JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT,
ISLAMABAD

Criminal Appeal No. 211 of 2019
Liaqat Ali
Versus
The State, etc.

Appellant by:	Mr. Anwar Zeb Khan, Advocate,
State by:	Mr. Sohail Khursheed , State Counsel with Syed Azhar Hussain Shah, DSP (Legal), Arshad Mehmood S.P. Investigation, Hakam Khan DSP Investigation and Muhammad Azam Inspector,
Date of Hearing:	03.02.2021.

FIAZ AHMAD ANJUM JANDRAN, J.- Before dilating upon merits, it is noticed that the instant appeal has been preferred under section 410 of the Code of Criminal Procedure, 1898 (**the Code**) which provides remedy of appeal against conviction on a trial held by a Sessions Judge or an Additional Sessions Judge.

2. The application of the Code under the Control of Narcotics Substances Act, 1997 (**Act of 1997**) is provided in section 47 of the Act of 1997 which states that the provisions of the Code shall apply to trials and appeals before a **Special Court** under this Act.

3. It is thus obvious that the application of the Code in terms of section 47 of the Act of 1997 is applicable to **trial and appeals before the Special Court** under the Act of 1997 and has not transposed any remedy of appeal from the Code to the Act of 1997. Section 48 of the Act of 1997 provides **remedy of appeal against the order of a Special**

Court comprising a Sessions Judge or Additional Sessions Judge to the High Court, to be heard by a Bench of not less than two Judges while as per clause (2) of section 48, an appeal against the order of a Special Court comprising a Judicial Magistrate shall lie to a Special Court comprising a Sessions Judge or Additional Sessions Judge.

4. In the case at hand, the appellant was tried under the Act of 1997 by the Special Court comprising Additional Sessions Judge and appeal against the said decision is provided in terms of section 48 of the Act of 1997.

5. While forming the view, guidance is sought from the case of ***"Anti-Narcotics Force Lahore v. Mst. Fazeelat Bibi"*** *(PLD 2013 SC 361)* wherein at page 364 it is held that:-

> *"4……. The right of appeal conferred by section 48 (1) of the Control of Narcotics Substances Act, 1997 is all pervasive catering for every kind of appeal from every kind of order passed by such a special court and the provision of section 48 (1) of the Code of Narcotics Substances Act, 1997 do not make any distinction between appeal against a conviction, an appeal of acquittal or an appeal seeking enhancement of a sentence passed against a convict….."*

6. In view of above, only recourse available to the appellant to assail the judgment of the Special Court was to file an appeal in terms of section 48 of the Act of 1997. Consequently, for reasons enumerated above, for all intents and purposes, instant appeal under section 410 of the Code is converted into appeal under section 48 of the Act of 1997 and is being decided accordingly.

7. The instant criminal appeal (**the appeal**) under Section 48 of the Act of 1997, is directed against the judgment dated 20.05.2019, passed by the learned

Additional Sessions Judge/Judge MCTC, East-Islamabad in a Sessions case No.18 of 26.02.2019, whereby appellant was convicted under Section 9/C of the Control of Narcotic Substances Act, 1997 (**Act of 1997**), and sentenced to undergo life imprisonment with fine of Rs.100,000/-, in default regarding payment of the amount of fine, to further undergo one year simple imprisonment, in F.I.R. No.511, dated 23.12.2018, under Section 9/C of the Act of 1997, Police Station Lohi Bher, Islamabad. The benefit of Section 382-B of Cr.P.C was also extended to the appellant.

8. Briefly, the accusation against the appellant in complaint Ex.PC, on the basis of which F.I.R. Ex.PA was registered is that on 23.12.2018 complainant (PW-5) along with other C.I.A officials, was present near Khokhar Hotel, Highway, Islamabad at about 03:15 pm, when on the basis of suspicion, stopped vehicle being driven by Liaqat Ali *(appellant)*. On search, 14 packets of charas, wrapped in sack "*gattu*" were recovered which on weighing found 14 KG 30 grams. On personal search of appellant, 42 grams Ice wrapped in shopper was also recovered from right side pocket. PW-5/Inspector C.I.A. prepared 14 sample parcels of ten grams each besides one gram of Ice. The sealed parcels of remaining charas P1 and Ice P2 were taken into possession through recovery memo Ex.PB, duly attested by Salman Shah ASI and Wasim Iqbal Constable/PW-4. After investigation, challan was submitted in the Court of learned Special Judge (C.N.S.), Islamabad-East. The appellant was formally charge sheeted, where he pleaded not guilty and claimed trial.

