

IN THE FEDERAL SHARIAT COURT.
(Appellate Jurisdiction)

PRESENT.

Mr. Justice Ch. Ejaz Yousuf.

CRIMINAL APPEAL NO.154/Q OF 1999.

Naik Mohammad, s/o Ahmad Bakhsh, Appellant.
Caste Siyapad, resident of
Angol, presently confined in
Central Jail Khuzdar.

Versus

The State Respondent.

Counsel for the
Appellant

Mr. Abdul Ghias Nausherwani
Advocate

Counsel for the
State

Mr. Ghulam Mustafa Mengal
Assistant Advocate General
Balochistan

No. date of FIR
and Police Station

No.03/Her/99-N.C. dated
5.1.99 Police Station Excise
and Taxation, Hub, District
Lasbela.

Date of Judgement of
trial Court

27.11.1999

Date of institution

18.12.1999

 Date of hearing

14.6.2000

Date of decision

14.6.2000

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JUDGEMENT.

CH. EJAZ YOUSUF, J:- This appeal is directed against the Judgement dated 27.11.1999 passed by the learned Sessions Judge Lasbela at Hub whereby the appellant has been convicted under Article 3 of the Prohibition (Enforcement of Hadd) Order 1979 and sentenced to suffer 5 years RI alongwith a fine of Rs.50,000/- or in default thereof to further undergo SI for 6 months. Benefit of section 382-B Cr.P.C. has, however, been extended to the appellant.

2. Briefly stated, the prosecution case as gathered from the record is that in consequence of secret information received by Maqbool Ahmad, Sub Inspector, Excise and Taxation Lasbela that "heroin" was being supplied by the appellant in White coloured Pick-up bearing registration No.LSA 6948, a blockade was laid at RCD Road near Asad Chowk at Hub. At about 3.00 p.m. the aforesaid Pick-up reached the spot. It was intercepted and the appellant who was driving the

Pick-up at the relevant time was brought down. The Pick-up was searched and consequently a black coloured plastic bag containing "heroin" concealed underneath the driving seat was recovered. The contraband material on weighing was found to be one kilogram. The recovered "heroin" was seized and sealed at the spot, in presence of the witnesses and the appellant was arrested. Resultently FIR bearing No.03HER/99/NC under Articles 3/4 of the Prohibition (Enforcement of Hadd) Order, 1979 was registered at the Excise and Taxation Police Station Lasbela at Hub and investigation was carried out in pursuance thereof. On the completion of investigation the appellant was challaned to the Court for trial.

3. Charge was accordingly framed to which the appellant pleaded not guilty and claimed trial.

4. At the trial, the prosecution in order to prove the charge and substantiate the allegations levelled against the appellant produced 3 witnesses, in

all. Whereafter, the appellant was examined under section 342 as well as 340(2) Cr.P.C. In his above statement, the appellant denied the charge and pleaded innocence. He also produced one witness namely Mohammad Hassan son of Noor Mohammad in his defence.

5. After hearing arguments of the learned Counsel for the parties, the learned trial Court convicted the appellant and sentenced him to the punishment as mentioned in the opening para hereof.

6. I have heard Mr. Abdul Ghias Nausherwani, Advocate, learned Counsel for the appellant and Mr. Ghulam Mustafa Mengal, learned Assistant Advocate General, Balochistan, for the State and have also perused the entire record with their assistance.

7. It has been mainly contended by the learned Counsel for the appellant that though report of the Chemical Expert, i.e. Ex.P/3-D, which has been relied

upon by the learned trial Court in recording conviction against the appellant, was tendered in evidence by P.W.3 as a proof of the fact that the allegedly recovered material was opium yet, the report being inadmissible in evidence in view of section 510 Cr.P.C. no reliance could have been legally placed thereon. In order to supplement his contention he has submitted that under section 510 Cr.P.C. it is only the report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government which may without calling the Expert as a witness be used as evidence at a trial. He argued that since Syed Abdullah, the Chemical Expert was not notified by the Government to be a Chemical Examiner, therefore, Ex.P-3/D, on mere presentation was not admissible in evidence and therefore, could not have been used as evidence against the appellant without examination of the Chemical Expert in Court.

B. Mr. Ghulam Mustafa Mengal. learned Assistant

Advocate General, Balochistan, having been confronted with the proposition candidly conceded and submitted that Syed Abdullah, the Chemical Expert, though was notified as Chemical Examiner by the Government of Balochistan vide Notification No.SO(H)1-145/99/1447-89, dated 7th July, 1999 yet, on 16.2.1999 when the report in question was prepared and issued, by him, he was certainly not notified as Chemical Examiner, therefore, in order to prove the report in question it was obligatory for the prosecution to examine him in Court. He has, however, submitted that since the omission had taken place due to inadvertence and under the bonafide belief that the report on mere presentation was admissible in evidence and that the case in question pertains to the recovery of huge quantity of narcotics, therefore, prosecution may be afforded an opportunity to get prove the document in question and for the purpose aforesaid the case may be remanded to the trial Court.

9. I have given my anxious consideration to the

respective contentions of the learned counsel for the parties and have also perused the record carefully.

Before dealing with the proposition it would be advantageous to reproduce here-in-below Section 510

Cr.P.C. which reads as follows :-

"510. Report of Chemical Examiner, Serologist etc. Any document purporting to be a report under the hand of any Chemical Examiner or Assistant Chemical Examiner to Government (or of the Chief Chemist of Pakistan Security Printing Corporation, Limited) or any Serologist, finger print expert or fire-arm expert appointed by Government upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under this Code, may without calling him as a witness, be used as evidence in any inquiry, trial or other proceeding under this Code."

Provided

A bare reading of section 510 Cr.P.C, would lead to the inference that under the law only a report issued by a duly notified Chemical Examiner or Assistant Chemical Examiner by the Government is admissible in evidence on mere presentation, meaning thereby that if an Expert is not a duly notified Chemical Examiner than his report cannot be admitted in evidence without formal proof.

10. In the instant case report of the Chemical

Expert i.e. Ex.P/3-D, was tendered in evidence by P.W.3. Perusal thereof shows that it was issued by Syed Abdullah, Chemical Expert of FSL, Crime Branch, Quetta who was not a duly notified Chemical Examiner or Assistant Chemical Examiner to the Government of Balochistan within the purview of section 510 Cr.P.C. at the time of preparation and issuance of the report Ex.P-3/D. therefore, the report in question being inadmissible could not have been read in evidence. Further, since he was not examined in the case, therefore, the contents of Ex.P-3/D, cannot be said to have been legally proved and without formal proof of the contents the report could not have formed basis of conviction.

11. The upshot of the above discussion is that judgement dated 27.11.1999 passed by the learned Sessions Judge Lasbela at Hub. is set aside and the case, with consent of parties, is remanded to the trial Court for its decision afresh in accordance with law

with the direction that prosecution may be provided an opportunity to get prove the report in question through the Chemical Expert, in accordance with law. Thereafter appellant be re-examined under section 342 Cr.P.C. and he be confronted with all the material/circumstances which may come on record through the statement of said witness. The appellant shall also be at liberty to lead evidence in his defence with regard thereto, if he chooses to do so.

sd/
[REDACTED]
(CH. EJAZ/YOUSUF)
JUDGE

Dated Quetta, the
14th June, 2000.

Approved for reporting.

sd/
[REDACTED]
Judge