IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Criminal Appeal No.D-35 of 2024

***Before*:**
Mr. Justice Shamsuddin Abbasi.
Mr. Justice Ali Haider 'Ada'.

Appellant	: Abdul Razzaque s/o Soba Khan, *through* Mr. Hamadullah Mengal, Advocate.
The State	: *through* Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh

Criminal Jail Appeal No.D-43 of 2024

Appellants	: 1). Abdul Razzaque s/o Soba Khan, 2). Najeebullah S/o Mubarak Khan, *through* M/s. Hamadullah Mengal & Farhat Ali Bugti, Advocates.
The State	: *through* Mr. Aitbar Ali Bullo, Deputy Prosecutor General, Sindh
Date of Hearing	: 13.08.2025.
Date of Decision	: 27.08.2025.

JUDGMENT

Ali Haider 'Ada'.J:- Through the instant appeals, the appellants, namely Abdul Razzaque son of Soba Khan (Appellant in Criminal Appeal No. D-35 of 2024) and Najeebullah (Appellant in Criminal Jail Appeal No. D-43 of 2024), have challenged the judgment dated 13.05.2024, passed by the learned Additional Sessions Judge-I/MCTC/Special Judge for CNS, Shikarpur, in Special Case No. 241 of 2023. By the said judgment, both appellants were convicted and sentenced to rigorous imprisonment for life and directed to pay a fine of Rs.800,000/- (Eight Hundred Thousand) in equal share. In case of default in payment of fine, they were further ordered to suffer simple imprisonment for ten (10) years. However, the benefit of Section 382-B, Cr.P.C. was extended to them. It is pertinent to note that the conviction arose out of Crime No. 01 of 2023, registered for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, (CNS Act). Furthermore, it appears that in Criminal Jail Appeal No.D-43 of 2024, the appellant Abdul Razzaque is also shown as a co-appellant. Hence, in effect, he has filed two separate appeals challenging the same judgment, which requires consideration.

2. As, per the contents of the FIR, on 05.02.2023, one Inspector of Excise, Rahim Bux Sanjrani, posted at Excise Police Station, Shikarpur received spy information regarding the transportation of Charas. Acting upon such information, he proceeded along with his subordinate staff to the pointed place, where they intercepted a truck bearing registration No. C-1458, coming from Jacobabad towards Shikarpur on the main Sui Gas Station road. The truck was signaled to stop, and upon being stopped, the driver disclosed his name as Abdul Razzaque, while the person seated with him disclosed his name as Najeebullah. Due to non-availability of private witnesses, the police officials themselves were appointed as mashirs. During the personal search of accused Abdul Razzaque, the police secured his original identity card, driving license, and cash amounting to Rs.1,000/-. From accused Najeebullah, the police recovered two currency notes of Rs.1,000/- each and two currency notes of Rs.100/- each. Upon conducting a search of the truck, the police also recovered a scanned copy of the truck's registration book. The truck was loaded with sand, but upon closer inspection, a hidden cavity was found. When opened, it revealed four white plastic sacks, each containing 20 multi-colored packets. On counting, the total number of packets came to 80. Each packet contained two slabs of Charas, thereby making a total of 160 slabs. One slab was weighed, which was found to weigh 500 grams. Thus, the total weight of the recovered contraband substance (Charas) came to 80 kilograms. For chemical examination, two white plastic sacks containing 40 slabs each (20 kilograms of each sack, total 40 Kilograms) were separated, sealed, and marked as Serial Nos. 1 to 80. After completing all the codal formalities, the FIR was registered, and the matter was investigated by the complainant himself, who thereafter submitted the challan before the competent Court of jurisdiction.

3. After receipt of the challan, the learned trial Court supplied the requisite documents to the appellants and subsequently framed the charge on 26.05.2023. Both appellants pleaded not guilty, and their pleas were recorded by the learned trial Court. Thereafter, the prosecution was permitted to lead its evidence.

