IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE NAZIR AHMAD BHATTI, CHIEF JUSTICE.

CRIMINAL APPEAL NO.105/I OF 1994
CRIMINAL SUO MOTO NO.3/I OF 1994.

Muhammad Mumtaz son of Muhammad Hayat, caste Awan, resident of Chak No.378/W.B, Tehsil Duniapur, District Lodhran.(now confined in Central Jail, Multan)	...	Appellant
	Versus	
The State	...	Respondent
For the appellant	...	Raja Muhammad Ibrahim Satti, Advocate
For the State	...	Ch.Muhammad Ibrahim, Advocate
No.& date of F.I.R Police Station	...	No.120/93,dt.5.4.1993, P.S City Shuja-abad.
Date of order of the trial court	....	13.4.1994.
Date of Institution in this Court	...	28.4.1994.
Date of hearing and decision	...	12.9.1994.

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JUDGMENT

NAZIR AHMAD BHATTI,CHIEF JUSTICE.- Sub Inspector Khyzer Hayat,SHO Police Station City Shujaabad was present, alongwith a police party, at Sikandar Abad Morr road on 5.4.1993 at 11.00 A.M. Sub Inspector Rustam Ali Special Branch of Circle Office of Shujaabad came and informed him that a person named Muhammad Mumtaz resident of village 378-W.B coming on a motorcycle was heroin paddler. In the meantime the said person reached the police party and was stopped. His search was carried out. He was having a black polythene bag wrapped in a cloth bag hanging to the handle of the motorcycle. The S.H.O carried out search of the polythene bag and recovered heroin weighing 2100 grams from therein and took the same into possession. The S.H.O separated one gram from the bulk powder as sample for chemical analysis. The S.H.O apprehended the accused and sent written complaint to Police Station where F.I.R No.120/93 was registered on the same day.

2. After investigation the accused was sent up for trial before Judicial Magistrate with powers under section 30 Cr.P.C Multan who charged him under Articles 3 and 4 of the Prohibition (Enforcement of Hadd) Order, 1979 to which the accused/appellant pleaded not guilty and claimed trial.

3. 5 witnesses were produced for the prosecution during the trial. The appellant made a statement under section 342 Cr.P.C.

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He also produced two defence witnesses but had not himself made a deposition on oath.

4. After the conclusion of the trial the learned Magistrate convicted the appellant under Article 4 of the Prohibition Order and sentenced him to undergo rigorous imprisonment for 5 years, to pay a fine of Rs.3000/- or in default to further undergo rigorous imprisonment for 3 months and to suffer 3 stripes. The convict has challenged his conviction and sentence by the appeal in hand.

5. P.W.2 Khyzer Hayat SI/SHO had stated that he had himself carried out search of the appellant and had recovered the black polythen bag wrapped in a cloth bag from the handle of his motorcycle and had himself recovered heroin weighing 2100 grams from the black polythene bag in the presence of the appellant. P.W.3 Khuda Bakhsh ASI and P.W.4 Rustam Ali Sub Inspector of Special Branch were both witnesses of the recovery of the heroin from the polythene bag which was found in the possession of the appellant. Both the aforesaid witnesses admitted their signatures on the recovery memo Ex.PA. They also deposed that the recovery had been made in their presence by P.W.2 Khyzer Hayat SHO from the polythene bag hanging to the handle of the motorcycle of the appellant. P.W.5 Nasir Mahmood Moharrir of the Police Station had recorded F.I.R and had also

kept two parcels of the narcotic given to him by the investigating officer. This witness deposed that he had handed over the sample parcle to P.W.1 Muhammad Ilyas F.C on 6.4.1993 for taking the same to the Office of the Chemical Examiner. P.W.5 further stated that during the period the parcels remainined with him no body interfered with them. P.W.1 Muhammad Ilyas deposed that he had taken the sample parcel to the Office of the Chemical Examiner Multan on 6.4.93 and had deposited the same there on the same day. He further deposed that no body had interfered with the parcle during the period it was in his custody.

6. The appellant in his statement under section 342 Cr.P.C denied the commission of the offence. He further stated as follows:-

" میں چک نمبر ۳۷۸/ ڈبلیو بی کا رھائشی ھوں ، وھاں ھماری اراضی ایک مربع ھے ۔ بشیر نامی شخص چاہ مٹھوی والا موضع شاہ پور تحصیل شجاع آباد کا رھائشی ھے ، ھمارے پاس تین سال ملازم رھا اور وہ اس جھوٹے مقدمہ تین ماہ قبل اچانک چوری چوری چلا آیا ، اور رقم اس کے ذمہ تھی ، بشیر کا رستم علی گواہ سے تعلق ھے ، اور اس کا ھمسایہ ھے ، میں مورخہ ۵ ۔ اپریل ۱۹۹۳ ء کو بشیر سے رقم لینے چاہ مٹھوی والا گیا ، میرا اور بشیر کا آپس میں جھگڑا ھوگیا تو رستم علی گواہ نے بشیر کی امداد کرتے ھوئے خطرحیات تھانیدار گواہ سے ساز باز کر کے ناجائز طور پر اس جھوٹے مقدمہ میں مجھے پھنسوا دیا ، مجھ سے ھیروئین برآمد نہ ھوئی ، میرا موٹر سائیکل ، گھڑی اور =/۱۱۰۰ روپے بھی پولیس نے چھین لیئے ۔ میں بے گناہ ھوں " ۔

