

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
LARKANA**

Criminal Appeal No.D-12 of 2022

Present:

**Mr. Justice Amjad Ali Sahito
Mr. Justice Jan Ali Junejo**

Appellant : Ghulam Asghar s/o Bakhshal Shaikh
Through Mr. Zafar Ali Malghani, Advocate

The State : Through Mr. Aitbar Ali Bullo, D.P.G

(Criminal Appeal No.D-13 of 2022)

Appellant : Majid Ali Shah s/o Muhammad Hashim Shah
Through Mr. Habibullah G.Ghour, Advocate

The State : Through Mr. Aitbar Ali Bullo, D.P.G

Date of hearing : 29-04-2025

Date of Judgment: 29-04-2025

JUDGMENT

Jan Ali Junejo, J:- This single judgment shall decide the fate of captioned criminal appeals filed separately by the named above appellants, who being tried by learned 1st Additional Sessions Judge/MCTC/Special Judge for CNS, Kamber, in Special Case No.30/2022, arising out of FIR bearing Crime No.178/2021, registered at P.S Nasirabad, were convicted for an offence punishable under section 9 (c) of Control of Narcotics Substance Act, 1997 and sentenced as under;-

- 1) *UTP Ghulam Asghar Shaikh has been convicted for offence punishable U/S. 09 (C) CNSA-1997 and therefore, he is sentenced to Life Imprisonment R.I and fine of Rs.200,000/- (Rupees Two Lac). In case of non-payment of*

fine he will suffer S.I one year more (Fine not paid by the accused).

2) Majid Ali Shah (now convict) has been convicted for offence punishable U/S. 14 CNSA R/W Section 09 CNSA-1997 & 34 PPC, therefore, he is sentenced to Life Imprisonment R.I and fine of Rs.2,00,000/- (Rupees Two Lac). In case of non-payment, he will suffer S.I one year more (Fine not paid).

UTP Ghulam Asghar Shaikh was extended benefit in terms of Section 382-B Cr.P.C, whereas no such benefit was extended to Majid Ali Shah, who enjoyed bail throughout the trial.

2. The gist of the facts, depicted in the FIR, is to the effect that on 01.12.2021, complainant SIP Zakir Hussain Sandano alongwith his subordinates namely HC Abdullah Memon and PC Mukhtiar Ali Kalhorro left Police Station in government vehicle driven by HC Muhammad Khan Chandio, for patrolling, during course whereof, he received spy information at village Saeed Khan Panhwar that a person having Charas is coming from Quetta in a white color Mehran Car through Warrah Road to Nasirabad. On receipt of such information, he while holding Nakabandi started checking of vehicles. At about 1500 hours, they noticed the said Car bearing registration No.BCJ-722, coming from Warrah side, which was got to halt with the help of police. Due to non-availability of private mashirs, HC Abdullah Memon and PC Mukhtiar Ali Kalhorro were associated as mashirs. On query, the person sitting on driving seat revealed his identity as Ghulam Asghar Shaikh and his bodily search yielded two currency notes of Rs.1000/- with his CNIC. Two white color sacks were lying on rear seat of the said Car, the same on being opened, the one was having 26 packets of Charas

while the other contained 27 packets of Charas. On weighing, each packet came out to be of 01 K.G, making total of 53 K.Gs. 100/100 grams from each packet were segregated as sample while the remainder was also sealed separately. On inquiry, the said accused disclosed that he and one Majid Ali Shah being partners used to deal with business of Charas within the country. Accused was arrested under memo of arrest and recovery, which was prepared in presence of above said mashirs. Thereafter, the accused alongwith recovery was then taken to police station, where the present case under Control of Narcotics Substance, Act, was registered against the accused on behalf of the State.

3. After completion of usual investigation, the police submitted the final report under section 173 Cr.P.C against the appellants before the competent Court of law.