4. In support of its case, the prosecution first examined Inspector Rahim Bux Sanjrani, who was the complainant, author of the FIR, Incharge of the Malkhana, dispatch rider, and Investigating Officer of the case. During his examination, he produced and exhibited the documents: Memo of recovery and arrest, Copy of FIR, Relevant roznamcha entries regarding his departure and arrival at the police station, Roznamcha entry pertaining to the dispatch of samples to the chemical examiner, Letter dated 05.02.2023 addressed to the Motor Registration Authority,

Excise and Taxation, Control Officer Mardan, for verification of Truck bearing registration No. C-1458, Letter dated 05.02.2023 addressed to the chemical examiner for forwarding of samples, Reply of the concerned Motor Registration Authority, Information slip, Chemical Examiner's Report, Agreement to sale of the Truck, and Receipt of the Truck. Thereafter, the prosecution examined Qadir Bux, who acted as mashir of the memo of recovery and arrest. Upon completion of the examination of witnesses, the prosecution closed its side through a statement filed by the learned State Counsel on 04.05.2024.

5. Subsequently, the learned trial Court recorded the statements of the accused under Section 342, Cr.P.C. Both appellants professed their innocence, alleging mala fide and ill will on the part of the complainant in conducting the raid proceedings. They prayed for their acquittal. After hearing the parties, the learned trial Court convicted and sentenced both appellants as detailed in the impugned judgment, which is now under challenge through the present appeals.

6. Both the Learned counsel for the appellants contended that there exist serious flaws in the investigation. It was argued that the person who acted as the head of the raiding party also himself performed the role of the Investigating Officer, and all essential steps in the proceedings were conducted solely by him. This circumstance, according to counsel, casts doubts upon the veracity of the prosecution case. It was further submitted that the prosecution has failed to establish the safe custody and safe transmission of the case property, which is a mandatory requirement in cases under the CNS Act. No documentary proof or roznamcha entry was produced to show that the recovered contraband was ever deposited in the malkhana or that it remained in safe custody before being sent to the chemical examiner. In such a situation, it was urged, the prosecution has failed in its legal duty to prove the case beyond any shadow of doubt. Learned counsel further emphasized that the case of the prosecution is filled with contradictions and material inconsistencies, which create serious doubts. It was submitted that, in view of the settled principle of law, any benefit of doubt must be extended to the accused, entitling the appellants to acquittal.

7. Conversely, learned State Counsel opposed the appeals, submitting that a huge quantity of contraband was recovered from the possession of the appellants, as one of them was driving the truck while the other was seated as co-driver. It was argued that there was no mala fide or reason for the complainant to falsely foist such a large quantity of narcotics upon the appellants. He further submitted that minor discrepancies in the prosecution evidence, if any, are not sufficient to

discard the entire case, particularly where recovery of a large quantity of contraband is involved. Learned State Counsel maintained that the prosecution has successfully established its case beyond reasonable doubt, and the learned trial Court has rightly convicted and sentenced the appellants.

8. Heard the learned counsel for the appellant as well as the learned counsel for the State at length and also carefully perused the record available on the record. The contentions raised by both sides have been duly considered in light of the legal and factual aspects of the case.

9. The prosecution's case suffers from serious procedural irregularities that compromise the fairness of the investigation and cast severe doubt on its trustworthiness. The complainant in this case not only claimed to have received spy information, but also registered the FIR, thereby acting as the author of the FIR. Subsequently, the same officer undertook the role of the Investigating Officer. Furthermore, he assumed the responsibilities of Incharge Malkhana and also performed the duties of a dispatch rider by personally depositing the case property with the Chemical Examiner for analysis. This complete control of the investigation process by a single person reflects a gross procedural anomaly. It is as if the entire Excise Police station functioned through the agency of one officer who wore multiple caps, each of which ought to have been independently exercised to maintain the transparency and impartiality of criminal proceedings. The same person collecting the evidence, preserving the case property, investigating the matter, and initiating the complaint, raises serious concerns about the integrity of the prosecution's case. Legally, the complainant and the accused are adversarial parties. While the complainant supports the accusation, the accused defends against it. In contrast, the role of the Investigating Officer is neutral, tasked with unearthing the truth rather than securing a conviction. It is therefore a settled principle of law that the Investigating Officer should remain impartial and detached from adversarial interests. Though the law does not impose an absolute bar preventing a police officer from acting both as a complainant and as an Investigating officer, it is equally well established that such a situation is legally sustainable only where it does not cause prejudice to the accused and where the prosecution's evidence withstands heightened judicial scrutiny. In the present case, not only was no independent officer appointed to investigate the matter, but the complainant himself admitted that one Abdul Jabbar Buriro, an Excise and Taxation Officer, was posted at the relevant time. No explanation is offered as to why the investigation was not transferred to him or to

