

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Special Criminal Jail Appeal No. D-34 of 2024

PRESENT

Mr. Justice Amjad Ali Bohio, J

Mr. Justice Ali Haider 'Ada', J.

Appellant: Akhtiar Ali Metlo, *through* Mr. Khan Muhammad Sangi, Advocate

The State: *Through* Mr. Aftab Ahmed Shar, Additional Prosecutor General

Date of hearing: 18.6.2025.

Date of Short Order: 18.06.2025.

Date of Reason: 25.06.2025.

JUDGMENT

Ali Haider 'Ada', J.:- Through the instant Special Criminal Jail Appeal, the appellant has challenged the judgment dated 27.02.2024 passed by the learned Ist Additional Sessions Judge / Special Judge (CNS) / Model Criminal Trial Court-I, Sukkur (hereinafter referred to as "the Trial Court"), in Special Case No. 202 of 2023, titled The State vs. Akhtiar Ali Metlo. By the said judgment, the appellant was convicted under Section 9(1)(3)(d), Control of Narcotic Substances (amendment) Act, 2022 and sentenced to rigorous imprisonment for fourteen (14) years along with a fine of Rs. 400,000/- (Four hundred thousand Rupees). In default of payment of the fine, the appellant was directed to undergo simple imprisonment for a further period of six (06) months. However, the benefit of Section 382-B, Cr.P.C. was extended to the appellant. The conviction relates to Crime No. 45 of 2023, registered at Police Station Tamachani.

2. The prosecution's case, in brief, is that on 13.08.2023, a police party headed by SIP Irshad Ali, along with subordinate staff, left the police station for routine patrolling. Upon reaching Gosarji Curve Railway Crossing No.1, they observed a person standing there holding a blue shopping bag. Upon noticing the police party, the person attempted to flee. However, due to suspicion, the person was apprehended. During the subsequent search, Nine slabs of charas were recovered, which were in the shape of two joined slabs. Each joined slab was weighed, revealing a weight of 1 kilogram (1kg), bringing the total weight of the recovered charas to 9 kilograms (9kg). The search and recovery were conducted in the presence of a mashirs. In addition to the narcotics, Rs. 500 were also recovered from the accused. Upon interrogation, the accused

disclosed his name and address. A memo of arrest and recovery was duly prepared and the accused was taken to the police station. Following the completion of legal formalities, the FIR was registered by SIP Irshad Ali under Section 9-D, Control of Narcotic Substances Act.

3. Following the registration of the FIR, the matter was investigated by the complainant himself, SIP Irshad Ali, who conducted the investigation and after completion of the investigation, a challan was submitted to the Court of Law. The accused was subsequently sent up for trial based on the findings of the investigation.

4. The requisite documents were duly delivered to the appellant/accused and on 18.10.2023, the learned trial Court framed charges against the appellant. The appellant pleaded not guilty and claimed trial. Subsequently, the learned trial Court directed the prosecution to present their evidence. The prosecution examined the following witnesses:

PW-1: Irshad Ali, the Complainant and Investigating officer, who during his examination, exhibited the documents as Roznamcha entry for patrolling, Memo of arrest and recovery, FIR, Arrival entry at the police station, Malkhana entry (Register No. 19), Memo of visit to the place of the incident, along with the relevant roznamcha entries, Road certificate, Roznamcha entry for sending the case property to the chemical examiner for analysis.

PW-2: Ghulam Mustafa, the second mashir, who witnessed the memo of arrest and recovery and the memo of visiting the place of the incident.

PW-3: Allah Wasayo, the dispatcher of the case property to the chemical examiner, who presented the report of the Chemical Examiner.

5. After the prosecution's evidence was concluded, the learned State counsel closed the prosecution's case on 27.01.2024.

6. Thereafter, the learned trial Court recorded the statement of the accused under Section 342, Cr.P.C., where the appellant maintained his innocence and prayed for acquittal. After hearing the arguments of both the prosecution and defense counsel, the learned trial Court passed the impugned judgment, convicting the appellant. The appellant has now preferred the present Special Criminal Jail Appeal, challenging the said judgment.