4. The present appellants pleaded not guilty to the charge framed against them and claimed trial.

5. At the trial, the prosecution to establish the accusation against the appellants, examined PW-01 Complainant/SIP/I.O Zakir Hussain Sandano at Exh.04, he produced departure and arrival entries, memo of arrest/recovery, FIR of the present case, memo of site inspection, permission letter, road certificate and positive chemical report at Exh.4/A to 04/G respectively. PW-02 Mashir/HC Abdullah Memon at Exh.05. PW-03 Malkhana Incharge HC Zamir Ali Gopang at Exh.06, he produced roznamcha entries, copies of Register No.19, Register No.2 and R.C at Exh.6/A

to 6/F respectively. PW-04 Dispatcher/PC Muhammad Saleem at Exh.07. Thereafter, the learned State Counsel closed the its' side.

6. The appellant Ghulam Asghar in his statement recorded under section 342 Cr.P.C at Exh.09, denied the allegations leveled against him by the prosecution and stated as under;

"I was driver of accused Majid Ali Shah in respect of Mehran Car No.BCJ-722. I have no knowledge about Charas. Majid Ali Shah implicated me. I therefore, pray for justice.

7. Appellant Majid Ali Shah in his statement under Section 342 Cr.P.C also denied the prosecution allegations by stating as under;

"Sir, I am innocent. Due to religious dispute, I shifted to Larkana 15 years ago. My children are under education in a public school at Luhar Colony Larkana. I have been running a shop (Autos Spare Parts) at Luhar Colony Larkana. Accused Ghulam Asghar has deposed against me due to personal grudge, so I pray for justice. I produce Card of my shop and certificates of my children.

Both the appellants did not examine themselves on oath in disproof of the charge, nor led any evidence in their defence.

8. The learned trial Court after hearing the parties counsel and on assessment of the evidence, convicted and sentenced the appellants vide impugned judgment dated **26.03.2022**, which they have assailed before this Court by preferring the instant criminal appeals separately.

9. Learned counsel for appellant Ghulam Asghar argued that the present appellant has been arraigned in this case falsely at the instance of appellant Majid Ali Shah being his driver, and that he had no knowledge about Charas; that there are several lapses in

the evidence of prosecution witnesses, which has shattered the credibility of their testimony; that the complainant himself has acted as investigation officer, which has also impaired the transparency of the case. Summing up his contentions, he asserted that learned trial Court has committed illegality while convicting the present appellant, holding him guilty of the charged offence by way of impugned judgment, which requires interference by this Court; therefore, the present appellant deserves to be acquitted in the circumstances of the case.

10. Learned counsel for appellant Majid Ali Shah argued that the appellant being innocent has been involved in this case falsely at the instance of appellant Ghulam Asghar due to his personal grudge; that there are material contradictions in the evidence of prosecution witnesses, which have rendered the credibility of their evidence at stake; that it is quite unbelievable and does not appeal to the prudent mind that how such a huge quantity was checked, weighed, separated for chemical analysis and sealed at the spot in such a short span of time; that no record is collected during course of investigation against the appellant in respect of selling Charas or he is previously involved/convicted by any Court of law in offences of like nature; that the place of recovery is frequented by traffic and public yet not a single passerby there-from was taken to witness the recovery proceedings; that the recovered case property was sent to the Chemical Laboratory with deliberate delay of five days which has not been explained plausibly; that the Chemical Examiner's report is not with protocol of the test, hence,

it has lost its' sanctity in the eyes of law; that the safe custody/transmission of Charas to the Chemical Examiner has also not been established; that the evidence of such interested witnesses requires independent corroboration, which is also lacking in the present case; that the complainant and his witnesses are police officials and no independent person has been cited to witness the recovery proceedings, which has clearly disregarded the mandatory provision of Section 103 Cr.P.C. To reinforce his arguments, he contended that the prosecution has miserably failed to prove its case against the appellant beyond shadow of reasonable doubt and in such circumstances he is entitled to his acquittal.

11. Conversely, learned D.P.G for the State while conceding to the findings of impugned judgment has contended that the prosecution has successfully proved its case against both the appellants who were found carrying the huge quantity of Charas through a Car; that there is compatibility in the evidence of prosecution witnesses on all material aspects of the case, which is further strengthened from the documents produced by them at trial; that the police officials had no hostility to foist such a huge quantity of narcotics substance against the appellants of its own, therefore, the learned trial Court has passed the well-reasoned judgment, which requires no interference by this Court. He thus implored for the dismissal of instant Criminal Appeals.

12. We have heard learned counsel for the parties and have minutely gone through the material made available on record with their able assistance.

