

07/07/2015 + 2015  
Mr. G. Anton Qadri  
Jettor  
AP

IN THE HON'BLE SUPREME COURT OF PAKISTAN  
AT KARACHI

Crl. Petition Leave to Appeal No. 49 - K of 2015

Mst. Asia alias Nafeesa  
W/o Abdul Hameed Baloch,  
Muslim, adult, resident of  
Meera Naka, Karachi,  
Presently Confined in  
Central Prison for Woman,  
Sindh at Karachi ..... PETITIONER

*Versus*

The State ..... RESPONDENT

PETITION UNDER ARTICLE 185(3) OF THE CONSTITUTION  
OF ISLAMIC REPUBLIC OF PAKISTAN, 1973 AGAINST THE  
JUDGMENT DATED 26.05.2015 PASSED BY THE HON'BLE  
DIVISIONAL BENCH OF HIGH COURT OF SINDH AT  
KARACHI IN CRL. APPEAL NO. 131/2013.

HUMBLY SUBMITTED.

Points for consideration :

A. Whether the Hon'ble High Court Sindh at Karachi was justified to pass the impugned Judgment / Order, although the prosecution's case its self was that total 10Kg. 350 grams of Chars in shape of packets were recovered from the petitioner / accused and the complainant / I.O separated little quantities of Chars from each packets, which become 100 grams and sent the same in the shape of one simple / parcel to the chemical examiner and failed to draw / separate 10 grams from each packet and then send the separate simples of each packet to the chemical examiner as decided in case of Khuda Bux v/s The State 2015 S.C.M.R 735 ?

B. Whether the Hon'ble High Court Sindh at Karachi failed to consider that the learned trial Court neither mentioned the chemical examiner report /exhibit-11 in the charge nor any question regarding the chemical examiner report was put to the petitioner / accused during examining her U/s 342 Cr.P.C.?

C. Whether the Hon'ble High Court failed to consider that complainant failed to produce departure entry recorded in the station dairy of P.S Excise in respect of proceeding to the place of raid for arrest and recovery ?

D. Whether the Hon'ble High Court failed to consider that the learned trial Court did not frame any question in the statement recorded U/s 342 Cr.P.C regarding the arrest and recovery of Chars from the petitioner /accused in-side a bus / coach coming from Karachi and proceeding for Mirpur Khas ?

E. Whether the Hon'ble High Court of Sindh at Karachi failed to consider that the prosecution as well as the Learned Trial Court changed the venue as Mirpur Khas road instead of in-side bus / coach, which caused serious prejudice to petitioner / accused ?

F. Whether the Hon'ble High Court of Sindh at Karachi failed to consider that the complainant PW-2 Excise Inspector Sher Khan Awan himself was also investigation officer of the present case, while all the PW's were his sub-ordinates , hence the prosecution's case become doubtful ?

G. Whether the Hon'ble High Court of Sindh failed to consider that the petitioner/accused is a chronic patient of Cancer having six small children and is not a previous convict ?

H. Whether the Hon'ble High Court failed to appreciate that it is clear case of misreading and non-reading of evidence on record ?

I. Whether the Hon'ble High Court failed to consider that the petitioner / accused is a female by sex and at the most is a first offender , while the sentence passed by the learned trial Court is too harsh ?

J. Whether the Hon'ble High Court of Sindh failed to consider that the Judgment passed by the trial Court is against the fundamental rights of the petitioner / accused ?

K. Whether the Hon'ble High Court of Sindh was legally justify to passed the impugned Judgment in the above circumstance ?

L. Whether the impugned Judgment passed by the Hon'ble High Court of Sindh is being perverse and liable to be set aside ?

FACTS INVOLVED IN THE PETITION :

Brief facts of the case are that PW-2 complainant /I.O Sher Khan Awan excise inspector lodged his report / FIR No. 03/2012 at 600 P.M at P.S Excise Tando Allahyar , which contents are reproduced as under :-

Today i.e. 26.3.2012, I Sher Khan Awan, Excise Inspector, Tando Allah Yar along with sub-ordinates staff, E/C. Ali, E/C. Nazir Ali, E/C Abdul Hameed, E/C Ghulam Rasool along with LHC Razia Mehram vide station diary entry number 449, proceeded by service mobile number GS-5353 and on the spy information of ETO reached at Battu bus stop, Mirpur Khas Road, where a coach was coming from Karachi for Mirpur Khas, which was intercepted. One woman was

found in suspicious condition. One big plastic beg was lying in her lap, which was opened by LHC and found 10 packets of chars. Her name was enquired, who disclosed her name as Asia @ Nafeesa W/o Abdul Hameed Baloch, resident of Mæra Naka, Lyari, Karachi. Thereafter the recovered property was weighed and its weight was found 10 KG and 350 grams. One hundred 100 for chemical examinations. The remaining case property of 10 KG and 250 grams was sealed at the spot and the accused was also arrested at the spot. Memo was prepared at the spot, read over to the witnesses and they signed it after accepting correct. Thereafter the accused and case property was brought at P.S and the case was registered U/S 9/C.