7. The learned counsel for the appellant contended that the appellant has been wrongfully implicated in this case and the prosecution has completely

failed to establish a prima facie case against him. The learned counsel pointed out that there are major discrepancies in the prosecution's case. One of the most significant points raised was the failure of the prosecution to prove the safe custody of the contraband articles, which is a mandatory requirement under the law. The complainant himself, who also acted as the Investigation officer, as he also kept the case property in the Malkhana. This raises serious concerns about that, as per Police Rules of 1934, a Sub-Inspector (like the complainant) cannot act as the In-charge of the Malkhana. The learned counsel referred to Rule 22.7 and Rule 22.8 of the Police Rules. The counsel also emphasized the major discrepancies in the weight of the contraband material, noting that the weight of the material recorded during the seizure does not match the chemical analysis report. Furthermore, the number of slabs is inconsistent, as the prosecution's case alternates between the contraband being in 9 slabs and 18 slabs. Learned counsel argued that the prosecution has failed to establish the chain of custody and the exact nature of the contraband articles. To support his arguments, the learned counsel relied on the cases of Ahmed Ali and another v. The State (2023 SCMR 781) Ali Hussain alias Raju v. The State (2024 YLR 996) Wakeel v. The State (2024 PCRLJ 592)

8. The learned counsel for the State, on the other hand, supported the impugned judgment, contending that there are no major discrepancies in the prosecution's case. According to the learned counsel, the prosecution has successfully established the case against the appellant based on the points that a huge quantity of contraband was recovered from the exclusive possession of the appellant. The recovery of such a large quantity of narcotics clearly implicates the appellant, and this fact alone establishes a strong case against him. It was further argued that the Police Rules of 1934 do not need to be applied in a strict sense in this case. The learned counsel asserted that even if there was a technical violation regarding the handling of the case property, it did not affect the overall veracity of the prosecution's case. The material evidence of the recovery remains intact and cannot be undermined due to such procedural issues. The learned counsel pointed out that the appellant had failed to shake the credibility of the prosecution's evidence during cross-examination. Since the defense could not effectively challenge the key evidence, there is no reason to discard the prosecution's evidence at this stage. Based on these submissions, the learned counsel argued that the evidence produced by the prosecution is reliable and sufficient to sustain the conviction. To support these

arguments, the learned counsel for the State relied on the cases as reported as 2022 SCMR 905, 2022 SCMR 1097, 2019 SCMR 206, 2021 SCMR 1773.

9. Heard, learned counsel for both parties and have carefully examined the entire record in this case.

10. Upon careful examination of the deposition and evidence of the complainant, who also served as the Investigating officer and also kept the case property in the Malkhana. It is noted that he recovered 9 slabs of charas, each weighing 1 kilogram. The slabs were described as being of two types: four slabs joined together in pairs and one separate slab. To clarify, the four joined slabs each weighed 1 kilogram, and the separate slab also weighed 1 kilogram. The issue arises when considering the complainant's failure to explain the difference in size between the joined slabs (measuring 4x2) and the single, separate slab. Specifically, the complainant did not clarify whether the single slab that was not joined to the others was larger in size, and if so, whether its weight was adjusted to match the others. The key concern here is that, if the joined slabs were indeed of smaller size (as indicated by the measurements of 4x2), it is unclear how the single, separate slab could still weigh the same 1 kilogram without a detailed explanation from the complainant. Given this uncertainty, there are doubts raised about the accuracy of the prosecution's case concerning the weight of the recovered charas. Specifically, it remains unclear how the four joined slabs, each described as weighing 1 kilogram, could be consistent in weight with the separate slab, which was not joined but also purportedly weighed 1 kilogram. This lack of clarification casts doubt on the prosecution's evidence, particularly with regard to the weight and measurement of the contraband.

