JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Crl. Appeal No.28 of 2022

Gull Muhammad

Versus

The State

=====

Appellant By	:	Mr. Shan Zeb Khan, Advocate
State By	:	Mr. Muhammad Saeed Khan Saddozai, State Counsel with Ali Muhammad S.I. Police Station Noon, Islamabad.
Date of Hearing	:	16.05.2022

ARBAB MUHAMMAD TAHIR, J: Through the instant criminal appeal under section 48 of the Control of Narcotics Substances Act, 1997 **("Act of 1997")**, appellant (*Gull Muhammad*) impugns judgment dated 19.01.2022, passed by the learned Additional Sessions Judge/Judge Special Court, (CNS), Islamabad (West), whereby he was convicted under Section 9(C) of the Act of 1997, and sentenced to undergo 5 years and 10 months R.I. with fine of Rs. 31,000/-, in default whereof, to further undergo 09 months S.I. with benefit of section 382-B Cr.P.C in case F.I.R No. 215, dated 15.07.2021, under Section 9-C of the Act of 1997, registered at Police Station Noon, Islamabad.

2. As per the prosecution case, set-forth in complaint Ex. PA, on 15.07.2021, at about 9:50 p.m. within the area of Golra More Stop, on spy information, police party headed by Muhammad Khan S.I/PW-3, apprehended the appellant while holding a blue shopping bag in his hand. On search of the said shopping bag, charas weighing 1220 grams and ICE 110 grams were recovered. Out of the recovered substance, 10 grams was separated from the recovered charas and one gram was separated from ICE and sealed it into separate parcels.

Muhammad Khan S.I./PW-3 took all the four parcels in possession through recovery memo Ex.PC. After due investigation, on being found guilty, report in terms of section 173 Cr.P.C was submitted before the trial Court against the appellant to face the trial.

3. At the trial, prosecution produced 5 witnesses i.e. PW-1 Sajid Nazir H.C, PW-2 Muhammad Manzoor S.I., PW-3 Muhammad Khan S.I. PW-4 Asim Shah Constable and PW-5 Shakeel Abbas Moharrir Malkahana while the report of the National Forensic Science Agency, Islamabad was tendered as Ex.PF.

PW-1: **Sajid Nazir**, Head Constable P.S. Noon Islamabad has deposed that on 28.07.2021, he joined the investigation. On the same day, he received two sample parcels containing one gram ICE and 10 grams Charas respectively from the I.O. Manzoor S.I. and deposited the parcels intact in the N.F.S.A, Islamabad intact on the same day.

PW-02: **Muhammad Manzoor,** Sub Inspector, P.S. Noon Islamabad on 15.07.2021, recorded formal F.I.R Ex.PA on the basis of complaint sent by Muhammad Khan S.I.. He then proceeded to the place of occurrence where Muhammad Khan S.I. handed over to him case property and other documents, conducted spot inspection and prepared unskilled site plan Ex.PB, recorded statements of witnesses under Section 161 Cr.P.C. He then on return to the Police Station, locked the appellant in lockup and deposited the case property with the Moharrir. On the next day, he produced the appellant before the Judicial Magistrate, who was then sent to Central Prison Adyala, Rawalpindi.

PW-2 further deposed to prove transmission of sample sealed parcels to the N.F.S.A intact by Sajid Nazir constable on 28.07.2021.

PW-03: **Muhammad Khan Sub Inspector** deposed to prove the apprehension of appellant, recovery of contraband, and the details of the investigation conducted by him. The said witness had taken into possession two sample sealed parcels besides remaining charas Ex.P-1 and remaining ICE Ex.P-2, vide recovery memo Ex.PC duly attested by Safdar Rehman and Asim Shah, constables. The S.I. also deposed to prove the recovery of articles i.e. Registration Book, P3, original CNIC P4, mobile phone Nokia P5, cash Rs 450 as P6, which he had taken into possession vide memo Ex.PD. The witness also drafted complaint Ex.PE.