9. At the trial, prosecution examined Imtiaz Khan/HC C.I.A staff, as PW-1, who on 28.12.2018 deposited sealed sample parcels in the office of National Institute of Health (**N.I.H**) Laboratory, Islamabad. Iftikhar Ahmad ASI PW-2 on 23.12.2018 kept the case property in safe custody in malkhana and on 28.12.2018, handed over sealed sample parcels to PW-1 Imtiaz Khan/HC PW-1 for onward transmission to N.I.H, Islamabad. PW-3, Muhammad Iqbal ASI on 23.12.2018, registered F.I.R Ex.PA. PW-4 Wasim Iqbal/C is the recovery witness while PW-5 Muhammad Azam Sahi Inspector is the complainant, recovery witness and the Investigating Officer as well, who deposed to prove the investigation conducted by him.

10. After the recording of statements of above stated witnesses, the prosecution has given up PW Salman Shah ASI, being unnecessary and after tendering the reports of Chemical Examiner Ex.PE, Ex.PF and Ex.PG, closed the prosecution evidence on 16.04.2019.

11. After the recording of prosecution evidence, appellant was examined under Section 342 of the Cr.P.C, wherein he denied the allegations and has opted that "*All the PWs are police officials. I am employee of ANF. They demanded that you have information about criminals, tell us, otherwise, we will register F.I.R against you.*"

12. In addition, on the application of learned SPP, Dr.Shahzad Hussain, Chief, Drugs Control and Traditional Medical Division, N.I.H, Islamabad was examined as CW-1 who deposed to prove the preparation of reports in accordance with the Control of Narcotic Substances (Government Analysts) Rules, 2001 and issuance of

duplicate copies of the said reports Ex.PE, Ex.PF and Ex.PG respectively.

13. The learned trial Court, after hearing learned counsel for the appellant and learned Prosecutor, convicted and sentenced the appellant as mentioned in Para-1 *supra* vide judgment dated 20.05.2019, being assailed through the instant criminal appeal.

14. Learned counsel for the appellant argued that the prosecution evidence is not worthy of credence; that the C.I.A staff was not competent to investigate the case; that entire proceedings are illegal and that appellant had been made scapegoat, therefore, the impugned conviction and sentence is liable to be set aside.

15. On the other hand, learned State Counsel stood behind the judgment and argued that the appellant was arrested red-handed at the spot and 14-Kg and 30 gram charas and 42 gram Ice were recovered from his possession; that both the recovery witnesses successfully faced the test of cross-examination; that the defence remained unable to create any dent in the prosecution evidence, therefore, appeal is liable to be dismissed.

16. We have heard the learned counsel for the appellant, learned State Counsel and have gone through the record.

17. The record of the appeal when examined with due consideration, reveals that the instant case was got registered by the C.I.A Staff vide complaint Ex.PC and thereafter F.I.R Ex.PA was registered by PW-3. Ultimately, challan was submitted before the Court of competent jurisdiction by the C.I.A authorities. Not only this, the

prosecution witnesses PW-4 Wasim Iqbal/C and PW-5 Muhammad Azam Inspector were also of the C.I.A Staff posted in the C.I.A Police Station at the relevant time.

18. By now, it is well settled that if the manner of doing a particular act is prescribed under any statute, the act must be done in that manner alone, the doing of that act in other manner is not warranted, this rule is an integral part of our judicial system. Section 156 (1) of the Cr.P.C specifically stipulates that the case registered under the Act of 1997 is required to be investigated, proceed with by the concerned Police Station and the C.I.A Staff figures nowhere. Non-compliance of the statutory provision would amount to an illegality. The forum which was not competent and authorized to conduct the investigation, when investigated, the same exercise would be considered as to be made without jurisdiction. In the case of ***"State through Advocate General Sindh v. Bashir and others"*** *(PLD 1997 SC 408)*, it is held that:-

