

JUDGMENT SHEET  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
(Judicial Department)

**Cr.A.742-P of 2019.**

Date of hearing: 01.08.2019.

Ms.Zohra Durrani, advocate for appellants.

Mr.Mujahid Ali Khan, AAG for State.

**JUDGMENT**

**LAL JAN KHATTAK, J.-** This criminal appeal is directed against the judgment dated 28.05.2019 delivered in case FIR No.355 dated 26.02.2018 u/s 9 (c) of the Control of Narcotics Substances Act, 1997 of Police Station Faqir Abad, Peshawar, whereby each of the appellant has been convicted and sentenced to 14 years RI and fine of Rs.50,000/- each or in default whereof to further suffer six months SI each with benefit u/s 382-B Cr.P.C.

2. Brief facts of the case are that on 26.02.2018 Noor Haider Khan SHO (PW-3) was on routine gusht alongwith other police contingent when he received a spy information regarding the smuggling of chars from FATA to Punjab. In order to foil the bid, he arranged a Nakabandi on the spot. In the

meanwhile, a motorcar bearing No.RIW/5841 arrived there, which was stopped. The driver disclosed his name as Javed while the front seater turned out to be Fazal Noor and the rear seater as Yaseen. From personal possession of the above persons, 3 pistols of 30 bore alongwith live rounds were recovered. Besides, on search of the vehicle, 10 packets of chars concealed in its secret cavities too were taken out. On the strength of ibid recoveries, case FIR was registered against them. On completion of investigation, case was put in court, which indicted the accused to which they pleaded not guilty. In order to prove its case, prosecution examined 7 witnesses, whereafter statements of the accused were recorded. On conclusion of the trial, the learned trial court, found them guilty u/s 9 (c) of the Control of Narcotics Substances Act, 1997 and sentenced them as mentioned above.

3. Arguments heard and record gone through.

4. Pronounced aspect of the case is that the murasila Ex.PA/1 was drafted by PW-3

and then handed over it to one Riwayat Khan for its taking to the Police Station so that formal FIR be lodged but said Riwayat Khan has not been produced by the prosecution as its witness. So the very chain of the occurrence starting from the spot has not been established, which was must. It also reveals from cross-examination of PW-4 that the murasila Ex.PA/1, recovery memo Ex.PW3/1 and card of arrest Ex.PW3/2 were also handed over to said Riwayat Khan by complainant of the case (PW-3). In such like circumstances, production of Riwayat Khan as prosecution witness was necessary. His non-examination has caused serious cracks in the prosecution case benefit of which must go to the appellants.

5. The prosecution has also not produced extract from the relevant Register, which is kept at Police Malkhana for entering therein the recovered and sent contraband. Production of extract from the ibid Register was material so that it could be ascertained that the prosecution version regarding safe

custody of the case contraband was corroborated by the relevant record.

6. Another important aspect of the case is that the samples and rest of the parcels have thereon the monogram of SK but there is no evidence on the case file to show that on whose name monogram SK was and whether any official by the name of SK was ever posted in the Police Station Faqir Abad or not. Ibid aspect of the case also has damaged the prosecution case.

7. Further noticeable aspect of the case is that neither the recovery has been effected from personal possession of the appellants nor same was taken out of the vehicle on their pointation, which aspect of the case also caused dents in the prosecution case as to its accuracy.

8. Thorough and careful examination of the entire case record would show that the prosecution has not proved its case against the appellants beyond any reasonable doubt, which is hallmark of criminal law for which the impugned judgment cannot be sustained.

9. For what has been discussed above, this appeal is allowed, convictions and sentences of the appellants are set aside. They are acquitted of the charges levelled against them. They be set at liberty forthwith, if not required in any other case.

10. Above are the detailed reasons of our short order of even date, which is as follows:-

“For the reasons to be recorded later, this appeal is allowed. The convictions & sentences of the appellants, namely, (1) Javed s/o Zahir Shah (2) Fazal Noor s/o Fida Muhammad (3) Yaseen s/o Hazbullah, recorded by the learned Sessions Judge, Peshawar vide impugned judgment dated 28.05.2019 in case FIR No.355 dated 26.02.2018 registered at Police Station Faqir Abad Peshawar are set aside and they are acquitted of the charges levelled against them. They be released forthwith, if not required in any other case”.

**JUDGE**

**JUDGE**

**Announced.**

**01.08.2019.**

Sadiq Shah PS (DB) Hon'ble Mr. Justice Lal Jan Khattak & Hon'ble Mr. Justice  
Mohammad Ibrahim Khan.