

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Cr. Appeal No. D –48 of 2023

(Imam Bux versus The State)

Present:

Mr. Justice Khalid Hussain Shahani

Mr. Justice Muhammad Jaffer Raza

Date of hearing : 29.07.2025

Date of Announcement : 20.08.2025

Mr. Asif Ali Abdul Razaq Soomro, Advocate for the Appellant

Mr. Sardar Ali Solangi, Deputy Prosecutor General.

J U D G M E N T

Muhammad Jaffer Raza, J.- This Criminal Appeal No. D-48 of 2023 has been preferred by Appellant Imam Bux s/o Ali Khan by caste Kosh Jatui, impugning the judgment dated 01.06.2023 passed by the learned I-Additional Sessions Judge / Special Judge for Control of Narcotic Substances (MCTC), Shikarpur in Special Case No. 691 of 2021, arising out of Crime No. 43/2021 registered at Police Station Lakhi Gate, for offence under Section 9(c) of the Control of Narcotic Substances Act, 1997 (**“Act”**). By virtue of the said judgment, the Appellant was convicted and sentenced to undergo Rigorous Imprisonment for Life and a fine of Rs.800,000/-, and in case of default in payment of fine, to further undergo six months Simple Imprisonment, with benefit of Section 382-B Cr.P.C.

2. The brief facts giving rise to the prosecution case are that on 23.07.2021 at about 1820 hours, complainant ASI Muhammad Ilyas Khakhrani of Police Station Lakhi Gate, while on routine patrolling along with his subordinates HC Abdul Hameed, HC Nazir Ahmed and PC Muneer Ahmed, duly armed, reached link road leading towards Bekhari near Hockey Stadium Shikarpur, where they noticed a person coming from Bekhari side towards city Shikarpur, carrying a white colour plastic sack on his right shoulder. Upon seeing the police party, the said person attempted to escape, but was apprehended. On enquiry, he disclosed his name as Imam Bux S/o Ali

Khan by caste Kosh Jatoi R/O Taluka Khanpur, District Shikarpur. On search of the white plastic sack, 12 packets and four patties of charas were recovered, weighing a total of 15340 grams. Out of these, three packets bore the label "Meister Kaffee", four had the words "Dunkin Donuts", five were silver-coloured with words in Italian style, and on the pattis the words "Gumnam 2020-2021" and "555" were found inscribed. From his personal search, Rs.200/- were also recovered. The recovered narcotics and currency were sealed on the spot in presence of police mashirs HC Abdul Hameed and HC Nazir Ahmed, as no private person was available to act as mashir. The accused allegedly confessed that the narcotics were meant for sale. FIR bearing Crime No.43/2021 was registered at Police Station Lakhi Gate under section 9(c) of the Control of Narcotic Substances Act, 1997.

3. Record reflects that the case was transferred to the Court of I-Additional Sessions Judge / Special Judge CNS (Model Criminal Trial Court), Shikarpur, upon establishment of the said Court for expeditious trial where accused Imam Bux was formally charged before the trial Court, where he pleaded "not guilty" and claimed trial. During trial, the prosecution examined five witnesses including ASI Muhammad Ilyas Khakhrani (complainant), HC Abdul Hameed (mashir of arrest and recovery), HC Sooba Khan, WHC Salahuddin Mahar and SIP/SIO Ali Hussain Shah. P.Ws produced documentary evidence including roznamcha entry, mashirnama of recovery, FIR, malkhana entry, R.C. and chemical report. In his statement under section 342 Cr.P.C., the accused Imam Bux denied the allegations, claimed false implication, and neither examined himself on oath nor produced any witness in defence.

4. The learned trial Court, after hearing both sides and evaluating the evidence, convicted the Appellant as noted above. Hence, the present appeal.