> *"Under subsection (1) of Section 156, Cr.P.C. the power to investigate a cognizable offence under the above provision has been conferred on any officer Incharge of the Police Station having jurisdiction over the local area within the limits of such Police Station .*
> *Only an officer incharge of the police station having jurisdiction over the local area within the limits of a police station can investigate a cognizable offence or any other person covered by the definition of the officer incharge of a police station given in the clause (p) of Section 4, Cr.P.C. which, in the absence of officer incharge of a police station, "includes officer incharge present at the station house who is next to the officer incharge of the police station and is above the rank of the constable or when the Provincial Government so directs, any other police officer so present.*
> *The above does not include C.I.A. personnel, therefore, they have no power to investigate a cognizable offence."*
> *[Emphasis added]*

In another judgment, in case of *"**Muhammad Afzal v. The State**" (PLD 2000 SC 816)*, it is held that:-

> *"8. The record reveals that though CIA personnel knew it very well that they were not empowered to investigate this matter, yet, they had done so and in this way deliberately violated the provisions of section 156, Cr.P.C. Although they had prior information about the offence which was likely to be committed, yet, they had not passed on this information to the concerned police and took upon themselves the task of investigation which, we feel, was not proper. What they had done was in violation of law and was also against the principle of supremacy of law."*

19. The Bashir's case referred above was followed by the Hon'ble Sindh High Court in ***"Dodo v. The State"*** *(2009 YLR 2049 Karachi)* wherein principle has been laid down in following terms:-

> *"18. All officials had to act according to law and not otherwise. It would, however, appear that every word used by the legislature must be given its true meaning and all provisions be construed together in a harmonious manner. To our mind, it would not be legal and proper to apply one provision of law in isolation to the other as no redundancy can be attributed to the legislature organ of the State.*
>
> *19. The learned counsel for the appellant rightly referred to the case of State v. Bashir (Supra), in which the Honourable Supreme Court specifically directed the CIA officials not to conduct investigation by detaining the people themselves unless the F.I.R. is registered at the police station having jurisdiction and investigation being conducted by the police officials, per order of the competent authority, is transferred to CIA official.*
>
> *20. In the present case the arrest and investigation conducted by the complainant was a clear flouting of the order of the Honourable Supreme Court, hence cannot be declared legal. The CIA officials have also violated the provisions of section 166 (1) & (4) of Cr.P.C. and Chapter XXI Rules 25.3 and 25.4 of Police Rules, 1934 as prior to arrest of the applicant he should have informed the area police station and if arrested should have 'been produced the appellant before the concerned S.H.O.*

21. In our view the CIA had no authority to detain the appellant for 5 hours without registration of the F.I.R. They should have produced him and the contraband before the area police and this was the duty of the concerned S.H.O. to deliver the investigation to any of his subordinates and thereafter, the CIA official could have taken the investigation after the order of the competent authority, which was lacking in this case. The investigation conducted by the CIA official was illegal, void and without lawful authority, therefore, the impugned judgment is not sustainable in law. We therefore, set aside the impugned judgment and acquit the appellant." *[Emphasis added]*

20. From above case laws, it is unambiguously established that C.I.A officials have no authority and mandate to arrest, cease the articles, separate samples, deposit the same in laboratory, to put the accused in the lockup, to proceed with the investigation, record statements under Section 161 Cr.P.C, submit report under Section 173 Cr.P.C, appear in Court as witnesses in the capacity of being posted at C.I.A Staff. Instead, they are required to entrust/ transmit any information having in their possession to the concerned Police Station for its further proceeding as per law, unless they are expressly authorized by the concerned police/ competent authority.

21. The statement of I.O. (PW-5) who was posted at C.I.A at the relevant time is available on record wherein in cross-examination he stated that:-

ملزم کی تفتیش بھی میں نے کی ہے۔ مجھے پولیس رولز کا بخوبی علم ہے۔ یہ غلط ہے کہ میں نے پولیس رولز کی خلاف ورزی کی ہے۔

Thereafter, when specific question was put regarding authority of the C.I.A on the same page, he responded in the following terms:-

جس ملزم کو CIA کی پولیس پکڑتی ہے اس کی تفتیش بھی CIA ہی کرتی ہے۔ جس تھانہ کی حدود میں ہم ناکہ بندی کرتے ہیں اس تھانے میں کبھی ہم اطلاع دیتے ہیں اور کبھی ہم نہیں دیتے۔

22. From above cross examination, it is very much clear that I.O/C.I.A. official at the relevant time acted without authority and against the police rules. He did not mention a single document or material through which it could be demonstrated that any entrustment regarding the case at hand was made to the C.I.A staff rather statement of the I.O. is in corroboration of the fact/law that he did not inform the concerned Police Station regarding alleged recovery of narcotics and matter was not reported to the concerned Police Station. There is also nothing available on record wherein it could be construed that C.I.A was entrusted with the investigation of the case at hand. Entrustment by the concerned police authorities to the C.I.A is mandatory and in this respect guidance is also sought from the judgment reported as ***"Muhammad Idrees v. The State"*** *(PLD 2006 Lahore 780)*.