11. The prosecution also examined PW-2, Ghulam Mustafa, the second mashir of the memo of arrest and recovery, who testified in Court. However, the role of the first mashir, Anwar Ali, is of paramount importance in this case. According to the complainant's deposition, Anwar Ali played an active role in the recovery process. The complainant testified that Anwar Ali assisted in weighing the charas and even provided an electronic scale for this purpose. Moreover, the complainant stated that during the process of weighing the contraband, the custody of the accused was with Anwar Ali. Despite the crucial role played by Anwar Ali, the prosecution failed to produce him as a witness to corroborate the complainant's version of events. While the complainant

testified about Anwar Ali's involvement, the prosecution did not present him in Court to establish his role as a witness. Additionally, the case diaries of the learned trial Court indicate that witness Anwar Ali attended court on multiple occasions but was never called to testify by the prosecution. Furthermore, the complainant testified that PC Nawab prepared the memo of arrest and recovery. However, PC Nawab, who is another witness, was not examined by the prosecution either. His absence further weakens the chain of evidence, as his testimony could have provided additional validation to the actions of the complainant and the process of recovery.

12. During the examination, the complainant produced the entry regarding the safekeeping of the case property in the Malkhana. He referred to Register No. 19 to show that the case property was entered therein. However, upon careful perusal of Entry No. 20 in Register No. 19, it is apparent that the entry is different from the prescribed format as laid down in the Police Rules of 1934. The entry in Register No. 19, specifically Entry No. 20, does not adhere to the proforma prescribed by the Police Rules of 1934, which sets out clear guidelines for the maintenance of Malkhana records. Rule 22.70 of the Police Rules 1934 defines the manner in which such records must be kept and maintained for proper transparency. For ready reference, Rule 22.70 of the Police Rules 1934 is as follows:

22-70. Register No. XIX:- *This register shall be maintained in Form 22.70 With the exception of articles already included in register No. XVI every article placed in the store-room shall be entered in this register and the removal of any such article shall me noted in the appropriate column.*

FORM No. 22-70

POLICE STATION _____ DISTRICT _____

Register No. XIX. Store - Room Register (Part-I)

- Column
- 1, -- Serial No.

2 -- No. of first information report (if any), from whom taken (if taken from a person), and from what place.

3. -- Date of deposit and name of depositor.

4.-- Description of property.

5. -- Reference to report asking for order regarding disposal of property.

6. -- How disposed of and date.

7.-- Signature of recipient (including person by whom despatched).

8. -- Remarks.

(To be prepared on a quarter sheet of native paper).

13. Upon reviewing the entry produced by the complainant in Register No. 19, it becomes evident that the entry is inconsistent and does not align with the prescribed format as required by the Police Rules of 1934. The entry appears to have been prepared by the complainant on plain white paper, with the columns manually written and the entire entry seemingly hand-made. The manner in which the entry was made does not inspire confidence, as it does not conform to the established procedures for recording case property in the Malkhana. This irregularity creates a serious dent in the present case, when the very entry in Register No.19, purporting to reflect the deposit of the recovered narcotics in safe custody suffers from defects and omissions, and use of a non-prescribed proforma, the entire process of safe custody becomes doubtful. Any break in the chain of custody or failure to demonstrate compliance with these procedural safeguards, renders the prosecution's case doubtful. Support for this view is drawn from the judgments of the Hon'ble Supreme Court in ***Abdul Haq v. The State* (2025 SCMR 751)**, held that :

"Any failure to prove the safe and continuous handling of the narcotic sample from seizure to forensic analysis not only weakens the prosecution's case but also vitiates the reliability of the evidence, entitling the accused to the benefit of the doubt. This Court held in Javed Iqbal v. The State (2023 SCMR 139), wherein it is held that:

[4]. It is duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and safe transmission of the sample parcels to the concerned laboratory. This chain has to be established by the prosecution and if any link is missing in such like offences the benefit must have been extended to the accused

In this regard, reliance is placed upon the judgments rendered by this Court in cases titled "Qaiser Khan v. The State" reported as 2021 SCMR 363, "Mst. Sakina Ramzan v. The State" reported as 2021 SCMR 451, "Zubair Khan v. The State" reported as 2021 SCMR 492 and "Asif Ali and another v. The State" reported as 2024 SCMR 1408.