Sd/-  
Excise Inspector,  
Incharge Excise Circle,  
Tando Allah Yar."

ii. After registration of above FIR, the case was investigated and charge sheet was submitted against the petitioner / accused by the PW-2 complainant / I.O Sher Khan Awan.

iii. Thereafter the trial was conducted by the learned trial Court and finally the learned trial Court was pleased to convict the appellant / accused U/s 9/C of CNS Act 1997 sentencing her to under go imprisonment for life to pay to fine of rupees 500000/= or in default in payment of fine, she would further under go imprisonment for six

(8)

month moor. However the benefit of section 382 Cr.P.C to the petitioner /accused.

iv. The petitioner / accused also filed Crl, Appeal No. 131/2013 before the Hon'ble High Court of Sindh at Karachi against her conviction and also challenged the Judgment dated 20.03.2013 passed by the Learned trial Court.

v. On 26.05.2015 , a Divisional Bench of Hon'ble High Court of Sindh was pleased to dismissed the above Crl, Appeal No. 131/2013 and was further pleased to maintain the conviction and sentence passed against the petitioner / accused.

#### GROUND'S INVOLVED IN THE PETITION

1). That the impugned Order/Judgment is patently illegal, erroneous, factually incorrect and have resulted in total miscarriage of Justice.

2). That the impugned Order/Judgment is not sustainable in Law and on facts and are liable to be set-aside.

3). That Hon'ble High Court of Sindh at Karachi failed to appreciate that the Learned Trial Court committed serious mistake by passing the conviction and sentence against the petitioner /accused, although it is a clear case of acquittal.

4). That both the Learned Courts below failed to consider that although the prosecution's case its self is that total 10 Kg , 350 grams of Chars in the shape of packets were recovered from the petitioner

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accused and the complainant / I.O separated little/small quantities of Chars from each packets, which became 100 gram and sent the same in the shape of one simple / parcel to the chemical examiner and failed to separate 10 gram simple from each packet and then send the separate simples / parcels of each packets of Chars to the chemical examiner as decided in case of Khuda Bux V/s The State 2015 S.C.M.R page 735.

5). That the Hon'ble High Court of Sindh also failed to consider that neither the Learned Trial Court mentioned the chemical examiner report / exhibit -11 in the charge framed against the petitioner / accused nor any question was framed in 342 Cr.P.C statement regarding the chemical examiner report during examining the petitioner / accused , which totally caused prejudice to the petitioner / accused.

6). That both the Courts below failed to consider that complainant /I.O Pw-2 failed to produced any departure entry of P.S Excise in respect of proceeding to-wards place of raid for arrest and recovery of the petitioner / accused.

7). That the Hon'ble High Court of Sindh also failed to consider that the Learned Trial Court did not framed any questions in statement recorded U/s 342 Cr, P.C regarding the arrest and recovery of Chars from the petitioner / accused in-side a bus/coach coming from Karachi and proceeding for Mirpur Khas. It is further submitted that the Learned Trial Court surprisingly changed the venue, and framed wrong question to the petitioner/ accused in the charge as will as in



the statement recorded U/s 342 Cr. P.C the place and recovery as "Mirpur Khas Road", hence the same is liable to the set-aside.

8). That the Hon'ble High Court of Sindh at Karachi, failed to consider that the petitioner / accused was allegedly arrested from a bus/coach in a thickly populated area of bus stop Battu of Tando Allahyar, situated in the heart of city at 03:30 P.M, but the prosecution failed to associate any independent witness at the time of arrest and recovery. It is further submitted that the complainant PW-2 Excise Inspector himself conducted the investigation of the present case, while all the PW's are his sub-ordinates, hence the entire prosecution's case is doubtful and no reliance can be placed on it.

9). That the Hon'ble High Court of Sindh failed to appreciate that it is a clear case of misreading and non-reading of evidence.

10). That the Hon'ble High Court of Sindh failed to appreciate that the petitioner / accused is a female by sex, chronic patient of cancer having six small children and is not a previous convict.

11). That the Hon'ble High Court of Sindh failed to consider that at the most the petitioner / accused would be a first offender, while the sentence awarded to her is too harsh.

12). That the impugned Judgment passed by the Hon'ble High Court of Sindh is perverse and liable to be set-aside.

13). That the Hon'ble High Court of Sindh failed to consider all the above, even otherwise it is a case of acquittal.

14). That the petitioner / accused is a house hold lady hails from a poor class and is in custody since 26.03.2012 and has already served much hard ship and agony in Jail, hence deserves leniency.

15). That there are many other grounds , which would be urged at the time of hearing of this petition with the prior permission of this Hon'ble Court.

PRAYER


It is therefore prayed that this Hon'ble Court may be pleased to set-aside both the Judgments dated 20.03.2013 passed by the Learned Trial Court and Judgment dated 26.05.2015 passed by the Hon'ble High Court of Sindh at Karachi after hearing the parties and be further pleased to set petitioner / accused at liberty by acquitting her in the above cited case , if not required in any other case in the interest of justice.

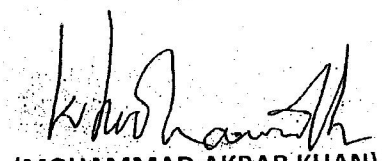
B: To suspend the operation of both the Judgments referred above and be further pleased to release the petitioner / accused on bail till pendency of this petition.

C. Pass any other order or orders , which may deem fit and proper in the interest of Justice.

Filed by.

Drawn and settled

  
( GHULAM QADIR JATOI )  
AOR FOR THE PETITIONER

  
(MOHAMMAD AKBAR KHAN)  
ADVOCATE SUPREME COURT  
FOR THE PETITIONER.

Address For Service  
Room No,16 to 19 2<sup>ND</sup> floor  
Safy Bulding, Near Light House,  
M.A. JINNAH Road, Karachi  
Cell No. 0300-8993496