

Jammu & Kashmir High Court

State Of J&K vs Shakoor Ahmed And Another on 30 December, 2022

HIGH COURT OF JAMMU, KASHMIR AND LADAKH
AT JAMMU

Reserved on : 14.12.2022
Pronounced on: 30.12.2022

CRAA No. 57/2014(0&M)

State of J&K

.....Appellant(s)/Petitioner(s)

Through: Mr. R. S. Jamwal, AAG

vs

Shakoor Ahmed and another

..... Respondent(s)

Through: Mr. P. N. Raina, Sr. Advocate with
Mr. Nigam Saroop, Advocate

Coram: HON'BLE MR. JUSTICE RAJNESH OSWAL, JUDGE
HON'BLE MR. JUSTICE PUNEET GUPTA, JUDGE

JUDGEMENT

Per Oswal-J

1. This appeal arises out of the judgment of acquittal dated 08.08.2013 passed by the learned Additional Sessions Judge, Rajouri (hereinafter to be referred as the trial court) in file No. 42/Special, titled, "State vs. Shakoor Ahmed and Another" whereby the respondents have been acquitted of the charges for commission of offences under sections 8/15/20 of the Narcotics Drugs & Psychotropic Substances Act, 1985 (for short the Act) in FIR No. 40/2011 of Police Station, Rajouri.

2. The judgment has been impugned on the ground that the learned trial court has not appreciated the evidence in its correct perspective and the learned trial court has not considered that section 54 of the Act creates a statutory presumption against the accused and if the accused fails to account satisfactorily the possession of the narcotics drugs and psychotropic substance, then he is required to be convicted.

3. Mr. R. S. Jamwal, learned AAG appearing for the appellant vehemently argued that all the witnesses examined by the prosecution have proved that the contraband was recovered from the respondents but the learned trial court has not appreciated the said evidence in its right perspective and acquitted the respondents erroneously.

4. On the contrary, Mr. P. N. Raina, learned senior counsel representing respondents vehemently argued that there is delay of more than a month in sending the samples to the FSL for chemical analysis and there is no evidence as to the safe custody of the samples allegedly extracted from the

recovered contraband till the same were dispatched to FSL. He further argued that there are material contradictions in the prosecution evidence and learned trial court has rightly acquitted the respondents.

5. Heard and perused the record.

6. The case set up by the prosecution is that on 31.01.2011 at around 11.30 AM a docket was produced by Constable Ghulam Rasool in the Police Station, Rajouri, that was sent by Sub Inspector, Jan Mohd. It was stated in the docket that S.I Jaan Mohd. alongwith other Police Officials i.e. Constable Shafiq Ahmed, Imtiaz Ahmed, Ghulam Rasool and Yashpaul were performing naka duty at Sallani Pul, Rajouri and at around 10.30 AM, a Santro car bearing registration No. 7722/JK03 coming from Jammu side, was stopped for checking. Two persons were found to be travelling in the same. On enquiry, driver disclosed his name as Shakoor Ahmed-respondent No. 1 herein and the other person disclosed his name as Mohd. Farooq-respondent No. 2 herein. Both the persons appeared to be in nervous condition. The whiff of charas from the vehicle was felt by Sub Inspector, Jan Mohd, who became suspicious that some narcotics may be in the vehicle, as such, he informed his senior officers about it and requested them for the search of the vehicle to be conducted in the presence of the Magistrate. In the meanwhile, Dy.SP, Headquarter Rajouri and Tehsildar Rajouri came on spot. Option was obtained from both the accused persons and vehicle was checked in presence of Magistrate. Assistance of Ravi Kumar, Mechanic was also sought. During the search, sealing of the right and left side of the dickey was opened and charas weighing 6 kgs wrapped in maize cobs and poppy straw weighing 400 grams were recovered. The samples of the contraband were prepared for sending the same to the FSL for chemical analysis. The accused were arrested. The vehicle was also seized. On receipt of this docket, FIR bearing No. 40/2011 dated 31.01.2011 was registered against the accused persons for commission of offences under sections 8, 15 and 20 of the Act. The investigation of the case was conducted by Inspector Deepak Jasrotia. He came on spot and prepared the site plan and also seized the documents prepared by the Sub Inspector Jan Mohd. The statements of the witnesses were recorded and after completion of the investigation, charge sheet was laid before the learned Sessions Judge, Rajouri on 28.04.2011. The same was transferred to the trial court on the same date.