***Muhammad Iqbal v. The State* (2025 SCMR 704).**

4. In a criminal trial, the prosecution is duty-bound to establish its case beyond reasonable doubt, and any doubt, no matter how slight, must be resolved in favour of the accused. In cases under the Control of Narcotic Substances Act, 1997, where conviction primarily rests upon the recovery of contraband and its subsequent chemical analysis, it is a settled principle that the prosecution must establish an unbroken and unimpeachable chain of

custody to ensure the credibility and evidentiary value of the recovered substance. This Court has consistently held that failure to prove the safe custody and secure transmission of the contraband from the place of recovery to the forensic laboratory renders the chemical examiner's report unreliable and incapable of sustaining conviction. In Zahir Shah v. The State (2019 SCMR 2004) this Court held: -

"Safe custody and safe transmission of the drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory must be satisfactorily established. This chain of custody is fundamental as the report of the Government Analyst is the main evidence for the purpose of conviction. The prosecution must establish that chain of custody was unbroken, unsuspicious, safe and secure. Any break in the chain of custody i.e., safe custody or safe transmission impairs and vitiates the conclusiveness and reliability of the Report of the Government Analysis, thus, rendering it incapable of sustaining conviction."

The prosecution is thus required to demonstrate that the custody of the recovered substance remained uninterrupted, free from suspicion, and protected from the possibility of tampering, failing which the accused is entitled to the benefit of doubt (Sarfraz Ahmed v. The State 2024 SCMR 1571). With these principles in mind, we now proceed to examine whether the prosecution has successfully discharged its burden by establishing the integrity of the chain of custody at every stage of the proceedings.

Asif Ali and another v. The State (2024 SCMR 1408).

7.Rule 22.70 of the Police Rules, 1934 ('the Police Rules') mandates that Register No.XIX shall be maintained in Form 22.70 of the Police Rules in the police station wherein, with the exception of articles already included in Register No.XVI, every article placed in the store room (Malkhana) shall be entered and the removal of any such article shall also be noted in the appropriate column

14. Reliance is also placed upon the case of ***Muhammad Qaseem v. The State (2025 PCr.LJ 328)***, as it is held by Learned Division Bench of Balochistan High Court that:

6. In order to substantiate the safe custody and transmission of the narcotics, the prosecution produced Muhammad Hassan Head Constable (PW-3). He testified that on 01.12.2022, Masood Ahmed IO (PW-4) handed over him parcels Nos.1 to 40 and 1-A to 40-A, whereof he made entry in Register No.19 at serial No.1102 and that on 03.12.2022, at 11:00 am, he handed over back parcel Nos.1 to 40 to IO (PW-4) for onward transmission to the Federal Narcotics Testing Laboratory Balochistan, Quetta ("FNTL, Quetta") for chemical analysis. He produced copy of relevant page of Register No.19 as (Ex.P/3-A). The perusal column Nos.5, 6, 7 and 8 of the said page of Register No.19 shows that the same have been left blank, which raises questions with regard to the evidentiary value of such documents as it offends Rule 22.49 of Police Rules, 1934.

15. Upon perusal of the evidence provided by PW-2, Ghulam Mustafa, the second mashir, it is noted that he deposed that the weight scale used during the recovery was brought by him, as opposed to Anwar Ali, the first mashir, as

testified by the complainant. Further, both the complainant and PW-2 provided conflicting accounts of the recovered charas slabs. The complainant testified that nine slabs were recovered, with two slabs pasted together (weighing 1 kilogram each) and that the total weight was 9 kilograms. In contrast, PW-2, the second mashir, testified that the nine slabs were actually pasted together, and if they were separated, they would result in 18 individual slabs. This testimony differs significantly from the complainant's account, which described the slabs as 4x2 in size with one separate slab. This serious contradiction between the testimonies of the complainant and the mashir witnesses casts doubt on the accuracy of the recovery process and the weight of the contraband. The conflicting accounts create a material discrepancy that undermines the reliability of the prosecution's case.