13. The meticulous scrutiny of the material brought on record is entailing that appellant Ghulam Asghar was captured by the police party of P.S Nasirabad, with recovery of 53 packets of Charas, weighing to be 53 K.Gs, from two sacks lying on rear seat of the Car, driven by him, who on query disclosed that he and Majid Ali Shah(appellant) being partners used to deal with business of Charas within the country. Here, the entire case of prosecution is based upon the evidence of PW-01 Complainant SIP/I.O Zakir Hussain Sandano, PW-02 Mashir/HC Abdullah Memon, PW-03 Malkhana Incharge HC Zamir Ali Gopang and PW-04 Dispatcher/PC Muhammad Saleem. All these witnesses have narrated the entire episode of the occurrence in a natural manner and remained consistent throughout and their testimony could not be shattered by the defence despite lengthy cross-examination. The said witnesses had no enmity with the accused to falsely implicate in the present case. Even otherwise, a huge quantity of 53 K.Gs of Charas in no circumstances can be planted/foisted against any individual by the police of his own.

14. To prove the safe custody/transmission of Charas, the prosecution examined PW-3/HC Zamir Ali Gopang (Exh.06), who being Incharge of Malkhana deposed that on the same date, SIP Zakir Ali Sandano handed over the case property of Crime

No.178/2021, u/s.9-C CNSA. He checked the case property viz. 53 sealed parcels of Charas (each weighing 100 grams) other 53 packets sealed in two separate sacks (27 packets in one sack and 26 packets in another sack) original CNIC of accused Asghar Shaikh, two currency notes of Rs.1000/- each as well as white Mehran Car bearing registration No.BCJ-722. He kept the sealed parcel of Charas, currency notes and original CNIC of accused Ghulam Asghar in Malkhana for safe custody and Mehran Car was got parked within premises of P.S Nasirabad under his supervision. He maintained such entry of case property in property Register No.XIX vide Serial No.297 on the same date. On 06.12.2021, he took out sealed parcels of Charas mentioned above and the same were handed over to PC Muhammad Saleem (PW-04) for depositing in Chemical Laboratory Sukkur at Rohri for examination and report. SIP Zakir Ali Sandano recorded his statement in this regard. In cross-examination, he deposed that ***“case property of this case was handed over to me at 1600 hours on 01.12.2021. Case property consisted upon packets of Charas (separately sealed in two sacks and separate 53 sealed parcels of Charas), Car, two notes of Rs.1000/- each and original CNIC of accused Ghulam Asghar Shaikh. I handed over 53 sealed parcels of Charas alongwith road certificate to PC Muhammad Saleem on 06.12.2021 in morning hours at about 08.30 a.m at P.S Nasirabad. The same police official came back at P.S Nasirabad on the same date at about 04.30/04.45 p.m.”***

15. From the evidence, it is evident that 53 K.Gs of Charas in two sacks were carried by appellant Ghulam Asghar in a Car driven by him and he was captured red-handed by the police officials, as such, he is solely responsible for having possessed such contraband Charas. It is well-settled principle of law as held by the Hon'ble Apex Court that a person on a driving seat shall be held responsible for transportation of such huge quantity of narcotics substance. The reliance in this context is placed upon case of **Kashif Ameer Vs. The State (PLD 2010 SC-1052)**, wherein the Hon'ble Supreme Court of Pakistan has held that:

“It is well-settled principle that a person who is on driving seat of the vehicle, shall be held responsible for transportation of the narcotics having knowledge of the same as no condition or qualification has been made in section 9(b) of CNSA that the possession should be an exclusive one and can be joint one with two or more persons. Further, when a person is driving the vehicle, he is incharge of the same and it would be under his control and possession, hence, whatever articles lying in it would be under his control and possession. Reference in this behalf may be made to the case of Muhammad Noor Vs. The State (2010 SCMR-927). Similarly, in the case of Nadir Khan Vs. The State (1988 SCMR-1899). This Court has observed that knowledge and awareness would be attributed to the incharge of the vehicle. Another aspect of the case is that once the prosecution has prima facie established its case then under section 29 of the CNSA burden shifted upon the accused to prove contrary to the plea of the prosecution. Reliance in this behalf may be made to the case of Ismaeel Vs. The State (2010 SCMR-27). Wherein, this Court while relying upon the cases of Muhammad Arshad Vs. The State (2007 SCMR-1378) and Mst. Taj Bibi Vs. The State (2007 SCMR-1591) has held that chemical examiner's report regarding Charas

and Opium were sufficient to prove that the substance recovered from the accused was Charas which can be used to cause intoxication; the prosecution had discharged its initial onus while proving that substance was recovered from him whereas the petitioner had failed to discharge its burden in terms, of Section 29 (d) of CNSA.”