5. It has been contended by the learned counsel for the Appellant that the Impugned Judgment is contrary to the law and facts in the instant case. He has further averred that the learned trial Court failed to appreciate the material contradiction and

omissions in the case of the prosecution, which ought to have rendered a finding of acquittal in reference to the present Appellant. He has further stated that the evidence adduced at trial is ripe with glaring contradictions, which are apparent from the perusal of the Impugned Judgment. He has further contended that there is no safe custody or safe transmission and the same is apparent from the bare perusal of the record. In this regard, he invited our attention to the Mushirnama, FIR, Road Certificate, charge and Malkhana Register and the apparent contradiction of the same with the report of the Chemical Examiner. He stated that he will only rely upon the noted contradiction to establish that the recovery does not match the report of the Chemical Examiner and the same entitles the Appellant for an acquittal, without referring to other evidence and lacunas which surfaced at trial. He has lastly argued that the Appellant has been in custody for over five (05) years on a charge which the prosecution has miserably failed to prove.

6. Conversely, learned DPG has argued that the report of the Chemical Examiner is positive and in this regard the Appellant is not entitled for any relief sought in the instant appeal. He has further argued that instant appeal ought to be dismissed and has in most vehement terms, supported the Impugned Judgment.

7. We have heard both the learned counsels and perused the record. The mushir nama, attention to which was invited by the learned counsel for the Appellant shows the details of the recovered property, the same is reproduced hereinunder: -

“One white colour Bachka containing 12 packets of charas out of them three packets were of sky blue colour and MEISTER KAFFEE was written on packets, four packets were of orange colour, DUNKIN DONUTS was written and five packets were of silver colour, Italian Style was written on them and four slabs of charas were recovered written with Gum Nam 2020/2021 and on one slab 555 was written total charas weighing 15340 fifteen thousand three hundred forty grams duly sealed.”

8. It is noted, without any need for reproduction, that the same description features in the contents of the FIR, Road Certificate, Malkhana Register as well as the charge framed against the present Appellant. However, bare perusal of the report of

Chemical Examiner conducted at Chemical Laboratory Sukkur, at Rohri, reveals that the physical examination was conducted of the following: -

“Parcel contains twelve (12) printed plastic packets each containing two black brown coloured patties wrapped in white plastic pani kept in plastic kata.”

9. It is apparent that there is serious discrepancy between the property which was allegedly recovered and the property which was examined by the Chemical Examiner. It appears, from the comparison of the noted documents above, that the same do not match the names, description and marks noted in the Mushirnama, FIR, Road Certificate, charge and Malkhana Register. In this regard, it is held that from the face of the record not a single piece of recovery was sent for examination to the Chemical Examiner, therefore, it can safely be concluded that there is no safe custody or transmission of the recovered narcotics. The same was held the same to be pivotal in cases under the Act by the Hon’ble Supreme Court in the recent case of **Ameenullah versus The State¹** wherein the Hon’ble Court held as under: -

“6. In the case of conviction under the Act of 1997, it is an onerous duty of the prosecution to prove beyond a reasonable doubt that the material recovered from an accused is one of the narcotic drugs defined in the said statute. The most crucial element in proving this factor is the evidentiary value of the report of the government analyst. The credibility and integrity of the chemical examiner’s report essentially depends on proving the recovery and, most importantly, the chain of custody. This chain of custody commences from the stage of the recovery of the alleged material and ends at the delivery of the samples to the chemical examiner’s office. After the alleged material has been recovered, samples are separated and sealed in accordance with the principles and law enunciated by this Court in Ameer Zeb’s case. Then the recovered material has to be taken to the Police Station and kept there in custody by the concerned law enforcement agency. The samples are then to be taken out from the place of storage and transmitted to the concerned government analyst for chemical analysis. The chain of safe custody, therefore, starts from the recovery till the samples have been received at the office of the government analyst. The integrity of this chain of custody at each stage is fundamental for proving that the material recovered and seized by the law enforcing agency is one of the narcotic drugs contemplated under the Act of 1997. Section 29 of the Act of 1997 provides that in relation to trials ibid it may be presumed that the accused has committed the offence under the Act of 1997 unless the contrary is proved. This Court, while interpreting this provision in the case of Ameer Zeb (supra), after examining its earlier ¹ Ameer Zeb v. The State (PLD

¹ Criminal Appeal No. 525 of 2022. Judgment dated 18.04.2025. Earlier a similar view was taken by the Hon’ble Supreme Court in the cases of Asif Ali and another Versus The State reported at 2024 SCMR 1408 and Zahir Shah versus The State reported at 2019 SCMR 2004.