any other officer. This silence indicates a deliberate retention of the investigation by the complainant, which is contrary to the settled norms of independent and fair inquiry. The Courts have consistently disapproved of such overlapping of roles. In this Context, reliance is placed upon the cases of ***Ashiq alias Kaloo v. The State*** **(1989 PCr.LJ 601 FSC),** Similarly, in ***Zeenat Ali v. The State*** **(2021 PCr.LJ 1294 Islamabad DB)**, ***Javed Akhtar v. The State*** **(1998 PCr.LJ 1462 DB),** Likewise, in ***Nazeer Ahmed v. The State*** **(PLD 2009 Karachi 191),** further reliance in case of ***Agha Qais v. The State*** **(2009 PCr.LJ 1334),** ***Javaid Khan v. The State*** **(2024 YLR 1611),** ***Ahmed Shah and another v. The State*** **(2020 YLR 1715**. The Honourable Apex Court in Case of ***State vs Bashir and others*** **PLD 1997 Supreme Court 408,** held that:

> ***Then .reference may be made to the Police Rules, 1934. Chapter XXV of the Police Rules relates to Investigation. Para. 3 of the Rule 25.2 in Chapter XXV reads asunder:-- ,***
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> ***"3. It is the duty of an Investigating Officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."***
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> ***It could hardly be expected that a police officer, who is heading a raiding party and is a witness, also becomes the complainant and loges an F.I.R. against the accused, and then becoming an Investigating Officer of the same case, will comply with the aforesaid Police Rule. In the circumstances, the practice of the seizing officer or the head of a police party who is also a witness to the crime becoming or being nominated as an Investigating Officer of the same case should be avoided and if any other competent officer is available in the police station, he may be nominated as the Investigating Officer rather than the head of the Police Party. As observed, Investigating Officer is an important witness for the defence also and in, case the head of the police party also becomes the Investigating Officer he may not be able to discharge his duties as required of him under the Police*** *Rules. .*

10. In case of ***Fahad vs The State*** **(2022 PCr.L.J 279 DB-Sindh),** as held that:

> ***10. It is also pertinent to mention here that in this case complainant/ SIP Muhammad Khan had not only lodged FIR. but also conducted investigation of the case himself as well as he himself took the case property for Chemical Examination. In our view it is/was not appropriate that the person who is complainant of a case could investigate the same case and took the narcotic item for report because in order to keep all fairness of thing the rule of propriety demands that it must be investigated by an independent officer but not by the complainant himself.***

11. Further reliance is placed upon the judgment in ***Taj Wali and 6 others vs The State*** **(PLD 2005 Karachi 128),** wherein this Court held that:

> ***27. The practice of complainant being also an Investigating Officer is increasing day by day, which should be stopped immediately. The investigation should be conducted by entrusting the same to any other police official preferably to a superior officer to that of the designation of the complainant. In this way, a check can be placed on manipulation of the evidence by the complainant against an innocent person, which is very essential in the present day's time, when we receive complaints of false involvement of the accused persons due to some personal animosity with the police or releasing the real culprits because of various reasons. Thus it is high time that a check should be placed on the activities of the police officials who are themselves becoming complainants, witnesses and Investigating Officers. Under these circumstances we direct the Director General ANF, I.G. Police, Secretary Excise and Taxation and other concerned officers of other agencies who are involved in the investigation of those types of cases to issue a direction to their subordinates who are detecting the cases that they should not act as Investigating Officers and after detecting the cases, the investigation of the cases should be entrusted to a superior officer of the complainant. In this way the grievance of the accused persons would be redressed as arguments are being advanced before us that had the investigation been conducted by any other superior police official then the true facts could have been brought on the record and the false involvement of the accused persons could have been checked at the very initial stage of investigation. This will also ensure fair play between the parties.***

12. In light of the above, the conduct of the investigation in this case falls short of legal standards. The simultaneous assumption of all key roles by one officer renders the investigation highly suspect and prejudicial. The principles of fair trial and due process demand that such procedural lapses be viewed seriously. Where the investigative process itself is tainted with bias, the benefit of the doubt must necessarily be extended to the accused. It is further necessary to highlight that the Police Rules, 1934, specifically Rule 25.2, mandates that the purpose of an investigation is to discover the truth of the matter whether it supports the prosecution or the defence. The rule requires the Investigating Officer to conduct the investigation with objectivity, fairness, and impartiality, free from bias or motive to secure a conviction at any cost. However, in the instant case, the complainant has failed to act in accordance with the spirit and letter of this rule. His conduct is entirely contrary to the purpose of an investigation as envisaged under Rule 25.2. Rule 25.2 of the Police Rules, 1934 is reproduced here for ready reference:

> ***25-2 Power of investigating officers.- (1) The powers and privileges of a police officer making an investigation are details in sections 160 to 175, Criminal Procedure Code.***
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> ***An officer so making an investigation shall invariably issue an order in writing in Form 25-2 (I) to any person summoned to attend such investigation and shall endorse on the copy of the order retained by***

> ***the person so summoned the date and time of his arrival at, and the date and time of his departure from the place to which he is summoned. The duplicate of the order shall be attached to the case diary.***
>
> ***(2) No avoidable trouble shall be given to any person from whom enquiries are made and no person shall be unnecessarily detained.***
>
> ***(3) It is the duty of an investigating officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person.***

13. This rule makes it abundantly clear that an Investigating Officer is not an agent of the prosecution, but rather a neutral seeker of truth. In the instant matter, instead of following due process, the Investigating Officer, who is also the complainant in this case chose to unnecessarily centralize all responsibilities upon himself**,** thereby depriving the investigation of objectivity. The official police record clearly shows that other staff members were available at the relevant time, yet no effort was made to include them as witnesses, nor they were allowed to perform any investigative duties. This selective exclusion further strengthens the defense's claim that the investigation was conducted with mala fide intent and clear bias**.** The issue of bias is further fortified by the specific allegations leveled by the accused in their statements under Section 342 Cr.P.C**,** wherein they alleged ill will on part of the complainant. These allegations, which directly charge the complainant's impartiality and motive, could not be brushed aside, particularly in a case where the complainant himself was in full control of the entire investigation, including registration of FIR, collection of evidence, and custody of case property.

14. Furthermore, it is of considerable significance that in the present case, no site inspection was conducted, and the place of incident was never visited by the Investigating Officer. This serious lapse becomes even more glaring when examined in light of the prosecution's own evidence. Both the complainant and the Mashir admitted during deposition that no site memo was prepared. This omission reflects a deliberate departure from the procedure prescribed under the Police Rules, 1934, particularly **Rule 25.13**, which obligates the Investigating Officer to visit the place of occurrence and prepare a site plan or memo. In such circumstances, the failure to conduct a site inspection, the absence of a site memo cannot be overlooked or treated as inconsequential. These are not mere technicalities, but go to the root of the investigation, and they fatally damage the credibility of the prosecution's case. The law requires that the investigation be fair,

impartial, and in accordance with prescribed procedure requirements which stand wholly violated in the instant matter.

15. In addition to the investigative irregularities discussed above, it is pertinent to highlight the complete disregard of the mandatory procedure prescribed under the Police Rules, 1934**,** specifically in relation to offences**,** which directly pertain to the domain of the complainant in this case. As per the Rules, when an officer in charge of a police station becomes aware of the commission of an offence, it is his statutory obligation to register the matter as a police case immediately**,** and to inform the District Excise Officer**,** who Furthermore, it is also mandatory for Excise functionaries that a copy of the FIR must be sent to the police station of the jurisdiction where the offence is reported, and reciprocally, the police is required to provide a copy of the FIR to the excise authorities as part of inter-departmental procedural compliance. Moreover, an Excise Inspector or Sub-Inspector is ordinarily not authorized to carry out a search or arrest independently. Only in urgent situations, where delay would defeat the ends of justice, he may proceed with arrest or search, and even then, he must simultaneously inform the Police Sub-Inspector and request assistance**.** For ready reference the Rule 24.19 is reproduced as under:-