16. Moreover, the Hon’ble Supreme Court of Pakistan while dismissing the appeal of appellant Hussain Shah by way of the judgment dated 20-09-2019 passed in ***Criminal Appeal No.7-P of 2017***, has held that;-

“Hussain Shah appellant was driving the relevant vehicle when it was intercepted and from a secret cavity of that vehicle a huge quantity of narcotic substance had been recovered and subsequently a report received from the Chemical Examiner had declared that recovered substance was Charas. The prosecution witnesses deposing about the alleged recovery were public servants who had no ostensible reason to falsely implicate the said appellant in a case of this nature. The said witness had made consistent statements fully incriminating the appellant in the alleged offence. Nothing has been brought to our notice which possibility could be used to doubt the veracity of the said witnesses.

17. As regards the contention of learned defence counsel that the prosecution has failed to prove **safe custody/transmission of Charas** to the office of Chemical Examiner and that too with considerable delay. It may be mentioned here that in the cross-examination of PWs, no such question has been raised by the defence that there was tampering with the case property at the police station or during its transmission to the Chemical Laboratory. To this, the prosecution examined PW-04 PC

Muhammad Saleem who in his evidence (Exh.7) deposed that 53 sealed parcels of Charas each (weighing 100 grams) alongwith R.C No.447 were handed over to him by WHC Zamir Ali Gopang for depositing in Chemical Laboratory Sukkur at Rohri. The same sealed parcel remained in Malkhana under custody of WHC who handed over the same to him on 06.12.2021. He deposited 53 sealed parcels of Charas with the receiving Clerk of Chemical Laboratory Sukkur at Rohri, who acknowledged the same and put his signature on R.C on the same date. He came back at P.S and handed over it to WHC and narrated the same facts. SIP Zakir Ali Sandano recorded his statement in this regard. Further, the complainant/I.O in his examination-in-chief has also endorsed the version of PW-03 Malkhana Incharge HC Zamir Ali and PW-04 Dispatcher PC Muhammad Saleem and subsequently such report received in **positive** which he produced at **(Exh.04/G)** and the said report confirms that the parcel received through PC Muhammad Saleem on 06.12.2021, therefore, it can safely be said that safe chain of custody of the recovered narcotics and its transmission to the Chemical Laboratory was not compromised at all. The reliance in this regard is placed to the case of ***Faisal Shahzad Vs. The State [2022 SCMR-905]*** and ***Ajab Khan Vs. The State [2022 SCMR-317]***.

18. The requirement of Rule 4 of Control of Narcotic Substance (Government Analysis) Rules, 2001 is that the reasonable quantity of sample from the entire narcotics drug, psychotropic substance or the controlled substances seized, shall be drawn on the spot of

recovery and dispatched to the office in charge of nearest Narcotics Testing Laboratory for the test either by insured post or through a special messenger. No question was put by the defence counsel that there was tampering with the case property and it is also confirmed by the Chemical Examiner that the sealed parcels were received at his office on 06.12.2021 in a sealed condition by the hand of PC Muhammad Saleem. Further, Rule 5 of Control of Narcotic Substance (Government Analysis) Rules, 2001 provides a condition that it should be received in the sealed condition in the laboratory. The incharge officer shall observe full protocol by carefully opening and giving a distinct laboratory number. For that, a separate register shall be maintained. All samples shall be passed to the analyst on the same day and kept in safe custody and examine and record weight in the test memorandum. He will compare the markings on the test Memorandums with the markings on the packages envelopes and will ensure that he tests the relevant sample. Rule 6 of C.N.S (Government Analysts) Rules, 2001 further provides that on analysis the result thereof together with full protocols the test applied, shall be signed in quadruplicate and supplied forthwith to the sender as specified in Form-11. Now the question here is whether the report received from the office of the Chemical Examiner is according to Rule 4, 5 & 6 of C.N.S (Government Analysts) Rules, 2001 or not. The requirement of R.4 is only that the parcel/envelope should be received in the office of Chemical Examiner in a sealed condition. We have perused the Chemical Examiner's report available as

Exh.04/G, and in our humble view it is according to its' Rule and the full protocol was observed by the office of Chemical Examiner. It is appropriate to reproduce the relevant paragraph of the report, as under;

Test : Positive.
Result : Charas identified.
Conclusion : The submitted sample contains Charas.

