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IN THE SUPREME COURT OF PAKISTAN
(APPELLATE JURISDICTION)

Present:

Mr. Justice Amir Hani Muslim
Mr. Justice Gulzar Ahmed
Mr. Justice Maqbool Baqar

Cri.A. No.11-K/2015

Mst. Asia alias Nafeesa

Appellant

Versus

The State

Respondent

For Appellant : Mr. Muhammad Akbar Khan, ASC.
Mr. Ghulam Qadir Jatoi, AOR.

For Respondent : Mr. Shahadat Awan, Prosecutor
General Sindh

Date of hearing : 23.12.2015.

ORDER

Gulzar Ahmed, J.:- The appellant was proceeded in Crime No.3/2012 registered with Police Station Excise district Tando Allahyar under section 9-C of Control of Narcotics Substance Act. She was tried for recovery of ten packets of charas weighing 10.350 Kg. by the Special Judge CNS Tando Allahyar and vide judgment dated 20.3.2013 she was convicted and sentenced to imprisonment for life with fine of Rs.500,000/- in default whereof to undergo further imprisonment of six months with benefit of section 382-B Cr.P.C. Appellant's Criminal Appeal before the High Court of Sindh at Karachi was dismissed vide impugned judgment dated 26.5.2015.

2. Learned counsel for the appellant in the first place has contended that as per case of *KHUDA BUX V/S THE STATE* (2015 SCMR 735) the appellant could not have been sentenced to life imprisonment as only one parcel comprising of 100 grams of sample was sent to chemical examiner.

3. The FIR shows that small quantity of Charas was extracted from each of recovered packets and total 100 grams in the sealed parcel was sent for chemical examination. The recovery memo also shows that small quantity of

charas was separated from each of recovered packets total 100 grams in sealed parcel for chemical examination. The report of Chemical Examiner states that one plastic theli which contains ten greenish brown semisoft pieces with smell of charas each wrapped with plastic piece were received for chemical examination. The report of Chemical Examiner is that parcel contains charas. All the three prosecution witnesses namely PW Ghulam Rasool, PW Sher Khan and PW Mst. Razia in their statements before the court in clear terms have mentioned that small quantity of charas was separated from each of recovered packet for chemical examination.

4. In view of the above evidence, it can well be concluded without doubt that ten samples of each packet from recovered charas was separated for chemical examination and that Chemical Examiner also received ten pieces of charas each wrapped with plastic piece and that it was charas. For this reason we are unable to agree with the learned counsel that case is one of sending of one sample to the Chemical Examiner.

5. As regards further submission of learned counsel for the appellant that report of Chemical Examiner was not confronted to the appellant in her statement under section 342 Cr.P.C., suffice to note that the report of Chemical Examiner is not required to be confronted in the statement under section 342 Cr.P.C. for that the report of Chemical Examiner as per section 34 of CNS Act itself is admissible in evidence and is a conclusive proof unless it is rebutted. Report of Chemical Examiner was produced as Exh:11 in the evidence by PW-2 Sher Khan. No suggestion was made to this witness by the defense side challenging the report of Chemical Examiner. Where the report of Chemical Examiner itself has gone unchallenged by the defense, the submission of learned counsel for the appellant is of no significance.

6. Learned counsel further submitted that there was no entry of departure and Entry No.44 produced by the prosecution witness was only that of arrival. We have considered this submission of learned counsel and

find that not much turns upon such entry as very recovery of the charas stood established on the record by the prosecution through overwhelming evidence. Learned counsel also submitted that appellant is a cancer patient. From the record, we note that there is a Report No.17 dated 03.5.2014 of Woman Medical Officer, Special Prison for Woman, Karachi which shows that the appellant was examined by the doctors of Civil Hospital and was advised surgery for thyroid but she is not willing for operation in the prison. It seems that appellant has been offered treatment/surgery but she herself is not prepared to get herself treated.

7. The next submission of learned counsel was that Investigation Officer himself was the complainant. This argument has no basis for that the CNS Act does not prohibit the complainant who is a police official to act as a Investigating Officer. Even otherwise no bias or malafide is alleged against the Investigating Officer.

8. On over all examination of the matter, we are not persuaded to interfere with the impugned judgment of High Court which is maintained and appeal is dismissed.

Karachi, the

23.12.2015

Aamir

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