PW-04: **Asim Shah, Constable** is the recovery witness, who deposed to prove the apprehension of the appellant, recovery of contraband, separation of sample parcels, taking into possession four sealed parcels by PW-3 through recovery memo Ex.PC, personal belongings of the appellant comprising, P3 to P6 taken into possession vide recovery memo Ex.PD.

PW-05: **Shakeel Abbas Moharrir Malkahana,** deposed to prove the receipt of four sealed parcels containing charas and ICE respectively on 15.07.2021 from PW-3 Manzoor Ahmad S.I. and dispatched of sample parcels to the office of N.F.S.A Islamabad on 28.07.2021 through Sajid Nazir Head constable.

4. The appellant in his statement under Section 342 Cr.P.C. denied the allegations leveled by the prosecution. However, he did not opt to make statement on oath under section 340(2) Cr. PC or to produce any defence evidence. The learned Trial Court, after hearing the counsel for the appellant and learned DDP, convicted and sentenced the appellant vide judgment dated 19.01.2022 in terms noted in para-1 above, being assailed through the instant criminal appeal.

5. Learned counsel for the appellant argued that the prosecution evidence is highly discrepant as the sample parcels prepared on 15.07.2021 were dispatched for Chemical analysis after lapse of 12 days on 28.07.2021 in violation of Rule 4(2) of the Government Analysis Rules, 2001 where under sample parcels is to be deposited in the office of Chemical Examiner within 72 hours; that the statements of recovery witnesses are conflicting on the aspect of place of recovery and that there is conflict between the quantity of sample in sealed parcels as mentioned in recovery memo and the one mentioned in the report of N.F.S.A Ex.PF therefore, non-dispatch of sample sealed parcels within stipulated period and the divergence between quantity of sample parcels depicted in Ex.PC and Ex.PF makes the prosecution case highly doubtful, benefit of which is to be given to the appellant. Learned counsel relied upon case law reported as **PLJ 2022 Cr.C. 505 (DB).**

6. On the other hand, learned State Counsel repelled the above submissions by contending that the prosecution evidence is firm to establish unbroken chain of events that is corroborated by the report of N.F.S.A, while the variation between the quantities as argued has been explained by the Incharge of the N.F.S.A. According to the learned State Counsel the prosecution evidence being of unimpeachable character establishes charge against the appellant who even did not allege any malafide or malice on the part of the prosecution of his false implication, therefore, the impugned judgment does not call for any interference.

7. We have heard the learned counsel for the appellant, learned State Counsel and have gone through the record with their able assistance.

8. The prosecution case rests upon on the statements of PW-3 Muhammad Khan, S.I. /I.O. and PW-4, Asim Shah. Both the witnesses were consistent on material particulars i.e. the venue, date and time of the raid, apprehension of the appellant with contraband i.e. Charas 1220 grams and ICE 110 grams, respectively, separation of 10-grams

from the charas and 1 gram from ICE besides preparation of two sealed parcels and the other two parcels wherein remaining contraband i.e. charas P1 and ICE P2 were sealed.

9. The safe custody and transmission of the sample in sealed parcels to the office of N.F.S.A. Islamabad is established through the statements of PW-2 Muhammad Manzoor S.I. and PW-5 Shakeel Abbas, Moharrir Malkhana. The report of N.F.S.A, Ex.PF confirms that the sealed parcels said to contain suspected "01 gram ICE" and "10 grams Charas" contain "ICE, a **Psychotropic Substance**" and "**Charas**"

10. Adverting to the objection on the aspect of difference in weight in the report Ex.PF, while taking notice of the same, on preceding date i.e. 28.04.2022, the representative of the Laboratory was summoned. In response, Mr. Abdul Rab Ch. (D.D) N.F.S.A entered appearance and explained that for weighing the quantity of contraband received in sealed parcels, the latest analytical balance scale is being used which can easily weigh very meager and even a micro quantity unlike the scale used for weighing the contraband by the police at the time of apprehension of the accused person.

