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Ex.No. 15.

IN THE COURT OF SPECIAL JUDGE FOR CNS, (21)

TANDO ALLAHYAR.

Special Case No.26 of 2012. (25)

The State
Versus.

Mst.Asia alias Nafeesa w/o Abdul Hameed,
Adult, Muslim, by caste Baloch, Accused.

Cr.No.03/2012.
P.S Ex.Tando Allahyar
U/S 9-C CNS Act.

Mr.Farhad Ali Abro Adv: for accused.
Mr. Ashfaque Ahmed, DPP for state.

No-515
Dt: 20-3-2013

JUDGEMENT.

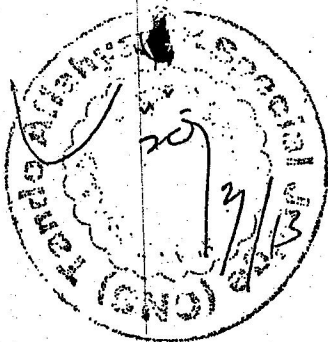
20-03-2013.

PREFACE.

This Judgment, will lead to decide the fate of above Special Case in which lady accused Mst.Asia alias Nafeesa w/o Abdul Hameed Baloch was charged and tried for the offence punishable U/S 9-C of CNS Act 1997 corresponding to Cr.No.031/2012 of Excise PS Tando Allahyar.

THE FACTS.

Brief facts leading to the prosecution case are that on 26-03-2012 Excise Inspector Sher Khan Awan was in receipt of secrete information from his high official for arrival of a lady from Karachi to Mirpurkhas with a huge quantity of narcotics. Accordingly Inspector Sher Khan left his Excise PS alongwith EC Nazeer Ahmed, EC Abdul Hameed, EC Ghulam Rasool and specially called lady Head Constable from local police namely Mst.Razia Moharam and other staff. The police party vide entry No.449 proceeded from PS in Government vehicle bearing registration No.GS-5353 and reached at Bhatto Stop and started checking the vehicles. At about 3-30 pm an Air-condition Coach leading from Karachi to Mirpurkhas was checked by the Excise police with the help of lady Head Constable Mst.Razia Moharam and during the course of checking, a lady was



found sitting on a seat behind the seat of Driver and she had a plastic bag in her, which was checked by lady Head Constable and she found 10 packets of Chars lying in it. On enquiry the lady who was found in possession of said Chars disclosed her name as Mst.Asia alias Nafeesa w/o Abdul Hameed Baloch, R/o Miran Naka, Liyari, Karachi. It is the further case of prosecution that said Chars was weighed, which become 10 KG and 350 grams, out of which small quantity was separated from each packet total 100 grams for chemical analyzation. Such proceeding had taken place under the memo of arrest and recovery duly prepared in presence of EC Ghulam Rasool and lady Head Constable Mst.Razia Moharam. The accused was then brought at Excise PS where FIR was lodged.

INVESTIGATION:-

During the course of interrogation, accused had disclosed the name of her companion as Saleem s/o Abdul Ahad. However, said Saleem could not be arrested by the police and after usual investigation, including sending of Chars for chemical analyzation, a challan was submitted in the court of law whereby accused Mst.Asia was shown arrested and accused Saleem as absconder.

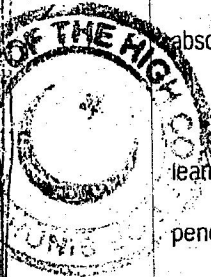
Perusal of record shows vide order dated 02-05-2012 passed by learned 1st Additional Sessions Judge, Hyderabad, where their case was earlier pending an order for keeping the case against accused Saleem on dormant file was passed and regular trial was started.

CHARGE

A formal charge against accused Mst.Asia alias Nafeesa U/C 9-C of CNS Act 1997 was framed at Ex.4, to which she vide her plea at Ex.5 did not plead guilty and claimed her trial.

TRIAL

At the trial, prosecution examined EC Ghulam Rasool, who had acted as mashir of arrest and recovery as PW-1 at Exh.6, who produced memo of arrest and recovery at Exh.7. Complainant Excise Inspector Sher Khan, who had also conducted Investigation of the case, was examined as PW-2 at Exh.8, who



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produced FIR at Exh.9, his arrival entry at Excise Office at Exh.10, under the same entry departure of the police party and again arrival at Excise PS after effecting recovery was also been mentioned. He also produced Chemical report at Exh.11. Lady Head Constable Mst.Razia Moharam of PS Tando Allahyar was also examined as PW-3 at Exh.12. No other witness was examined by the prosecution and the learned DPP for State closed the side of prosecution vide statement as Ex.13.

STATEMENT OF ACCUSED.

Statements of accused U/S 342 Cr.P.C was recorded at Ex.14. The accused denied to have been found in possession of 10 KG and 350 grams of Chars while claiming the same as false. She however admitted her arrest on 26-03-2012 from Mirpurkhas Road, leading to Tando Allahyar and Mirpurkhas. She claimed to be innocent and alleged against Excise police to have foisted Chars upon her. She did not examine herself on oath nor produced any defense in her favour. She requested for justice.