> ***24-19. The duties of the Police as Excise Officers.- (1) Co-operation between the excise and police force is necessary for the detection and investigation of excise offence. The Inspector General of Police and the Financial Commissioner lay stress upon this co-operation as one of the principal secrets of successful working. Any case of jealous or obstructive working will be severely dealt with.***
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> ***(2) When an officer in charge of a police station becomes aware of an excise offence, he shall at once register it as a police case and inform the District Excise Officer, who with respect to such cases shall be regarded as the magistrate in charge of the police station. The excise sub-Inspector concerned shall also be informed and his co-operation invited, but no delay shall be allowed to occur merely in order to obtain his presence.***
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> ***(3) All excise inspectors and sub-Inspectors are required to maintain First Information Report Register for the registration of complaints and reports of excise offences. In all cognizable cases a copy of the First Information Report shall be sent to the police station in whose jurisdiction the offence is reported. In return the excise inspector or sub-inspector will be given a copy of the Police First Information Report as a report.***
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> ***(4) An excise inspector or sub-inspector shall not ordinarily attempt a search or make an arrest by himself. He shall always obtain the assistance of the police sub-inspector. If however, delay is likely to defeat the ends of justice, the excise inspector or sub-inspector shall make the arrest or search himself, and at the same time send to the police sub-inspector for assistance.***
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> ***(5) The prevention of illicit distillation of spirit is one of the most important of the duties of the police. This will not be affected by isolated***

seizures. It involves careful and sustained enquiry and a complete knowledge of his jurisdiction by the officer in charge of the police station. As a rule the manufacture of illicit spirit is confined to certain castes which are habitual consumers of spirit. The most probable localities of illicit traffice should thus be easily ascertainable by the officer in charge of the police station. It is impossible for an illicit still to be regularly worked in a village without the knowledge of the chaukidars and tambardars. The trade betrays itself by the resulting smell, the accumulation of refuse, and the occurrence of drunkenness, where no means of licit supply exist. If these things happen and the village officials make no report, it is obvious that they are conniving at the offence. In such cases the officer in charge of the police station must at once take steps, to have these rural officials punished. Where it is notorious that illicit stills are worked, the officer in charge of the police station neglects his duty if he does not arrange to put in operation the provision for search, seizure, and prosecution contained in the Excise Act.

(6) If it is found that illicit manufacture of country spirit has been extensively carried on in a police station jurisdiction and preventive action has not been taken by the police, neglect of duty on the part of the officer in charge of the police station will be presumed.

(7) Attention must also be paid to the unlicensed sale of spirit in large towns by soda water sellers and others and to the smuggling of country spirit in thanas adjoining Indian States.

(8) Any charas coming into the Punjab by any other routes than those sanctioned should at once be detained under section 61 of the Excise Act, and the orders of the Collector taken. Charas smugglers generally travel by rail and can easily be captured in co-operation with the railway, checking staff, who while examining their tickets can also examine their luggage.

(9) The use of cocaine, except for medical and surgical purposes, is altogether prohibited in the Punjab. The principal places in the Punjab into which it is smuggled are Lahore, Amritsar, Rawalpindi, Ambala and Karnal.

(10) Offences against the opium law very in their nature with various districts; the most important offences, viz, smuggling and illicit sale of smuggled opium (whether contrived by licensed vendors themselves or by private individuals) being common or uncommon according to the geographical position of district with reference to Rajputana, Afghanistan and the Hill States, or even railway communication with Nepal.

(11) No opium can be imported into a district without a pass; and any police officer can, therefore, detain bulk opium if there is no pass. He can also search a person whom he believes to be guilty of having excess quantities of opium in his possession. Any police officer above the rank of head constable may search premises in which he believes smuggled or illicit opium is stored. The legal limit of possession of opium is two tolas and any person bringing it from any Pakistan Province in excess of this amount is liable to arrest and prosecution under section 9 of the Act.

(12) The sale of all preparations of opium for smoking of illegal. There is need of continued activity in tracing out and prosecuting proprietors of chandu and madak dens in which sales occur, the object being to make indulgence in opium smoking so difficult and disreputable that the younger generation will be unlikely to acquire it.

Under the Opium Smoking Act, 1923, members of opium smoking assemblies as well as proprietors of houses used for opium smoking are liable to prosecution. Under section 14 of the Act every officer of the police

> ***department is required to give reasonable aid to an excise officer making any arrest or search under the Act. The Police have no powers of search, seizure or arrest under the Punjab Opium Smoking Act; but they have such powers under sections 14 and 15 of the Opium Act, 1978, against any individual in possession of more than the half tola of preparations of admixtures of opium used for smoking which is the limit of legal possession under section 9 of that Act.***
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> ***(13) The (Board of Revenue) has impressed upon all Deputy Commissioners the necessity of granting liberal rewards both to informers and to arresting officers in all excise cases. Rewards to sub-inspectors and officers of lower rank may be sanctioned by the Deputy Commissioners up to Rs. 200, but the sanction of the Financial Commissioner is required for larger rewards and for rewards to officers of higher rank.***