2012 SC 380) *Cr.A.525/22 judgments rendered in the cases of Kashif Amir and Muhammad Noor*², has held that the initial onus to prove the offence of recovery of narcotic substance from the accused is always on the prosecution and, once it has discharged that onus to the satisfaction of the court, it is only then that the onus shifts to the accused person to establish falsity of the prosecution's allegation against him/her. It has been further observed that the initial onus on the prosecution in such cases includes the onus to prove that the entire substance allegedly recovered is in fact a narcotic substance and such onus can be discharged by the prosecution only if the samples of the recovered substance sent to the chemical examiner for analysis are representative samples of the entire quantity of the recovered substance. It has also been highlighted that, keeping in view the principles for safe administration of justice, a strict standard of proof is required in the case of offences which attract harsh sentences such as have been prescribed under the Act of 1997. The chain of safe custody and transmission thereof becomes crucial for the prosecution to prove its case. The prosecution, by producing unimpeachable evidence, has to prove that the chain of safe custody was unbroken, unsuspecting, indisputable, safe and secure. Any break in the chain of custody or lapse in the control regarding possession of the samples causes doubts relating to safe custody and safe transmission of the samples and, consequently, it impairs and vitiates the conclusiveness and reliability of the chemical report of the government analyst. It, therefore, renders the conviction to be unsustainable. If the prosecution fails in establishing safe custody or safe transmission of the alleged drug then the chemical report of the government analyst becomes doubtful and unreliable³. 2 *Kashif Amir v. The State* (PLD 2010 SC 1052) and *Muhammad Noor and others v. The State* (2010 SCMR 927) 3 *The State through Regional Director ANF v. Imam Bakhsb and others* (2018 SCMR 2039), *Amjad Ali v. The State* 2012 SCMR 577), *Ikramullah v. The State* (2015 SCMR 1002) and *Zahir Shah alias Shat v. The State* (2019 SCMR 2004) *Cr.A.525/22*.

7. If a person who is in charge of the place of storage in the Police Station i.e the Mall Khana or some other responsible person related with its affairs is not produced as a witness nor unimpeachable evidence relating to the record maintained is produced to establish the entry into and taking out of the material and samples from such designated storage place, then the safe custody becomes doubtful and thus breaks the chain. Likewise, if the official through whom the samples are transmitted to the office of the government analyst is not produced, the chain is broken and thus renders the chemical report unreliable or compromised⁵. It is, therefore, the obligation of the prosecution to prove the allegation against the accused to the satisfaction of the court that the chain of safe custody was unbroken and that safe custody of the samples and their transmission to the office of the chemical analyst were uncompromised beyond any doubt." (Emphasis added)

10. Further, it is apparent from the record that the bearer was not examined in the instant case, which further advances the argument of the learned counsel for Appellant that the Appellant is liable to be acquitted of the charge framed. The onerous burden

of the same rests entirely on the prosecution and the failure in discharging the same burden can prove to be fatal to the case².

11. It is a settled principle of criminal jurisprudence that the prosecution has to establish every element of the offence beyond all reasonable doubt³ and it is held that sufficient doubt exists in the present case for the Appellant to be acquitted of the charge. The compromised chain of custody and the inconsistency highlighted above warrants that the instant appeal be allowed. For the foregoing reasons, we are of the considered view that the prosecution has miserably failed to prove its case against the Appellant beyond reasonable doubt, the conviction is based on evidence, which is contradictory, tainted and legally insufficient to uphold the said conviction.

12. Resultantly, instant appeal is allowed. Impugned judgment dated 01.06.2023 and sentence passed by the 1-Additional Sessions Judge/Special Judge for Control of Narcotic Substance Act, (MCTC) Shikarpur, is hereby set-aside. The Appellant namely, Imam Bux Kosh Jatoti son of Ali Khan, is acquitted of the charge. He may be released forthwith, if not required, in any other case.

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² Abdul Ghafoor versus The State reported at 2022 SCMR 819 and Muhammad Shoaib versus The State 2022 SCMR 1006.

³ Rehmatullah vs. The State reported at 2024 SCMR 1782.