

Judgment Sheet

IN THE PESHAWAR HIGH COURT,
PESHAWAR.

JUDICIAL DEPARTMENT

Cr.A No.559-P of 2013.

JUDGMENT

Date of hearing.....25.10.2017.....

Appellant: (Imran Khan) By Mr. Jalaluddin, Advocate.....

Respondent/State: By Mr. Moen-ud-Din Humayun, AAG.



QALANDAR ALI KHAN, J:- The instant appeal under section 48 CNSA by Imran Khan, appellant, is directed against the judgment/order dated 23.10.2013 of the learned Additional Sessions Judge-XIV/Judge, Special Court, Peshawar, whereby, the accused/appellant was convicted under section 9 (c) CNSA, 1997 and sentenced to rigorous imprisonment for life; and also to fine

of Rs:100000/- or in default of payment of fine to further six months simple imprisonment, while extending him the benefit of section 382-B Cr.P.C. Simultaneously, the learned trial Court/Additional Sessions Judge-XIV/Judge, Special Court, Peshawar declared absconding co-accused Asim as proclaimed offender and directed for issuance of perpetual warrant of arrest against him.

2. The case/FIR was registered on the *murasila* of Fazal Wahid Khan SHO Police Station Sarband, Peshawar (complainant), who, allegedly received spy information while on patrol duty along with other police officials, about smuggling of chars in Cultus motorcar No.LZO-1125 from Bara tribal territory, and started vigil, and noticed the said car coming from the tribal territory, wherefrom a person occupying the rear seat managed to get down and flee towards tribal territory, while in the motorcar, the accused/appellant was found on the driving seat and during his interrogation and on his pointation from a cavity between

the rear seat and CNG tank, 25 packets of chars *Pukhta* were recovered, each packet weighing 1/1 kilogram, total 25 kilograms. The seizing officer/complainant separated 5/5 grams samples from each of the recovered packets and sealed them into separate parcels No.1 to 25, while the remaining chars was sealed separately in parcel No.26. The motorcar was taken into possession, and the accused/appellant was arrested, who also disclosed name of the person making good his escape from the motorcar as Asim.

3. The investigation was entrusted to Bashir Khan S.I investigation (PW-7), who proceeded to the spot, and prepared the site plan, and also received positive result from the FSL; and, then, after completion of investigation, complete challan in the case was submitted by the local police to the learned trial Court/Additional Sessions Judge-XIV/Judge, Special Court, Peshawar.

4. The learned trial Court framed formal charge under section 9 (c) CNSA against the

accused/appellant, to which he pleaded not guilty and claimed trial. The prosecution, in support of its case produced a total of nine PWs, including, Abdul Wahid No.4834 (PW-1); Fazal Wahid Khan DSP, Peshawar (PW-2); Rehmat Khan Inspector (PW-3); Behram Khan Inspector (PW-4); Taj Malook Inspector (PW-5); Pervaiz Khan Constable 3706 (PW-6); Bashir Khan S.I (PW-7); Younas Khan HC No.3820 (PW-8); and Nisar Khan SI (PW-9). Thereafter the prosecution closed its evidence and statement of the accused was recorded under section 342 Cr.P.C. The accused/appellant denied allegations of the prosecution levelled against him, and also expressed his desire to produce defence evidence; but lateron recorded statement to the effect that the defence witnesses, who could depose about his hiring the taxi car of the absconding co-accused for offering *Fateha*, had been dislodged from their abodes due to military operation in Bara; and his

counsel also recorded statement about not producing the defence evidence.

5. Having heard learned SPP for the State and learned counsel for the accused/appellant, the learned trial Court/Additional Sessions Judge-XIV/Judge, Special Court, Peshawar, rendered the impugned judgment/order dated 23.10.2013, and the accused/appellant was convicted under section 9 (c) CNSA, 1997 and sentenced to rigorous imprisonment for life; and also to fine of Rs:100000/- or in default of payment of fine to further six months simple imprisonment; hence the instant appeal by the appellant against the impugned judgment/order of the learned trial court/Additional Sessions Judge-XIV/Judge, Special Court, Peshawar.