7. The charge against the respondents was framed under section 8, 15 and 20 of the Act on 10.06.2011. As the respondents did not plead guilty, so the prosecution was directed to lead evidence. The prosecution has cited as many as 16 witnesses out of which 15 witnesses were examined by the prosecution.

8. In order to appreciate rival contentions of the parties, it is apt to have a brief resume of the relevant portion of the prosecution evidence.

9. PW-1 Jan Mohd. Sub Inspector stated that on 31.01.2011, he along with Ghulam Rasool, Yashpaul, Imtiaz Ahmed and Shafiq Ahmed had laid a naka at Sallani Bridge and at around 10.30 AM, one Santro Car bearing registration No. 7722/JK03 was coming from Jammu towards Rajouri, The car was driven by Shakoor Ahmed-respondent No. 1 herein and Farooq Ahmed was sitting on the other seat. He felt the smell of charas. He became suspicious. He informed his senior officers on

phone that Magistrate be sent on spot so that the vehicle is checked. Tehsildar Rajouri and Dy.SP Headquarter Rajouri came on spot. Consent of the accused for searching them in presence of the Magistrate was obtained. The search of the vehicle was conducted by the Tehsildar with the assistance of Ravi Kumar. The sealing of the dickey was removed with the help of the mechanic and 6 Kg charas wrapped in 105 pieces of maize cob leaves and 400 grams poppy straw kept in an envelope were recovered. It was weighed on spot. A sample of 50 grams charas and 10 grams of poppy straw was extracted from the charas and poppy straw. They were separately sealed and subsequently got resealed by the Tehsildar. A docket was sent to the Police Station for registration of FIR. In cross examination, he stated that the Santro Car was searched by the Magistrate and Mechanic Ravi Kumar only. He cannot say how many cob leaves were recovered from the left side sealing of the dickey. A small portion of charas was taken from every piece of maize cob leaves and he himself prepared the sample on spot. The samples were resealed by the Tehsildar on spot and sent for FSL by the Investigating Officer. The seizure memos were prepared by the SHO and he was cited as marginal witness to the seizure memos. The search of the vehicle was conducted on spot and also the contraband was weighed on spot prior to the arrival of the Investigating Officer. No witness has been cited to the memo of option given to the accused. He denied that the seizure memos (ExtP.6) and (ExtP.6/1) were prepared on the arrival of the SHO.

10. PW-2 Ghulam Rasool has deposed in identical manner as that of PW-1 and further stated that he took the docket to the Police Station that was written by Sub Inspector Jan Mohd. Thereafter, he came along with SHO on spot. Sub Inspector Jan Mohd. produced the seized papers, charas and poppy straw and vehicle before the SHO and the seizure memos were prepared. Seizure memo pertaining to papers (ExtP-9) bears his signatures. In cross examination, he stated that he was standing at a distance of 1-2 metres from the car. He expressed ignorance about the conversation between the accused and the Sub Inspector. The vehicle was checked at 10.45 AM and the Mechanic had also come at that time. First of all the flaps of windows were opened but nothing was recovered and thereafter, flaps of dickey were opened. Electronic machine was used for weighing the contraband. Samples weighing 100 grams each were extracted. He made the statement before the Police that charas was recovered from beneath the mud guard of the vehicle.

11. PW-3 Shafiq Ahmed has also deposed in identical manner as that of PW-1. He further stated that the seized vehicle was taken to Police Station and personal search of the accused persons was conducted in his presence. In cross examination, he expressed ignorance as to who weighed the charas and poppy straw. He further expressed ignorance as to whether the seized contraband was weighed on spot or in shop. The contraband was recovered after opening of the flaps above the tyre, the charas was recovered from one place and the poppy straw was recovered from beneath the mat where the passengers keep their foot. He has not signed on the seizure memo.