11. The above explanation is plausible and appeals to a prudent mind. Even otherwise, this stance is also negated by the entry against item No.08A155-01 and 08A155-02 in Ex.PF, report of N.F.S.A where the description of evidences is mentioned as "*one sealed parcel* ***said to contain suspected 01 gram ICE*** *in sealed pattern "MK" and one sealed parcel* ***said to contain suspected 10 grams charas*** *in sealed pattern "MK".* The objection to this effect put forth by the learned counsel for the appellant is accordingly repelled.

12. The prosecution through consistent and unshaken statements of PW-3 and PW-4 have successfully proved the recovery of contraband i.e. 1220 grams charas and 110 grams ICE from the possession of the appellant beyond any shadow of doubt. The objection with regard to violation of rule on the aspect of delay in sending sample parcel to the office of N.F.S.A cannot be considered reasonable in the light of law

laid down by the Hon'ble Apex Court vide judgment dated 09.03.2022 passed in ***Jail Petition No.637 of 2016,*** titled ***"Liaqat Ali and Shad Muhammad v. The State"*** wherein it has been held that "***if the series of acts which ultimately resulted into recovery of contraband-narcotics are juxta poised with the violation of the Rules due to one reason or the other as alleged, it cannot by any stretch of imagination be considered reasonable in law to smash the prosecution case on its salient features."*** Reliance is also placed upon the judgment dated 14.03.2022 passed by the Hon'ble Apex Court in ***Jail Petition No.95 of 2017***, titled ***"Faisal Shahzad v. The State."***

13. Adverting to the quantum of sentence, it is noticed that while placing reliance upon the case of **Ghulam Murtaza "PLD 2009 Lahore 362** the appellant was convicted for the offence under Section 9-C of the Act of 1997 and sentenced to imprisonment for 4 years and 6 months R.I with fine of Rs.20,000/- and in default to further undergo S.I. for 9 months for having charas and on account of having ICE, to 1 year and 4 months R.I with fine of Rs.11,000/- or in default to further undergo four months S.I. hence, sentenced to **undergo 5 years and 10 months R.I**. with fine of Rs.31,000/- or to undergo 9 months S.I. in total with benefit of section 382-B Cr.P.C was also extended.

14. Section 9 of the Act of 1997 stipulates punishments for contravention of Section 6, 7 and 8 of the Act of 1997. Section 8 prohibits the trafficking or financing the trafficking of narcotics drugs while Section 7 is with respect to import and export of narcotic drugs. Section 6 is in respect of prohibition of possession of narcotic drugs. In all the three sections, the nature of narcotics drugs has been mentioned as narcotic drugs, psychotropic substance and controlled substance. It is clear that for contravention of having possession of any type of the narcotics drugs, punishment shall be cumulative as there is no distinction of kind of narcotics drugs but for all kinds punishment is to be inflicted as provided in Section 9 of the Act of 1997.

15. In view of above legal position, the consecutive punishments awarded to the appellant are not legally sustainable as he had to be punished for recovery of 1330-Grams narcotics drugs in total and not separately for 1220 grams chars and ICE 110 grams respectively as the Act of 1997 did not provide separate sentences for separate kind of narcotics drugs. Resultantly, while maintaining conviction under Section 9 C of the Act of 1997, the appellant is sentenced to 4 years and 6 months R.I with fine of Rs.20,000/- and in default to further undergo S.I. for 9 months. The benefit of Section 382-B Cr.P.C shall remain intact.

16. With the above modification in the sentence, the instant appeal is **dismissed.**

(MIANGUL HASSAN AURANGZEB)
JUDGE

(ARBAB MUHAMMAD TAHIR)
JUDGE

Announced in open Court on ____06.2022.

JUDGE **JUDGE**

ISLAMABAD | 28.06.2022
APPROVED FOR REPORTING

//Kamran//*