court maintained the conviction and sentences recorded against the petitioners by the learned Trial Court.*

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

*"2. The brief facts of the prosecution case as disclosed in the FIR are that on 04.11.2013 SIP Khadim Hussain Buledi was posted as Incharge CIA Police Naushero Feroz, on the same date, he along with PCs Abdul Ghaffar Mashori, Khamiso Khan Mashori, Nisar Ahmed Kalhoro left CIA center in Police mobile vide Roznamcha Entry No. 07 at 1215 hours for patrolling duty. While patrolling at various places when the police party reached at National Highway, near Bhiria city, where it is alleged that Incharge CIA received spy information that two persons were coming in a Parado, Silver Colour Vehicle bearing No. BD-4450 from Sukkur to Karachi. According to information, accused persons had charas in secret cavities of the vehicle. Police party held nakabandi near Grid Station Bhiria City. At 1600 hours vehicle appeared on the road from Sukkur side. It was stopped, two persons were sitting in it, one was driving the vehicle and another was sitting beside the driver seat. SIP inquired the name of the driver to which he disclosed his name as Liaquat Ali son of Gul Hassan Magsi, resident of Labour Colony, Hub Chowki, Balochistan. Another accused who was sitting beside the driver disclosed his name as Shad Muhammad son of Gul Nazar Gujjar Pathan, resident of Qalander Abad, Gulistan-e-Johar, Karachi. SIP made PCs Abdul Ghaffar and Khamiso Khan as mashirs and searched the vehicle. Under the seat of the vehicle there was secret cavity, it was opened and charas was found in such cavity in plastic bags. 16 bundles of the charas were in white, black and red plastic bags and words 'Fair Trade Espresso Dark Rost' were written. Two bundles of the charas were in two red coloured polythine bags, on which 'candle' was written. Different words were written on different bundles. Total weight of charas was 59 Kgs. SIP conducted personal search of accused Liaquat Ali in presence of mashirs and recovered one original CNIC and cash Rs.1500/-. From personal search of accused Shad Muhammad a CNIC and cash of Rs.2000/- were recovered. Accused had no vehicle documents. Mashirnama of arrest and recovery was prepared by SIP in presence of the above named mashirs and charas was sealed in three different plastic bags. Thereafter accused, case property and vehicle were brought to the police station Bhiria city where SIP kept Entry No. 17 at 1830 hours. SIP Wali Muhammad, SHO PS Bhiria City lodged FIR bearing Crime No. 145/2013 under Section 9(c) of the Control of Narcotic Substances Act, 1997 at Police Station Bhiria City. Thereafter, investigation was handed over to SHO Wali Muhammad Chang."*

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 four witnesses. When examined under*

Section 342 Cr.P.C., the petitioners stated that they are innocent and have been falsely implicated in the case.

4. Learned counsel for the petitioners contended that the petitioners have been falsely implicated in this case and the Police has planted a fake case upon them. Contend that the narcotic was allegedly recovered from the petitioners in the broad daylight in a busy thoroughfare but none from the public was associated in the case to depose against the petitioners. Contend that safe custody and safe transmission of the narcotic was compromised as Amjad Hussain (PW-3) who was supposed to send the parcels to Forensic Science Laboratory did not mention the date and time as to when he transmitted the parcels to the Laboratory.

5. On the other hand, learned Law Officer has supported the impugned judgment. He contended that the petitioners were caught red handed while transporting a huge quantity of narcotics and the Police officials had no enmity to falsely involve them in the present case, therefore, they do 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 petitioners were caught red handed by the Police and a huge quantity of 59 kilograms of contraband charas packed in 58 packets was recovered from secret cavities of the car, which was being driven by the petitioner Liaquat Ali whereas the petitioner Shad Muhammad was sitting on the rear seat. The prosecution's case hinges upon the statements of SIP Khadim Hussain Buledi (PW-1), Abdul Ghaffar (PW-2), PC Amjad Hussain (PW-3) and Wali Muhammad Chang, I.O (PW-4). All 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 petitioners to falsely implicate them in the present case. Even otherwise a huge quantity of 59 kilograms of charas in no circumstances can be planted by the Investigating Officer of his own. 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 petitioners in this case. This Court has time and again held that reluctance of general public to become witness in such like cases has become judicially recognized fact and there is no way out to consider statement of official witnesses, 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 remains un-shattered during cross-examination. The police officials sent entire recovered contraband charas to the office of Chemical Examiner. The report of the Chemical Examiner shows that from all the 58 packets of recovered charas, 50 grams charas was separated from each packet and consumed in analysis and the same was found to be contraband charas. So far as the argument of the learned counsel for the petitioner that the contraband charas, its safe custody and safe transmission is not established is concerned, the learned High Court has very ably dealt with this issue in paragraphs 18 & 19 of the impugned judgment while holding that the Control of Narcotic Substances (Government Analysts) Rules, 2001 virtually place no bar on the Investigating Officer to send the samples beyond 72 hours of the seizure. These Rules are stricto sensu directory and not mandatory in any manner. It does not spell out that if there is any lapse and the time is consumed beyond 72 hours, it would automatically become instrumental to discard the prosecution case in all manners. The Control of Narcotic Substances (Government Analysts) Rules, 2001, cannot control the substantive provisions of the Control of Narcotic Substances Act, 1997. These Rules cannot in any manner frustrate the salient features of the prosecution case which otherwise hinges upon (i) receipt of information, (ii) action by the concerned law enforcing agency, (iii) recovery of contraband narcotics, (iv) the report of chemical examiner regarding analysis of the recovered contraband, (v) the finding of fact by the courts below after recording of evidence i.e. (a) witnesses of the raiding party, (b) the recovery witnesses, (c) Investigating Officer and all other attending circumstances. If the series of acts which ultimately resulted into recovery of contraband narcotic are juxta poised with the violation of the Rules due to one reason or the other*

as alleged, it cannot by any stretch of imagination be considered reasonable in law to smash the prosecution case on its salient features. The transportation of drugs either inside the country or sending it abroad has become a menace against morality, decency, public order, law and order situation which indirectly intrudes upon the sovereignty of the country. If this practice is allowed to continue it will squarely hamper the very purpose of the law on the subject and would squarely bring bad name for the country in the eyes of international community. It is established beyond any doubt that the proceeds of narcotics are largely utilized in terrorist activities which this country is facing since decades, therefore, the activities of these elements need to be curbed with iron hands. Even otherwise, on merits we could not find anything from the record, which could suggest that the safe chain of custody of the narcotic was compromised. The close analysis of the whole prosecution evidence i.e. the recovery of huge quantity of narcotics, the happening of the occurrence in broad daylight, report of the Chemical Examiner and the statements of the prosecution witnesses 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.

Islamabad, the

9<sup>th</sup> of March, 2022

Approved For Reporting

**Khurram**