12. PW-4 Imtiaz Ahmed has also deposed in identical manner as that of PW-1, PW-2 and PW-3. He stated that after the docket was sent, SHO came on spot and Investigating Officer recorded his statement. In cross examination, he stated that SHO came on spot after 10/15 minutes. The car was stopped and after arrival of the SHO, the vehicle was opened. The flaps were of plastic material. The maize cobs were tied with thread. He expressed ignorance as to who signed on the seizure memos as he was busy in checking other vehicles. 2-3 civilians signed on the seizure memos. He did not know

as to who weighed the contraband.

13. PW-5 Yashpaul stated that he stopped the vehicle on 31.01.2011 and further stated that dickey of the vehicle was opened and six kgs charas and 400 grams poppy straw was recovered. Charas was in the shape of 105 pieces of maize cobs. In cross examination, he stated that prior to arrival of Mechanic, no document was prepared. The weighing scale was arranged from the shop of Rajesh Kumar. He expressed ignorance about the weighing of the contraband on spot.

14. PW-6 Susheel Kumar stated that 5-6 months ago, he was going to PHE office.

He had taken a lift in the vehicle and he was dropped at Sallani Bridge. SHO, Dy.SP and Tehsildar and others were there. After meeting them, he went to PHE Office but one police official called him back. Police told him that there were drugs in a vehicle and they were going to search the same. When nothing was recovered from the car, then packing of the car was opened and some substance was recovered from the dickey of the car. Police told him that it was charas and it was seized on spot and the car was also seized. Accused were not known to him prior to the occurrence. He proved the seizure memos (ExtP-6) and (ExtP-6/1). In cross examination, he stated that he was going to PHE office for his personal work. The contraband was seized at 1200 noon. The car was parked on the wrong side of the road. A Mechanic was also on spot who removed the flaps of the car and dickey and charas was recovered from the dickey and not from the mud guard of the car. Both the bundles weighed 5 kgs approximately. Samples were not sealed before him and the contraband was packed by the police in two big packets and no small packets of contraband were prepared on spot.

15. PW-7 Ravi Kumar stated that he opened the sealing of the front door of the car and dickey and nothing was recovered in his presence. His signatures were taken on blank papers and he denied the seizure of the contraband as well as the Santro car.

16. PW-8 Rakesh Kumar also turned hostile. In cross examination, he denied that the Police Party had ever obtained weighing machine from his shop.

17. PW-9 Mohd. Mushtaq stated that on 31.01.2011, he along with SHO Police Station Rajouri reached at Sallani Bridge where certain documents prepared by the SI Jan Mohd. were seized by the SHO. He proved the seizure memo (ExtP-9). During cross examination, he stated that the charas was not seized in his presence by the Police and also not shown to him.

18. PW-11 Bilal Ahmed simply stated that he sold the Santro Car to Ajaz Ahmed.

19. PW-12 Vijay Kumar Sharma, Tehsildar stated that on 31.1.2011 on the request of SSP Rajouri, he reached at Sallani Bridge, where SSP and Dy.SP were also present. A Santro Car was parked near the road and accused were sitting inside it. The car was searched but nothing was recovered from the same. The foul smell was emitting from the car. A Mechanic was called on spot and the inner sealing of the car was removed from where charas wrapped in maize cob leaves and poppy straw were recovered. The seizure memo of the contraband(ExtP-6) and the seizure memo of the Car (ExtP-6/1) were prepared. The samples of the contraband were prepared on spot and he prepared the authority

letter for getting the samples examined from FSL. During cross examination, he stated that Santro Car was standing on the wrong side of the road. The packets were resealed by him on spot. Seizure memo does not carry the specimen seal used by him or the specimen of seal used by police in sealing the packets. Due to deficiency of the weight of the sample prepared on spot, the sample of the contraband was again prepared on 01.03.2011 and fresh authority letter was issued by him for chemical examination of the samples. He does not know anything about the preparation of samples second time by the police.

20. PW-13 Abdul Rauf Lone, Dy.SP has also deposed in identical manner as that of PW-1. In cross examination, he stated that the FIR was registered after the recovery and seizure of the contraband. The samples of the contraband remained with the Incharge Malkhana from 31.01.2011 to 03.03.2011. The letter written by him to Director FSL for chemical analysis of the samples is not on the file.