16. In the instant case, however, there is no record to suggest that the intimation to higher authorities was made, nor there is any footnote at the bottom of the FIR indicating that copies were sent to supervisory officers in accordance with established practice. Most significantly, there is no entry showing compliance with Section 157 Cr.P.C., which requires the Investigating Officer to forthwith report the case to the Magistrate having jurisdiction, outlining the steps taken in the course of investigation. The absence of such entries and procedural compliance casts a shadow over the legitimacy of the investigation and points to a willful disregard of mandatory rules. For ready reference, the relevant Rule 24.1 of the Police Rules, 1934, is reproduced below:

> ***24-1. First Information how recorded.- (1) Section 154 and 155, Code of Criminal Procedure, provide that every information relating to an offence, whether cognizable or non-cognizable, shall be recorded in writing by the officer incharge of a police station. The distinction between the form of reports required by the above-mentioned two sections has been defined as follows by the Punjab Chief Court (now High Court).-- Every information covered by section 154, Criminal Procedure Code, must be reduced to writing as provided in that section and the substance thereof must be entered in the Police station daily diary, which is the book provided for the purpose. It is only information which raises a reasonable suspicion of the commission of a cognizable offence within the jurisdiction of the police officer to whom it is given, which compels action under Section 157, Criminal Procedure Code.***

17. Furthermore, the complainant himself deposed during the trial that the case property was kept in a cupboard, as he claimed that no proper Malkhana (store room) was available at the concerned police station. This assertion is not only surprising but also highly irregular, as it reflects a complete deviation from the procedure prescribed for the custody and handling of case property. It is a settled principle that case property especially in narcotics or contraband-related offences must be placed immediately in safe custody, and the same must be entered in the Malkhana Register under the supervision of the designated officer in charge.

However, in the present case, no such entry or documentation is available on record to show that the recovered contraband was kept in proper custody or handled in accordance with standard protocols. Merely stating that the property was placed in a cupboard does not fulfill the legal requirement of ensuring the safe and tamper-proof custody of the seized material. Moreover, the non-production of the Malkhana entry in the instant case is not a minor procedural lapse but a substantive defect that strikes at the root of the prosecution's claim regarding the safe custody of the case property. In this regard, reliance is placed on the judgment in ***Saddam Khan and another vs The State*** **(2025 YLR 327).** While Rule 22.70 of the Police Rules, 1934, provides such a mandate, the same is reproduced below for ready reference:-

> ***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.***

18. It is trite law that prosecution must establish an unbroken chain of custody from the time of recovery to the time of production before the Court. Failure to explain any missing link in this chain creates a fatal loophole**,** which vitiates the credibility of the case**.** These lapses go to the root of the prosecution's case**,** and in view of such material contradictions and procedural violations, the benefit of doubt must inevitably be extended to the accused. In this Context, reliance is placed upon the case of ***Abdul Haq vs The State*** **2025 SCMR 751,** wherein the Apex Court held that:

> ***The sanctity of the chain of transmission stands as the cornerstone for maintaining the integrity and evidentiary credibility, particularly in narcotics cases, where the law imposes severe and inexorable punishments. Any rupture or inconsistency in the chain of custody strikes at the very root of the prosecution's case, rendering the evidence susceptible to doubt and challenge. It is an established principle that the prosecution bears the burden of ensuring an unbroken, meticulously documented chain of custody, so as to preclude any possibility of tampering, substitution, or contamination. If the prosecution fails to establish an unbroken chain of transmission of the narcotic sample and any breakage or discrepancy is observed in the custody of the recovered substance, the "benefit of such lapse must necessarily be extended to the accused. It is a well-settled principle of criminal jurisprudence that when the prosecution's evidence is tainted with doubt, the scales of justice must tilt in favor of the accused. 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 IqbaI 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.

