

2008 S C M R 1254

[Supreme Court. of Pakistan]

Present: Faqir Muhammad Khokhar, Saiyed Saeed Ashhad, Muhammad Akhtar Shabbir and Syed Sakhi Hussain Bokhari, JJ

ZAFAR----Appellant

Versus

THE STATE----Respondent

Criminal Appeal No.310 of 2003, decided on 17th April, 2008.

(On appeal from the judgment of the High Court of Sindh at Karachi, dated 8-7-2003 passed in Criminal Appeal No.100 of 2002).

(a) Control of Narcotic Substances Act (XXV of 1997)---

---S. 9(c)---Evidence of police officials---Competence---Police employees are competent witnesses like any other independent witness and their testimony cannot be discarded merely on the ground that they are police employees.

Muhammad Azam v. The State PLD 1996 SC 67; Muhammad Hanif v. The State 2003 SCMR 1237; Riaz Ahmad v. The State 2004 SCMR 988 and Naseer Ahmad v. The State 2004 SCMR 1361 rel.

(b) Control of Narcotic Substances Act (XXV of 1997)---

---S. 25---Criminal Procedure Code (V of 1898), S.103---Search---Evidence of private witness--Scope---Applicability of S.103, Cr.P.C. in narcotic cases has been excluded---Non-inclusion of any private witness is not a serious defect to vitiate conviction.

Muhammad Shah and others v. The State PLD 1984 SC 278; State v. Muhammad Amin 1999 SCMR 1367; Fida Jan v. The State 2001 SCMR 36 and Rasool Bakhsh v. The State 2005 SCMR 731 rel.

(c) Control of Narcotic Substances Act (XXV of 1997)---

---Ss. 20, 21 & 22---Seizure and arrest---Non-compliance of mandatory provisions---Effect---Provisions of Ss.20, 21 & 22 of Control of Narcotic Substances Act, 1997, being directory, non-compliance thereof would not be a ground for holding trial/conviction bad in the eyes of law.

Fida Jan v. The State 2001 SCMR 36; State through A.-G., Sindh v. Hemjoo 2003 SCMR 881; Karl John Joseph v. The State PLD 2004 SC 394 and Muhammad Younas v. Mst. Perveen alias Mano and others 2007 SCMR 393 rel.

(d) Control of Narcotic Substances Act (XXV of 1997)---

---S. 9(c)---Reappraisal of evidence---Recovery of 11 kilograms of opium---Complainant as Investigating Officer---No public witness---During search, 11 kilograms of opium was recovered from accused and he was convicted and sentenced by Trial Court for imprisonment for life, which was maintained by High Court---Plea raised by accused was that complainant himself was Investigating Officer and all prosecution witnesses were officials of Anti-Narcotic Force---Validity---Police Officer was not prohibited under the law to be a complainant, if he was a witness of an offence---Such officer could also be an Investigating Officer, so long as it did not prejudice accused person---Though Investigating Officer and other prosecution witnesses were employees of Anti-Narcotic Force, they had no animosity or rancor against accused to plant such a huge quantity of narcotic material upon him---Defence did not produce any such evidence to establish animosity qua prosecution witnesses---All prosecution witnesses deposed in line to support prosecution case---Witness had passed the test of lengthy cross-examination but defence

failed to extract any material contradiction fatal to prosecution case---Prosecution had been successful to bring home the guilt of accused to the hilt by placing ocular account, recovery of narcotic material and Chemical Examiner report---Accused failed to point out any error of law in the judgment and the same was unexceptionable---Appeal was dismissed.

State through Advocate-General, Sindh v. Bashir and others PLD 1997 SC 408 rel.

Muhammad Ashraff Kazi, Advocate Supreme Court for Appellant.

Sh. Riaz-ul-Haq, Advocate Supreme Court for the State.

Date of hearing: 17th April, 2008.