21. PW-14 Rohit Koul, Scientific Officer, FSL Jammu proved the FSL report (ExtP-14) and as per his opinion, the samples were found to be of charas and poppy straw.

22. PW Anand Ji, Head Constable stated that he had clicked the photographs of the seized vehicle.

23. PW Ali Bahadur, Constable is a marginal witness to R/C of the seized Santro car.

24. PW-15 Deepak Jasrotia, Inspector stated that he conducted the investigation of the case. He prepared the site plan. The seizure memo of documents was prepared and the statements of the witnesses were also recorded. He also sent the samples to FSL for chemical analysis. During cross examination, he stated that prior to his arrival on the spot, the contraband was already weighed and seized by SI Jan Mohd. The contraband was recovered from the front side window of the car. He cannot say how many maize cob leaves were recovered from each side of the windows. The contents of the samples of poppy straw were insufficient for examination therefore, the sample was got opened, sealed and resealed in presence of the Magistrate. The seized contraband along with seized samples remained with the Incharge malkhana of Police Station.

25. PW-16 Virender Gupta, Inspector has also conducted the partial investigation of the case. He recorded the statements of the witnesses and seized the R/C of the seized vehicle. During cross examination, he stated that he has conducted the investigation with regard to ownership of the vehicle involved in the commission of crime.

26. This is whole prosecution evidence. From the charge-sheet, allegations are that the contraband was recovered after removing the sealing of the dickey. PW-7 Ravi Kumar was the material witness whose assistance was sought for the purpose of removal of the sealing that led to the recovery of the contraband but he has not supported the prosecution case. Similarly, PW-8 Rakesh Kumar who was cited as a witness in respect of weighing the contraband, has also not supported the prosecution. Besides Police Officials, the independent witness who have supported the prosecution case to some extent is PW-6 Susheel Kumar. Though he proved the seizure memo but he categorically stated that charas was recovered from the car. However, he creates a doubt in the prosecution story when he

states that both the bundles were found to be weighing 5 kgs approximately and further that no small packet of contraband was prepared on spot and contraband was sealed in tw packets only. Therefore his presence on spot appears to be doubtful.

27. Further there are material contradictions in the statements of the police officials also. The prosecution story is that the contraband was recovered after removing the sealing of the dickey. PW-3 Shafiq Ahmed has also caste a dent in the prosecution story by stating that charas was recovered from one place only and poppy straw was found lying beneath the foot mat. PW-2 Ghulam Rasool has stated that the samples weighing 100 grams each were prepared. Pw Imtiyaz Ahmed stated that the vehicle was opened after arrival of SHO, which is not the prosecution case. These are the material contradictions with regard to the recovery of the contraband, which cannot be ignored.

28. Besides material contradictions, it is found that there is no evidence on record in the form of any record of malkhana to prove that after the recovery of the contraband, the same was kept in safe custody. It could have been proved only either by placing on record the extract of malkhana register or by examining the incharge malkhana, which has not been done by the prosecution. More so, another vital aspect that further creates a doubt about the prosecution story is that the Investigating Officer Deepak Jasrotia has stated that the samples were found to be insufficient and because of that reason only, the samples were prepared second time and that too after nearly two months of the alleged recovery. There is nothing on record to substantiate this statement of the Investigating Officer that samples were found to be insufficient. It assumes significance as the recovery was effected on 31.01.2011 and the samples were prepared second time on 03.03.2011 and there is no evidence as to where th samples were kept in the intervening period.

29. We have also gone through the judgment of the learned trial court and the learned trial court has rightly appreciated the evidence and we do not find that there is any perversity in the judgment impugned passed by the learned trial court, rather on the basis of the evidence led by the prosecution, the only option available before the trial court was to acquit the accused-respondents

30. We do not find any reason whatsoever particularly in view of all what has been discussed above, to take any view contrary to that of the learned trial court, as such the judgment impugned is upheld. The appeal is dismissed.

(PUNEET GUPTA)
JUDGE

(RAJNESH OSWAL)
JUDGE

Jammu
30.12.2022
Rakesh

Whether the order is speaking: Yes/No
Whether the order is reportable: Yes/No