19. The procedural detail is mentioned in the Chemical Examiner's report Exh.04/G about the tests applied do not fall short of **"protocol"**. In an unreported case of **Mushtaq Ahmed Vs. The State & others (Criminal Petition No.370 of 2019)**, the Hon'ble Supreme Court of Pakistan has observed that;

"3... Argument that Forensic report sans protocols as mandatorily required in the case of State Vs. Imam Bakhsh (2018 SCMR 2039), is beside the point and so is a reference to Rule 6 of the Control of Narcotic Substance (Govt. Analysis) Rules, 2001, for the convenience of reference reproduced below:-

"Report of the result of test analysis:- After test or analysis the result thereof together with full protocols of the test applied, shall be signed in quadruplicate and supplied forthwith to the sender as specified in Form-II".

The above requires reference to the test applied for analysis, specifically mentioned in Form-II thereof. We have perused the forensic report, relied upon the prosecution, which substantially meets the legal requirements in the following terms:-

"Test Performed on Received Item(s) of Evidence

1. Analytical Balance was used for weighing.

2. Chemical spot Tests were used for Presumptive Testing.

3. Case Chromatography-Mass Spectrometry was used for confirmation.

Results and conclusions

“Item # 01 72.87 gram(s) of blackish brown resinous material in sealed parcel contains Charas”

Details mentioned in the Forensic report procedure/test applied do not short of “protocol” as insisted by this Court in the supra case. According to the Oxford English Dictionary, 6th Edition, the expression “protocol” in relation to a forensic test means.

“A formal or official statement of a transaction or; spec, a record of (esp. scientific) experimental observations”.

20. The reliance is also placed on an un-reported case of Hon’ble Supreme Court of Pakistan, vide judgment dated 09-01-2020 passed in **Criminal Petition No.370 of 2019 Re. Mushtaq Ahmad Vs. The State & another;**

“4. It has been argued before us that the report submitted by the Chemical Examiner did not mention the necessary protocols followed or tests applied but we have seen the said report available on the record of the trial court and have found that the said report not only referred to the protocols adopted but also to the tests applied and, thus, we have not been able to find any deficiency in the said report.”

21. As regards to the arguments of learned defence counsel about violation of Section 103 Cr.P.C is concerned, it would be appropriate to refer Section 25 of the Control of Narcotics Substance Act 1997, which reads as under;-

**“25. Mode of making searches and arrest.---
The provisions of the Code of Criminal Procedure, 1898, except those of section 103 Cr.P.C shall mutatis mutandis, apply to all searches and arrests in so far as they are not inconsistent with the provisions of section 20, 21, 22 and 23 to all warrants issued and arrest searches made under these sections.**

22. At this juncture, the applicability of Section 103 Cr.P.C in narcotics cases has been excluded and the non-inclusion of any private person to witness the recovery proceedings is not a serious defect to vitiate the conviction. To this, not even a single word with regard to availability of any independent person has been uttered by the complainant/I.O or mashir or their cross examination.

23. So far the evidence of police officials is concerned, they are much competent than others, hence, their evidence cannot be discarded merely for the reason of their being as police officials. They have furnished straight-forward and confidence-inspiring evidence and there is nothing on record to show that they have deposed against the accused maliciously or out of any animus thus it cannot be believed that the police officials would plant or foist such a huge quantity of narcotics substance (53 K.Gs) against the accused from their own resources. It is well settled principle of law that the statement of the official witness cannot be discarded only on the pretext that they are police officials. The reference in this context is made to the case of **Zaffar Vs. The State (2008 SCMR-1254)**, wherein the Hon'ble Supreme Court of Pakistan has held that;-

“Police employees are the competent witnesses like any other witnesses and their testimonies cannot be discarded merely on the ground that they are police officials”.