D.W.1 Abdul Sattar was Ex-Councillor and a member of the Anti-Narcotic Committee Tehsil Shujaaabad whereas D.W.2 Nazir Ahmad was a Councillor during the days of occurrence. They both stated that one Bashir was formerly servant of the appellant but he had left the service and joined as servant with Sub Inspector Rustam Ali, that there was some dispute about money between the said Bashir and the appellant and on account of that P.W.4 Rustam Ali had falsely involved him in the matter.

7. It was firstly contended by the learned counsel for the appellant that one gram of heroin powder was separated from the bulk for sending as sample to the Chemical Examiner which was a very insufficient quantity and the Chemical Examiner could not appropriately analyse the same. I have very minutely considered this contention of the learned counsel but I am unable to accept the same for the reason that no objection in this respect was made by the Chemical Examiner. His report clearly shows that he had made chemical analysis of the powder sent to him and had reached the conclusion that it was heroin. No objection of any kind was offered by the Chemical Examiner regarding the insufficiency or otherwise of the sample power for the purpose of analysis. In the same context it was further contended by the learned counsel for the appellant that the report of the Chemical Examiner, Ex.PE, was not properly drawn. His contention was that it was a one line report, that the

conclusion was rubber stamped that the above of analysis was not signed as also analysis was not done by the Chemical Examiner himself. I have also very minutely perused the report of the Chemical Examiner and have also considered the objection of the learned counsel. However,, I am unable to see eye to eye with the learned counsel. The report of the Chemical Examiner discloses rubber stamp of the words "the above packet/bottle contains" but the word 'Heroin' has been written by hand by the person who has signed the report above the seal of the Chemical Examiner. The report is also signed by the Chemical Examiner. The result of examinatin shown on the reverse of the report does not disclose the seal of the Chemical Examiner but that is immaterial because the conclusion arrived at by the Chemical Examiner after the chemical analysis is duly signed by him. It cannot,therefore, be said that the chemical analysis was not done by the Chemical Examiner or it was an inappropriate report.

8. The learned counsel for the appellant further contended that although public witnesses were available near about the place of occurrence but none of them was cited as a witness and only police officials were made witnesses of recovery of narcotic from the possession of the appellant. This objection is also not valid. It is now commen knowledge that public witnesses do not volunteer to become witness in narcotic cases

on account of fear of the Drug Maafia and if any of them is forced to become a witness, he generally turns hostile at the time of trial on account of the same fear. It was not a search of premises but a search of person and as such the provisions of section 103 Cr.P.C were not applicable and police officers were competent witnesses of recovery.

9. The learned counsel further contended that the appellant had been falsely involved in the case on account of his enmity with the personal servant who had subsequently joined service with a xxxxxx police officer. This contention can also not be accepted for the simple reason that for a simple dispute about money no person can be involved in narcotic case, especially when such huge quantity weighing morethan 2 kilograms was the recovery. Such huge quantity of heroin couldnot be falsely planted against the appellant. The narcotic was actually recovered from the possession of the appellant.

10. The learned counsel further contended that there were contradictions in the prosecution story whichhad made it doubtful. He pointed out that some witnesses had stated that the cloth which was wrapped around the polythene bag was also taken into possession by the investigating officer while some had not stated so. The learned counsel also pointed out that some witnesses had stated that the weights used for weighing the narcotic

were already available with the investigating officer while some had stated that the same were brought from the nearby shop. I have considered this aspect of the matter very carefully and I hold that although there were some contradictions in the prosecution story but they were insignificant and were not so material as to cause any dent in the prosecution case. In so far as the recovery of narcotic from the possession of the appellant was concerned, all the witnesses were unanimous on that point and had deposed that it was recovered from the polythene bag hanging to the handle of the motorcycle of the appellant.

11. Lastly the contention of the learned counsel was that the defence witnesses were respectable people and their evidence had been inappropriately ignored by the learned trial court.

12. No doubt the witnesses xxx had admitted that the defence witnesses had arrived at the place of occurrence but no evidence was brought on the record in defence to show that the recovery of narcotic was made from the appellant in their presence and it transpires that they had reached the place of occurrence after the recovery proceedings had already been completed. In such view of the matter their defence version was immaterial.

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13. More than sufficient evidence was brought on the record to prove the guilt of the appellant who was appropriately convicted and sentenced. The learned counsel had in the end prayed for some reduction in the sentence but on acount of the huge quantity of narcotic recovered from the possession of the appellant, he did not deserve any leniency. However, the sentence awarded to the appellant by the learned trial court appears to be appropriate and does not call for any interference by this Court. The appeal is dismissed. The conviction and sentence of the appellant are maintained. The suo moto notice is also withdrawn.

Fit for reporting.

CHIEF JUSTICE

Islamabad, 12.9.1994
M.Akram/