

2022 S C M R 1784

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Sardar Tariq Masood and Mazhar Alam Khan Miankhel, JJ

NAVEED AKHTAR---Appellant

Versus

The STATE---Respondent

Criminal Appeal No. 108 of 2020, decided on 22nd September, 2020.

(On appeal from the judgment dated 17.05.2018 passed by the Lahore High Court, Rawalpindi Bench, Rawalpindi in CrI. A. No. 700 of 2016)

Control of Narcotic Substances Act (XXV of 1997)---

---S. 9(c)--- Possession of narcotics--- Reappraisal of evidence---Narcotics Analysis Report confirms that the recovery, effected from the accused, on his disclosure, was charas---Forensic report regarding narcotics was strictly in accordance with the principles laid down for such purpose by the Supreme Court--- Accused in his statement recorded under section 342, Cr.P.C. alleged false implication and mala fide but record of the case would show that he could not explain and establish the same---No reason or factum of malice was found on record for implicating the accused falsely or with any mala fide---Recovery of narcotics was proved by a police official and the said recovery was also testified by another police official---Non-production of other recovery witness/police official had no bearing on the merits of the case---Appeal was dismissed, and conviction and sentence awarded to accused under section 9(c) of the Control of Narcotic Substances Act, 1997 was maintained.

State v. Imam Bakhsh 2018 SCMR 2039 and Khair-ul-Bashar v. The State 2019 SCMR 930 ref.

Raja Farrukh Arif Bhatti, Advocate Supreme Court for Appellant.

Muhammad Jafar, Additional P.G. Punjab for the State.

Date of hearing: 22nd September, 2020.

JUDGMENT

MAZHAR ALAM KHAN MIANKHEL, J.---The appellant-Naveed Akhtar was being interrogated in case FIR No.226/2014 dated 8th July, 2014 registered under section 9(c) of the Control of Narcotic Substances Act, 1997 (the 'Act') at Police Station, Kallar Syedan, District Rawalpindi when during the course of interrogation, the appellant disclosed the fact of presence of some more narcotics in his residential house and upon such disclosure he led the police party to his house and got recovered five packets of charas hidden in a room of his house weighing 6150 grams. Each packet comprising 07 (seven) "Litters" was weighed to 1230 grams. The recovery officer Muhammad Nazir S.I. (PW.5) separated 05 grams charas from each "Litter" and made 35 separate sealed parcels for chemical analysis and the remaining charas was packed in a separate sealed parcel. For the above said

recovery, yet another case vide FIR No.228/14 dated 18th July, 2014 was registered against the appellant. On completion of the investigation, the appellant was sent to the court of Additional Sessions Judge, Rawalpindi to face trial. After a regular trial, the appellant was convicted under section 9(c) of the Act and sentenced to 09 years and 06 months' R.I. with a fine of Rs.45,000/- and in default thereof to further undergo S.I. for 07 months and 15 days vide judgment dated 16th November, 2016. The said conviction and sentence of the appellant was subsequently upheld and maintained by the Lahore High Court, Rawalpindi Bench, Rawalpindi vide judgment dated 17th May, 2018. Hence instant appeal by leave of this Court granted on 04.02.2020.

2. Leave to appeal was granted in this case to consider amongst other the following points:-

- "i. In respect of the case arising out of FIR No.226/2014 the petitioner was acquitted;
- ii. There were two recovery witnesses, namely, Asim Rasheed (PW-3) and Zaheer Nawaz, ASI, however, the latter was not produced by the prosecution;
- iii. Zaher Nawaz was convicted in some other narcotics case;
- iv. There are contradictions between the testimonies of Asim Rasheed (PW-3) and Muhammad Nazir (PW-5);
- v. The petitioner's defence plea was not discussed by the learned Judges of the High Court; and
- vi. The forensic report relied upon by the prosecution did not confirm to the principles enunciated in the cases of State v. Imam Bakhsh (2018 SCMR 2039) and Khair-ul-Bashar v. The State (2019 SCMR 930)."

3. Learned counsel for the appellant as well as the learned Additional Prosecutor General, Punjab was heard and record of the case was perused with their assistance.

Perusal of the record would reveal that recovery of narcotics, noted above, was made by one Muhammad Nazir S.I. (PW.5) which was received by Jameel Hussain Shah constable (PW.1) for safe custody. The 35 sealed parcels of narcotics were handed over to one Muhammad Ashraf HC (PW.2) by said Jameel Hussain Shah constable for its onward transmission for chemical analysis. The Narcotics Analysis Report is present on file as Exh-LPF which confirms that the recovery, effected from the appellant, on his disclosure, was charas. The appellant in his statement recorded under section 342, Cr.P.C. alleged false implication and mala fide but record of the case would show that he could not explain and establish the same. We also do not find any reason or malice for which appellant was implicated falsely or with any mala fide. While replying to Question No.6 he submitted that he would appear as his own witness under section 340(2), Cr.P.C. The record shows that besides three defence witnesses the appellant did not appear as his own witness to face the test of cross-examination. The defence version is nothing more than an effort in futile as the defence witnesses failed to shatter the evidence brought on record by the prosecution.

4. As far as the points noted in the leave granting order are concerned, we may observe that acquittal of the appellant in case FIR No.226/14 has no bearing on the merits of this case. Recovery of narcotics in this case was proved by one Asim Rasheed as PW.3 and the said recovery was also testified by Muhammad Nazir S.I. and non-production of other recovery witness namely Zaheer Nawaz ASI has no bearing on the merits of this case and similarly the conviction of said Zaheer Nawaz in some other case of narcotics, in absence of any material on the record, will not be sufficient to create any sort of doubt in this case. Similarly no such major contradictions in the testimonies of PWs.3 and 5 were pointed out. The forensic report regarding narcotics in this case is strictly in accordance with the principles enunciated in the cases of State v. Imam Bakhsh (2018 SCMR 2039) and Khair-ul-Bashar v. The State (2019 SCMR 930).

5. For what has been discussed above, we see no merit in this appeal. The same is, therefore, dismissed being merit less.

The above are the reasons for our short order of even date which reads as under:-

"For reasons to be recorded later, the instant criminal appeal is dismissed."

MWA/N-16/SC Appeal dismissed.