24. In the instant case, no proof of enmity with the complainant or the other witnesses has been brought on the record, thus, in the absence thereof, the competence of prosecution witnesses being police officials was rightly believed. Moreover, a procedural formality cannot be insisted at the cost of completion of an offence and if an accused is otherwise found connected then, mere procedural omission and even allegation of improper conduct of investigation would not be helpful to the accused. The reference in this context is made to the case of the ***State/ANF Vs. Muhammad Arshad (2017 SCMR-283)***, wherein the Hon’ble Supreme Court of Pakistan has held that;-

“We may mention here that even where no proper investigation is conducted, but where the material that comes before the Court is sufficient to connect the accused with the commission of crime, the accused can still be convicted, notwithstanding minor omissions that have no bearing on the outcome of the case”.

25. Even otherwise, mere status of one as an ***official*** would not alone prejudice the competence of such witness until and unless he is proved to be ***interested***, who has a motive, to falsely implicate an accused or has the previous enmity with the person involved.

26. It is now well settled proposition of law that by afflux of time in the case of transportation or possession of narcotics, technicalities of procedural nature or otherwise should be

overlooked in the larger interest of the Country, if the case stands otherwise proved, the approach of the Court should be dynamic and pragmatic, in approaching true facts of the case and drawing correct and rational inferences and conclusions while deciding such type of cases. The Hon'ble Supreme Court of Pakistan in the case of **Ghulam Qadir Vs. The State** reported in **(PLD 2006 SC-61)** has held that;-

“S.9(c)---Appreciation of evidence.---No acquittal on technicalities---Court in such like cases are supposed dispose of the matter with dynamic approach, instead of acquitting the drug paddlers on technicalities.”

27. On careful appraisal of evidence of the prosecution witnesses, we find it confidence-inspiring and trustworthy; as such appellant Ghulam Asghar was transporting 53 K.Gs of Charas through a Car and was arrested on 01.12.2021 at 1500 hours from Mir Wah Bridge, Warrah-Nasriabad road. The version of complainant SIP/I.O Zakir Hussain Sandano has been fully corroborated by mashir of arrest and recovery, which is substantiated with the memo of arrest and recovery (Exh.04/B), and FIR (Exh.04/C), as well as the Chemical Examiner's report in **positive** produced by him (Exh.04/G).

28. No previous enmity, ill-will or grudge has been alleged or proved against prosecution witnesses to implicate appellant Ghulam Asghar in this case falsely. The prosecution successfully discharged its lawful duty, thereby, shifting the burden upon him within the meaning of Section 29 of the Act. Such burden would

require the accused to firstly cause a dent in the prosecution case and secondly to establish at least justify the possibility of false implication or foistation of huge quantity of Charas but the defense has failed to do so. While recording his statement in terms of Section 342 Cr.P.C, the appellant Ghulam Asghar has taken the defence plea that he being innocent has been involved in this case falsely by the police with foistation of Charas upon him at the instance of appellant Majid Ali Shah being his driver, but strangely, he failed to produce any material or a person in support of his plea except the simple disclosure of his being implicated falsely, without producing any cogent evidence during the course of his statement.

29. There is no denial to the fact that appellant Ghulam Asghar was driving the Car containing therewith the huge quantity of Charas. No convincing material has been produced by him denying the fact that how it is possible that he was not having any knowledge about the Charas present in his Car, which he was driving all the way. It is hard to believe that the driver had no idea or knowledge about the contents and articles being transported by him or present in his Car on which he was driving. The deeper analysis of the whole prosecution evidence i.e, the recovery of a huge quantity of narcotics, the happening of occurrence on the place, during day time; sealing the entire material in a prescribed manner and sending the samples to the Chemical Examiner, report of the Chemical Examiner and the evidence of the

prosecution witnesses when evaluated in its entirety, conjointly hold the appellant Ghulam Asghar to be a real perpetrator.

