

IN THE FEDERAL SHARIAT COURT
(Appellate Jurisdiction)

PRESENT

MR.JUSTICE ALI MUHAMMAD BALOCH

CRIMINAL APPEAL No.37/k OF 2000

Abdul Sattar son of Muhammad Umer,
Caste Solangi, resident of House near
Arif Shah Bukhari, Faqir Muhammad
Durra Khan Road, Karachi.

Appellant

Versus

The State

Respondent

Counsel for the appellant

Mr.Shahadat Awan,
Advocate

Counsel for the State

Mr.Sharafit Ali Khan
Advocate.

No.date of FIR and
Police station

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No.366/95 dated -
10-12-1995,P.S.
Kalakot

Date of the judgment of

9-5-2000

Trial Court

Date of institution

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20-5-2000

Date of hearing

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3-11-2000

Date of decision

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3-11.2000

JUDGMENT

ALI MUHAMMAD BALOCH:- Appellant Abdul Sattar

was tried in the Court of VIIIth Additional Sessions Judge Karachi South and vide its judgment dated 9-5-2000 the learned Judge had found him guilty of the Offence, punishable under Article 4 of the Prohibition (Enforcement of Hadd) Order,1979. The appellant was sentenced to suffer R.I for 5 years, and fine of Rs:10,000/- (Rupees Ten Thousand) In case of non payment of fine, he was to further suffer R.I for one year. Benefit of section 382-B Cr.P.C. was extended to the appellant.

2. The appellant not being satisfied with the said judgment has filed the present appeal. The learned counsel for appellant and learned counsel for the State were heard in detail on 3-11-2000. Learned counsel for the State had not supported judgment of the trial court and had pleaded alongwith the counsel for the appellant to set aside the judgment and sentence passed by the trial court.

3. By the short order dated 3-11-2000 I had allowed this appeal and set aside the conviction and sentences of the appellant. I now proceed to record the detailed reasons for the said short order.

4. The facts of the case are that on 10-12-1995 S.I.P Ch.Muhammad Rafique of C.I.A police Saddar Karachi while patrolling his area, had received spy information that a person was present in the shrine of Arif Shah Bukhari in suspicious condition. The S.I.P of C.I.A. in company of his subordinate staff reached the place and found the appellant Abdul Sattar present there. The S.I.P. claimed that he recovered a plastic bag containing 100 tokens/packets containing heroin powder from the possession of appellant/accused. The secured heroin was said to have been sealed. The accused was arrested under a memo to which only police men belonging to C.I.A. who were the subordinates of Ch.Muhammad Rafique were made witnesses of the case.

5. Ch.Muhammad Rafique himself acted as a complainant and recorded his F.I.R. at police station Kalakot at 6-30 P.M. The endorsement at the bottom of the said F.I.R. shows that Sub Inspector Malik Rab Nawaz of police station Kalakot through Head Constable Imtiaz sent a copy of the F.I.R. to Ch.Muhammad Rafique of C.I.A. police who apparently took it to be an order of concerned S.H.O.of the police station to carry the investigation of the said crime.Ch.Muhammad Rafique of C.I.A. conducted the investigation and produced the challan of the case against the accused who was tried by the court described above.

6. In the charge sheet produced by the C.I.A. police, names of four witnesses were shown, they were:-

- (i) Ch.Muhammad Rafique, S.I, C.I.A. Saddar Karachi
- (ii) Imtiaz Hussain, H.C,13448 C.I.A, Karachi
- (iii) Muhammad Ayaz, H.C 169 C.I.A, Saddar Karachi
- (iv) Malik Anwar Khan, S.I of P.S Kalakot

7. Significantly it was not mentioned if S.I. Malik Anwar Khan was the Station House Officer of police station, Kalakot, nor any order from S.H.O. Kalakot was produced or claimed to have been

issued authorising the S.I.P of C.I.A. to investigate this case. The S.H.O. of police station Kalakot did not appear as witness to have ordered or entrusted the investigation of this case to the C.I.A. police. The S.H.O. himself was not shown as witness in the charge sheet nor he was examined by the trial court.

8. The learned counsel for the appellant relied on the authority reported in PLD 1997 SC page 408 and invited the attention of the court to the provisions of section 156 (1) Cr.P.C. and contended that the above provisions were violated in as much as power of investigation of a crime was available with the S.H.O. of the police station who was Incharge, and the C.I.A. could only investigate the crime alleged to have been detected by C.I.A. police, under specific authority delegated from the S.H.O. ^{or Incharge} concerned, or some superior police officer. The principle upheld by the superior court in the reported case was to the effect that ordinarily the C.I.A. police could not have under taken the investigation on their own, specially when it caused serious prejudice to the accused.

9. In the present case it appears that the S.H.O. of police station Kalakot (the police station concerned) had not conducted the investigation and had not even examined the facts of the case, nor he had specifically authorised the investigation of the present case by the S.I.P, viz C.I.A. police officer. Therefore, it could not be construed that the present case was entrusted to Ch.Muhammad Rafique, S.I.P of C.I.A, by any authorised or Incharge police officer of police station Kalakot.

10. Although in the case reported in PLD 1997 SC.408 it was observed that under provisions of section 156 (1) Cr.P.C. a police officer was not prohibited under the law to be a complainant when he was a witness to the commission of the offence, and also to be an Investigating Officer so long as "it did not, in any way prejudice the accused person". the trial court did consider the said point in favour of prosecution, but the fact that the C.I.A. police was not authorised specifically, while the investigation by C.I.A., did prejudice the accused was not considered or appreciated.

11. The significant fact to be considered is whether the investigation by the complainant Ch.Muhammad Rafique of C.I.A. police had caused the serious prejudice to the right of the appellant or not. The complainant did not make an effort of securing the services of any independent witnesses and his immediate subordinates who were in his company at the relevant time were made to act as the mashirs of the recovery only. It was not stated that any effort was made to enlist the services of some independent witnesses. This fact when examined from the point of view that the S.H.O. concerned of police station Kalakot, was neither cited as the witness nor examined in trial, in my humble opinion, would lead to the position that Ch.Muhammad Rafique had created one man show in challaning the appellant, and producing his subordinates only as only witnesses. Although, at least one person from the police station Kalakot could have been produced as a witness to independently satisfying the fact about the timing and the place of the recovery by the alleged C.I.A. staff.

12. Other surprising fact is that only the witness i.e Ch.Muhammad Rafique witness PW-1 and Muhammad Imtiaz PW-2 were examined by the trial court and on the basis of their evidence alone conviction was recorded.

13. Learned counsel for the State rightly did not support the judgment of the trial court stating that in order to advance the principle of safe dispensation of justice by superior judiciary, such kind of practice especially by C.I.A. police should be discouraged and conviction should not be supported, as held by Supreme Court in the reported case.

14. For the above reasons, agreeing with the contention of the learned counsel for the parties I had passed the short order dated 3-11-2000, allowing the appeal..

Ali Muhammad Baloch

(ALI MUHAMMAD BALOCH)
Judge

Karachi, the
3rd November, 2000
Zain/

*Approved for reporting.
Ali Muhammad Baloch
18-1-2001*