23. The investigation in the case at hand could not be described/termed as due investigation and it is held that the same was not as per law. Same was in violation of statutory provisions on the subject. No one is authorized to act in disregard to the legislative intent. It was asked by the Court to the learned State Counsel that whether any permission was granted to the C.I.A Officials in the case at hand by the competent Authority i.e. police authorities to investigate the matter, it was replied that there is no such permission to investigate the case by the C.I.A Officials, therefore, it is safe to hold that unless said permission/ authority was

granted to the C.I.A officials, which is missing in the instant case, then the exercise conducted by them could not be described as investigation as per law. In this respect, Sections 27, 28, and 47 of the Act of 1997 are relevant and reproduced hereunder:-

> ***27. Disposal of persons arrested and articles seized***
>
> *(1) Every person arrested and articles seized under a warrant issued under section 20 shall be forwarded without delay to the authority by whom the warrant was issued; and every person arrested and article seized under section 20 or section 21 shall be forwarded without delay to:–*
>
> *(a) the officer-in-charge of the nearest police station; and*
>
> *(b) the Special Court having jurisdiction.*
>
> *(2) The authority or officer to whom any person or article is forwarded under this section shall, with all convenient dispatch, take such measures as may be necessary under the law for the disposal of such person or article.*
>
> ***28. Powers to invest officers of law enforcement agencies with powers of an officer-in-charge of a police station***
>
> *The Federal Government may invest any officer of law enforcement agency or any other officer within their respective jurisdiction with the powers of an officer-in-charge of a police station for the investigation of offence under this Act.*
>
> ***47. Application of the Code of Criminal Procedure, 1898***
>
> *Except as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the Code (including provisions relating to confirmation of a death sentence) shall apply, to trials and appeals before a Special Court under this Act."* *[Emphasis added]*

24. In certain cases, where the concerned D.S.P/ S.P. is of the view that certain expertise and skills of the C.I.A staff are required, then the C.I.A Staff is asked to investigate a

particular case but the C.I.A cannot assume the authority on its own.

25. In the light of above, it is held that the investigation conducted in contravention of Section 156 (1) Cr.P.C by the C.I.A Staff is without lawful authority and of no legal consequence.

26. According to the prosecution evidence as reveals through the statement of PW-5/I.O, after conducting proceedings at the spot on 23.12.2018, he reached the police station and handed over the case property along with sample parcels to Moharrir Malkhana for its safe custody while as per statement of PW-2 Iftikhar Ahmad ASI/ Moharrir Malkhana, who on 28.12.2018, handed over sample parcels to PW-1/Imtiaz Khan/C for onward transmission to the NIH laboratory, which were deposited on the same day. It is thus clear that the samples collected were sent to the laboratory with a delay of five days of the alleged recovery. This is violation of Rules 4 and 5 of the Control of Narcotic Substances (Government Analysts) Rules, 2001, whereby the samples are to be dispatched for analysis within seventy two hours of the recovery.

27. Keeping in view above stated factual and legal position, this Court has come to the conclusion that case at hand was not only initiated but was investigated and completed, challaned by the C.I.A staff which under the law figures nowhere, having no jurisdiction in the matter, resultantly amounts to without jurisdiction particularly in the light of case laws referred in preceding paras, sample parcels under the rules were required to be deposited in N.I.H (Chemical Examiner) within 72 hours after its

recovery, sealed but in the case at hand had been transmitted after the delay of five days which is violation of the rules on the subject, therefore, conviction and sentence awarded to the appellant is not legally sustainable.

28. In view of above, the conviction and sentence recorded through the impugned judgment is not legally sustainable. Consequently, the instant appeal is **allowed**. Impugned judgment dated 20.05.2019 is set aside and the appellant is acquitted of the charge. He shall be released forthwith if not required in any other case.

(MOHSIN AKHTAR KAYANI)(FIAZ AHMAD ANJUM JANDRAN)
JUDGE JUDGE

Imran

Announced in open Court on **14.04.2021.**

JUDGE JUDGE