30. No illegality or irregularity and mis-appreciation of evidence were found, so far as his case is concerned. The case of the prosecution is based upon the appraisal of the evidence, supported with reasons placed on record. No incriminating evidence was produced to show misreading and omission from consideration of the evidence. The incomes of narcotics are largely utilized in anti-state/terrorist activities which this country has been facing for decades and it obviously has affected the society at large. When the prosecution proves its case on its salient features then unnecessary technicalities should not be allowed to hamper very purpose of the law on the subject. The reliance is placed in case of **FAISAL SHAHZAD v. THE STATE (2022 SCMR 905)**.

31. It is a trite proposition of law that items recovered from the vehicle in possession of the driver are presumed to be assenting to be in his control and in his knowledge. If the drugs are secured from the possession of an accused then it is normally believed that he has a direct relationship with the drugs and the burden of proof that he did not know the same lies heavily on him. We in this regard would like to refer to a judgment given by the Hon'ble Supreme Court of Pakistan in the case of **Muhammad Noor Vs. The State** reported in **(2010 SCMR-927)**, wherein the Hon'ble Court observed as under:

8. As regards Driver of the vehicle, it is important to note that when he is driving the vehicle, he is Incharge of the same, therefore, it would be under his control and possession. Hence, whatever articles lying in it would be under his control and possession. The liability of the driver, in view of provisions of section 27 of P.P.C, has been considered by this Court in the case of Sherzada v. State 1993 SCMR 149, wherein it was observed as under:-

The next point raised by the learned Counsel was that it is provided in section 27, P.P.C. that when property is in the possession of wife, clerk or servant on account of that person, it is in that persons possession within the meaning of this Code. The learned Counsel argued that the appellant was a driver, hence an employee of the owner of the car and even if he is admitted to be in possession of the contraband article on behalf of the owner, he cannot be said to be liable for that possession. But this argument of the learned Counsel is without force on the face of it because section 27, P.P.C. is confined to the Pakistan Penal Code only, as the words “within the meaning of this Code” appearing in that section clearly indicate. This section has not been made applicable to the Prohibition (Enforcement of Hadd) Order, 1979 as is evident from Article 26 of that Order where certain other provisions of the P.P.C. have been made applicable.

This Court in the case of Adil Ahmed v. Deputy Collector, C & CE 1991 SCMR 1951 has observed that in view of provisions of Customs Act, the drivers and owners were both responsible.

In the case of Rab Nawaz v. The State PLD 1984 SC 858, the liability of drivers was again considered and lenient view was taken, as they expressed their ignorance about the contents and claimed to be simple carriers. In the present case the appellant did not claim to be carrier.

This Court in the case of Nadir Khan v. State 1988 SCMR 1899 has observed that knowledge and awareness would be

attributed to the Incharge of the Vehicle. The relevant portion reads as under:--

“We have gone through the evidence on record and find that the petitioners had the charge of vehicle for a long journey starting from Peshawar and terminating at Karachi. They had the driving license also. As being person Incharge of the vehicle for such a long journey, they must be saddled with the necessary knowledge with regard to the vehicle and its contents”.

32. Based upon the above discussion, and while relying upon the case laws of the Hon’ble Apex Court, cited supra, we are of the unanimous view that the prosecution has successfully established the charge of transportation of a huge quantity of narcotics substance through a Car against appellant Ghulam Asghar Shaikh being its driver, beyond a shadow of any reasonable doubt, consequently, the Criminal Appeal No.D-12 of 2022 filed by him being devoid of merits is **dismissed**. The conviction and sentence awarded to him by the learned trial Court shall hold the field.

33. So far as the case against appellant Majid Ali Shah is concerned, no tangible piece of evidence was collected by the investigation officer either during investigation or even produced up to close of the trial, which may justify his involvement with the alleged recovered contraband Charas from his exclusive possession. In that situation, the prosecution has miserably failed to prove the guilt against him beyond shadow of reasonable doubt. Resultantly, the Criminal Appeal No.D-13 of 2022 filed by appellant Majid Ali Shah is **allowed**. The conviction/sentence awarded to him learned trial Court is set aside and he is **acquitted**

of the charged offence by extending him benefit of doubt. Let the release writ be issued for appellant Majid Ali Shah, directing the concerned jail authority to release him forthwith in the present case, if his custody is no more required in any other case.

34. Above are the reasons of our short order dated **29.04.2025**, whereby the above Criminal Appeals were disposed of accordingly.

JUDGE

JUDGE