I have gone through the record and proceedings, I find following points for determination:-

POINTS.

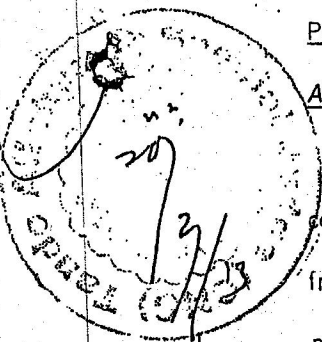
Point No.1. Whether on 26-03-2012 at 3-30 pm, at Mirpurkhas road leading towards Tando Allahyar to Mirpurkhas, lady accused Mst.Asia alias Nafeesa was found in possession of 10 KG and 350.grams of Chars.?

Point No.2. What offence, if any has been committed by the accused?

Point No.3. What should the decision be?

ARGUMENTS.

Heard learned DPP for State and Mr.Farhad Ali Abro, learned counsel for accused, who mainly argued that the accused was allegedly arrested from Air-Condition Coach, which was full of passengers and none of the passenger were made as witness of the recovery etc nor even the Driver and Conductor of Coach were made as mashirs. He further argued that the



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complainant himself acted as I.O of the case, therefore, fair and impartial investigation was not expected from the complainant, who was highly interest to get the accused conviction in the case in which he himself was the complainant. The learned counsel for accused further argued that prosecution witnesses made contradiction and several doubts have been created, benefit of which certainly goes in favour of accused.

I have given due consideration to the arguments advanced by both the learned counsel and perused the material available on record. My findings to the above points with reasons thereto are as follows:-

FINDINGS.

- Point No.1. Affirmative/Proved.
- Point No.2. Accused has committed the offence punishable U/S 9-C of CNS Act 1997.
- Point No. Accused is convicted and sentence to undergo Life imprisonment. She is also extended benefit of section 382-B Cr.P.C.

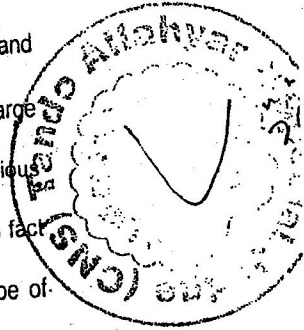


REASONS.

Point No.1.

RECEIPT OF INFORMATION.

It is the case of prosecution that Excise Inspector Sher Khan Awan was provided secrete information about the arrival of a lady from Karachi to Mirpurkhas duly in possession of Narcotics. Such fact is mentioned in the FIR and it was the reason that due to arrival of a lady with the narcotics, the Incharge Inspector also called a lady Head Constable from the local police for the obvious reason that no lady Excise official was posted in District Tando Allahyar. This fact not only find place in the FIR, but was also brought on record in the shape of evidence of all the three witnesses. PW complainant Inspector Sher Khan during the course of his evidence deposed that he was provided secrete information by the ETO that a lady was travelling in AC Coach duly in possession of narcotics. This fact was also deposed by the lady Head constable Mst.Razia Moharam, who



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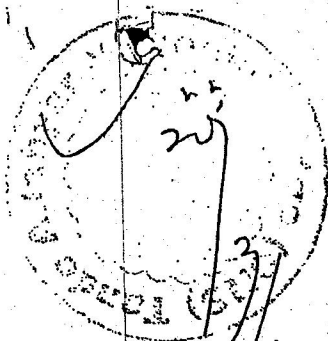
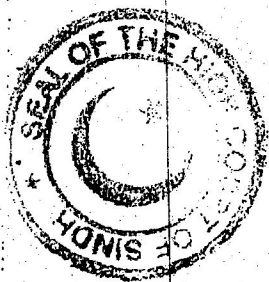
deposed that on 26-03-2012 she was sent in the Excise Office Tando Allahyar for performing her duty. She also deposed that Excise Incharge had secreta information about the arrival of a lady alongwith contrabond articles.

RECOVERY OF CHARS.

It is also the case of prosecution that during the course of checking an Air-condition Coach arrived from Karachi side leading towards Mirpurkhas, which was got stopped and its search was conducted. During the course of evidence all the three witnesses did not make any contradiction regarding the manner in which Chars was recovered from the possession of lady sitting behind the seat of driver holding plastic bag in her hand, whose name was revealed to the Excise Police subsequently as Mst.Asia alias Nafeesa w/o Abdul Hameed. All the three witnesses of the prosecution were duly cross examined by the learned counsel for accused but no contradiction could be brought out from their mouth so far the recovery of Chars is concerned. All the three prosecution witnesses were on agreement with each other about the quantity of Chars as 10 KG and 350 grams, they did not make any contradiction regarding separation of some quantity of Chars from each packet, total 100 grams for chemical analyzation nor they made any contradiction regarding manner in which the property was weighed and sealed at the spot nor they left any lacunas regarding preparation of memo of arrest and recovery by Excise Inspector.

CORROBORATION.

