

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

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

Criminal Petition No.30-P/2012

*(Against the judgment dated 22.2.2012 of the Peshawar High Court
Peshawar passed in Cr. A.No.351 of 2011)*

The State through Director ANF

...Petitioner(s)

Versus

Khurshid Khan

...Respondent(s)

For the Petitioner(s): Mr. Muhammad Tariq Shah,
Special Prosecutor ANF

For the Respondent(s): N.R.

Date of hearing: 28.6.2021

ORDER

Qazi Muhammad Amin Ahmed, J.- Tried by a Special Judge at Peshawar, the respondent was convicted under section 9(b) of the Control of Narcotic Substances Act, 1997 vide judgment dated 1.6.2011; he was sentenced to imprisonment for life with a direction to pay fine.

According to the prosecution, the respondent was intercepted by an A.N.F. contingent along with 22.550 kg cannabis, wrapped in 19 packs, on board a cab driven by Hameed Ullah, within the precincts of Police Station A.N.F. Peshawar; considered as an unsuspecting companion, the latter was let off. A learned Division Bench of Peshawar High Court acquitted the respondent of the charge vide impugned judgment dated 22.2.2012 by taking into consideration statements of PW-3 and PW-4 as well as plea of innocence supported by cab driver as a witness in his defence.

2. Mr. Muhammad Tariq Shah, learned Special Prosecutor ANF has vehemently argued that in the face of overwhelming evidence there was no occasion for the High Court to let off the respondent, captured red-handed with a huge cache of the contraband; according to him, the High Court, out of context, misconstrued the statements of the prosecution witnesses to hold that they failed to conclusively blame the

accused with the possession of narcotic lying next to him in the rear of car. Reliance upon statement of Hameed Ullah (DW-1), a witness conveniently manageable in circumstances, was hardly sufficient to preponderate over the prosecution evidence, concluded the learned Law Officer.

3. Heard. Record perused.

4. We have gone through the statements of the witnesses to find that one of them, namely, Mushtaq Ahmed, SI (PW-3), while sticking to his case for a while, did provide a space for exit to the respondent by stating that *"it is correct that no paper or chit are recovered from the Gatrhi or from the physical search of the accused facing trial to show that the narcotics belonged to the accused"*; in the next breath, he, however, volunteered that *"the accused himself admitted the ownership of the said Gatrhi"*; by that the damage to the prosecution case had irreparably been done; he dealt another blow to the prosecution by stating that *"It is correct that the Gatrhi was not lying in the lap of the accused nor he was holding it in his hand at that time"*. Fazal-i-Ameen, HC/PW-4 is an equal partner in the treacherous alliance; he stated with audacity *"it is correct that no narcotic was recovered from the accused from his body search"*. Arrival of Hameed Ullah in the witness-box to support the respondent is last straw on camel's back inasmuch, admittedly on the wheel, at the time of interception, he categorically denied, on oath, seizure of any contraband, foreclosing all options for the High Court to maintain the conviction. Petition fails. Leave declined. Office shall transmit a copy of this judgment to the Director General A.N.F. to seriously consider dire necessity of setting his house in order.

Judge

Judge

Peshawar, the
28th June, 2021
Not approved for reporting
Azmat/-