16. Upon perusal of report of the Chemical Examiner, a significant inconsistency emerges regarding the weight and quantity of the contraband material. According to the report, the total net weight of the recovered contraband was 8 kilograms and 920 grams, which differs from the 9 kilograms stated in the prosecution's evidence. Additionally, the Chemical Report paints a completely different picture of the recovered contraband. Contrary to the prosecution's claim of nine slabs or eighteen slabs (if separated), the chemical report indicates that there were eleven slabs (pattis) in the sealed parcel. Furthermore, all the slabs were marked with a golden stamp, which was clearly identified in the report. These discrepancies in the weight and number of slabs 8 kg and 920 grams in the chemical report versus 9 kg in the prosecution's case along with the differing count of slabs, suggest significant inconsistencies in the handling, packaging, and reporting of the recovered contraband.

17. In cases under the Control of Narcotic Substances Act, where punishments are primarily determined by the quantity of the recovered substance, the exact measurement and documentation of the recovered narcotics plays a crucial role in establishing the prosecution's case. In support of this view, reliance is placed upon the case of *Qalandar Shah vs. The State* (2021 YLR 2349), *Muhammad Arif v. The State* (2023 YLR 2369). Support is also drawn from the judgment rendered in *Mst. Marvi and another v. The State*, (2019 PCrLJ 1133). In this context, where the weight, shape and form of the narcotics are essential elements not only for establishing guilt, but also for determining the quantum of punishment. In this regard, reliance be placed on

the judgment rendered in *Naeem Ahmed and others v. The State and others* (2021 MLD 1772), wherein the learned Division Bench of the Lahore High Court observed that although, as per the prosecution's version, 10 grams from each of the 425 recovered bags of *charas* were separated for chemical analysis, the report of the Punjab Forensic Science Agency reflected that 427 samples were actually received and analyzed. This numerical inconsistency was held to have created a significant dent in the prosecution's version. Further reliance is placed upon the case of *Ahsan Marfani vs the state* (2022 YLR Note 5), this Court held that:

14. The description available on the charas were not mentioned in the mashirnama of arrest and recovery to show and to prove that the charas produced before the chemical analyzer and the Court at the time of evidence was same and was recovered from the accused. The complainant admitted this fact during his cross examination when the property was de-sealed before the court , complainant stated that it is fact that the slab of chars present in court having monogram and such monogram is not mentioned in mashirnama. It is fact that charas is available in cartoon.

18. It is settled principle of Law that the benefit of doubt must be extended to an accused if there exists even a single circumstance that creates reasonable doubt regarding his guilt in prudent mind. It is not necessary that there be a multitude of doubts or inconsistencies. A solitary, credible doubt is sufficient to entitle the accused to an acquittal. Reliance in this regard is placed upon the authoritative judgments of the Hon'ble Supreme Court in *Sajjad Hussain v. The State* (2022 SCMR 1540), *Abdul Ghafoor v. The State* (2022 SCMR 1527) and the judgment of the Division Bench of this Court in *Nadir Hussain v. The State* (2025 YLR 487).

19. For the reasons discussed above; and in view of the foregoing reasons, it stands established that the prosecution has failed to prove its case beyond reasonable doubt. Accordingly, the instant Special Criminal Jail Appeal is allowed. The conviction and sentence awarded by the learned trial court vide judgment dated 27-02-2024 in Special Case No. 202 of 2023 is hereby set aside. The appellant is ordered to be released forthwith, if not required in any other criminal case. These are the reasons for the short order announced on 18-06-2025.

JUDGE

JUDGE