6. Arguments of learned counsel for the accused/appellant and learned AAG heard and record perused.

7. The two aspects of the case, namely, presence of the accused/appellant on the

wheels at the time of recovery of the narcotics from the motorcar; and conviction and sentences of imprisonment for life and fine of Rs: 100000/- awarded to the accused/appellant by the learned trial Court/Additional Sessions Judge-XIV/Judge, Special Court, Peshawar, vide impugned judgment dated 23.10.2013 need deliberation.

8. As regards presence of the accused/appellant in motorcar No.LZO-1125 at the time of recovery of chars *Pukhta* in 25 packets, suffice it to say that notwithstanding non recovery of CNIC of the accused/appellant, registration book of the vehicle, driving license, cash amount, mobile phone or any other document or article from the possession of the accused/appellant to prove his presence in the vehicle and the other person present with him in the vehicle and making good his escape in mysterious circumstances, besides plea of defence of the accused/appellant regarding his hiring the taxi car for offering *Fateha*, the admission by the

accused/appellant about his presence in the vehicle at the time of recovery of narcotics from the motorcar and his arrest by the police from the vehicle wherefrom the narcotics were recovered would lead to a presumption of commission of the offence under section 29 CNSA, 1997, unless and until the contrary was proved by the accused/appellant. It may be pointed out here that in his statement under section 342 Cr.P.C, the accused/appellant expressed his desire to produce defence evidence, but lateron he expressed his inability to do so for the reason that his relatives had shifted their abode from Bara due to military operation. In other words, the accused/appellant failed to prove his plea of defence that he had hired the taxi car of the absconding co-accused in order to offer *Fateha* in Peshawar city.

9. The presence of the appellant/accused in the vehicle at the time of recovery of the narcotics having been proved on record, the next question falling for determination would

be justification for award of sentence of imprisonment for life and fine of Rs:100000/-, awarded to the appellant/accused vide the impugned judgment dated 23.10.2013, in view of quantity of the contraband/chars recovered from the motorcar. The FIR showed recovery of 25 packets, each packet containing 1/1 Kg chars *Pukhta*, total 25 Kilograms chars *Pukhta*, from a space between the rear seat and CNG tank of the motorcar. The FIR further showed samples weighing 5/5 grams separated from each of the 25 packets for chemical analysis in the FSL; and, therefore, the chemical examiner furnished opinion with regard to 25 samples each weighing 5 grams, in the affirmative, showing the same to be that of chars. The learned trial Court/Additional Sessions Judge-XIV/ Judge, Special Court, Peshawar, vide impugned judgment dated 23.10.2013, found the accused/appellant guilty of commission of offence under section 9 (c) CNSA 1997, for having in his possession 25 Kilograms chars *Pukhta* in 25 packets,

exceeding the prescribed limit of 10 Kilograms in section 9 (c) CNSA; and, thus, making the accused/appellant liable to punishment not less than imprisonment for life.

10. However, the fact that all the 25 packets of chars were containing 13 slabs, fixed to each other, as observed by the learned trial Court after de-sealing the packets on the request of learned counsel for the accused/appellant; and evidence of the prosecution, showing samples separated from each packet and not from each slab in the packet, and thus 25 samples from 25 packets, and not 325 samples from all the slabs in the packets, would reduce quantity of the narcotics from 25 Kilograms to 125 grams or at the most to 77 grams in one slab out of 13 slabs in a packet of one Kilograms, total 1925 grams, making the accused/appellant liable to lesser punishment of imprisonment

11. Consequently, while maintaining conviction of the appellant/accused under section 9 CNSA, the punishment of

imprisonment for life is reduced to the one already undergone, as the appellant/accused is behind the bars since his arrest on 19.12.2011. Likewise, the amount of fine is reduced from Rs:100000/- to Rs:20000/- and in default of payment of fine to one month simple imprisonment. The appeal is disposed of, accordingly.

Announced.
25.10.2017.

J U D G E

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M.Iqbal

*(D.B) Hon'ble Mr. Justice Lal Jan Khattak.
Hon'ble Mr. Justice Qalandar Ali Khan.*