It is pertinent to mention here that Excise party was consisting upon its own excise officials and a lady head constable namely Mst.Razia Moharam was also called by Inspector Sher Khan, to accompany with them as there was specific information about the arrival of a lady with chars. It is thus clear that lady head constable Mst.Razia Moharam was otherwise specially called by Inspector Sher Khan but was belonging to a different agency viz local police. She was therefore, cannot be paid as interested witness to depose in favour of Excise officer, whom she was not subordinate. Therefore, an independent corroboration is also available in the shape of evidence of lady head constable.



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So far contention of learned counsel for accused that despite prior information, Excise Inspector did not bother to associate any private person to see the recovery. First of all section 25 of the CNS Act 1997 as excluded as applicability of section 103 Cr.P.C in narcotics case.

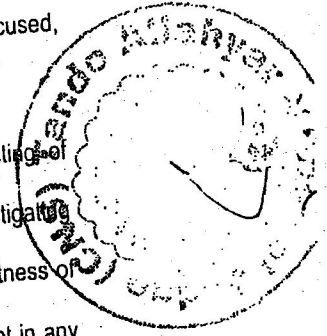
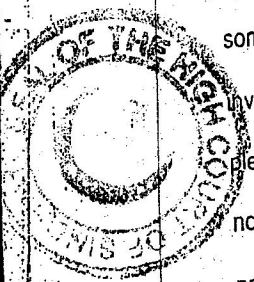
EXPERT OPINION.

The complainant does not been to have violated procedural law regarding search, recovery sealing of narcotics, separating samples for chemical analyzation etc. An expert opinion was also been received in the shape of report of chemical examiner which says that 100 grams of Chars was received in his office on 28-03-2012 viz within 48 hours of the recovery, which was duly examined and the said parcel was containing Chars. Such report is already available on record at Exh.11.

DEFENSE PLEA

During the course of trial, the accused was represented by a duly constituted counsel, who took great interest in the matter and proceeded with his all skills and experience. The accused took plea through her advocate that nothing was recovered from her possession of accused but in fact same was effected from someone else, who was let off by the Excise Police and accused was falsely involved in this case whereby the Chars was foisted upon her. From such defense plea, it was otherwise admitted that property recovered in the present case was nothing but Chars. Though at two occasions learned counsel denied the case property available in the court as Chars but in the next line he suggested the same to have been recovered from the possession of one Saleem (co-accused, absconded) and alleged that same was foisted upon the present accused.

There is another important aspect of the matter i.e acting of Inspector Sher Khan in dual capacity viz the complainant and the Investigating Officer. There is no bar for a police officer to be a complainant if he is witness of the commission of the offence and also to be an I.O so long as it does not in any manner prejudice the case of accused.



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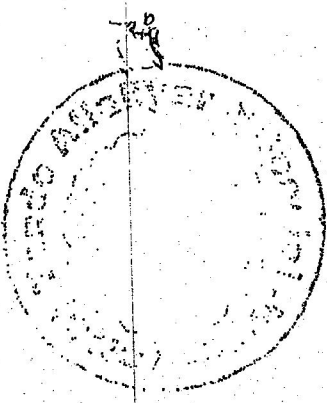
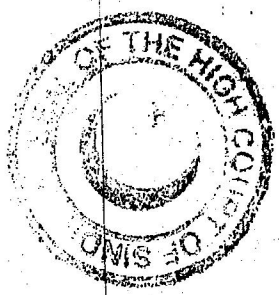
In view of what has been discussed above, I am of the view that the prosecution has succeeded to bring the guilt of accused at home, I therefore, answer the above point in affirmative.

Point No.2.

The prosecution has succeeded to bring on record that on 26-03-2012, accused was found in possession of 10 KG and 350 grams of Chars, which quantity brings section 9-C of CNS Act 1997 into motion, therefore, the accused has committed the offence punishable U/S 9-C of CNS Act 1997. I therefore answer the above point accordingly.

Point No.3.

Section 9-C of CNS Act 1997 provides punishment for death or imprisonment for life or imprisonment for terms which may extended to fourteen years and also liable to be fined which may be upto one Million rupees. In its proviso, it is also mentioned that in case the quantity exceeds 10 KG of Chars, punishment shall not be less than imprisonment for life. Though the accused has been found guilt of offence punishable under section 9-C CNS Act 1997, she being woman could not be given death penalty. I therefore, convict and sentence accused Mst.Asia alias Nafeesa to undergo imprisonment for life as the quantity of Chars was more than 10 KG. She is also liable to pay fine of Rs.5,00,000/-. In case of her failure in payment of fine, she would further undergo imprisonment for six months. The accused is also extended benefit of section 382-B Cr.P.C. She remained in custody right from 26-03-2012 till today, therefore, she remained in custody for 11 months and 24 days. Such period be calculated while committing her sentence. The accused is produced in custody, remanded to Jail with the direction to concerned Superintendent to carry out the sentence as awarded above. Let the copy of this judgment be supplied to the accused free of cost.



Announced in open court.

Given under my hand and the seal of the court this 20th day of

March 2013.

(JAVED AHMED KEERIO) 20/3/13
SPECIAL JUDGE FOR CNS ACT,
TANDO ALLAHYAR.