19. The record further reveals another serious inconsistency. According to the official documentation, a letter was issued to the Chemical Examiner on 05.02.2023, purportedly dispatching the sample of the recovered substance for chemical analysis. This letter was also issued by the complainant himself, who once again acted as the dispatch rider, further compounding the earlier discussed issue of him performing multiple conflicting roles. Despite the letter being dated 05.02.2023, the report from the office of the Chemical Examiner shows that the property was actually received on 06.02.2023. There is no explanation whatsoever as to where the property remained during this intervening period, whether it was stored in a secure location, or whether the chain of custody remained intact. In the absence of any record showing who held the property, where it was kept, and how it was transmitted, a serious doubt arises regarding the integrity of the evidence and the possibility of tampering or substitution.

20. It is a well-established principle of criminal jurisprudence that the prosecution bears the primary burden to prove its case against the accused beyond any shadow of doubt. In the present case, according to the deposition of the prosecution witnesses, the complainant had prior spy information regarding the alleged offence and proceeded to the place of arrest accordingly. It is also admitted that the place of arrest is a busy public area where several private persons were present at the relevant time. Moreover, it is an undisputed fact that the main Sui Gas office is also located in close proximity to the place of arrest. Despite the availability of numerous independent witnesses, the complainant and the prosecution deliberately failed to associate any private person in the recovery or arrest proceedings. No explanation whatsoever has been offered for this omission. Such exclusion of independent witnesses, without justification, casts serious doubt on the reliability of the prosecution's version. It amounts to a violation of the provisions of Section 103 of the Code of Criminal Procedure, which requires the presence of respectable inhabitants of the locality during search and recovery operations. The non-compliance with this statutory requirement appears to be

deliberate and intentional, thereby affecting the sanctity and reliability of the prosecution's evidence. In this context, reliance is placed on the judgment reported as ***Irfan alias Jilal v. The State*** **(2025 YLR 1409),** and case of ***Ghulam Shabbir and another v. The State*** **(2023 YLR 153).**

21. It is a cardinal principle of criminal law that the recovery of contraband material must be established by the prosecution through clear, consistent, and unimpeachable evidence. The chain of custody and detailed description of the recovered substance must be properly documented and corroborated through oral and documentary evidence to exclude every reasonable doubt. In the instant case, the complainant categorically deposed that the recovered charas was wrapped in yellow plastic wrappers, each bearing the word "Urooj" and the year "2019," while the outer packaging (plastic pani) was marked with the word "COTEDOR." However, this description is materially contradicted by the testimony of the mashir of arrest and recovery, who, during cross-examination, admitted that the plastic wrappers of the charas packets were of different colours and that the substance was actually wrapped in a white shopper. Although he admitted the presence of the word "Urooj" printed on the packets, these crucial physical descriptions were never incorporated into the recovery memo or any other documentation forming part of the trial record. Moreover, the Chemical Examiner's report is entirely silent regarding any identifying marks, colours, or labels on the packets, which creates a significant gap in the evidentiary chain. It is further argued that the complainant, in the memo of recovery**,** stated that he had marked each packet with serial numbers from 1 to 80 and thereafter sealed the same. However, the Chemical Examiner's Report does not reflect that the separately numbered packets were received, nor it indicated that the analysis was conducted packet-to-packet**.** This discrepancy creates a serious doubt as to whether the same sealed packets allegedly recovered at the spot were actually received and analyzed by the chemical examiner, thereby causing a break in the chain of safe custody and raising doubt on the prosecution case. Such inconsistencies between the oral evidence and the documentary record raise serious doubts about the integrity of the prosecution's case and cast uncertainty on whether the recovered substance produced before the Court is the same as allegedly seized from the accused. This lack of consistency and documentation undermines the reliability of the prosecution's version and amounts to a material omission. In support of this legal position, reliance is placed on the judgment reported as ***Bhawal Shaikh v. The State*** **(2025 MLD 840),** similarly, support is

drawn in case of ***Muhammad Arif v. The State*** **(2023 YLR 2369)** and in case of ***Ahsan Meerani v. The State*** **(2022 YLR Note 5).**

22. It is an admitted fact in the prosecution's case that the truck allegedly used in the commission of the offence is registered in the name of one Kando Khan, as verified by the concerned Motor Registration Authority, Mardan. However, during trial, the Investigating Officer deposed that an agreement to sell was executed between the registered owner, Kando Khan, and the appellant, Abdul Razzaque (the driver), whereby the ownership of the truck was allegedly transferred to the appellant. This assertion was intended to exclude the liability of the registered owner and shift sole responsibility to the appellant. However, upon perusal of the said agreement to sell, it clearly transpires that the same was not executed between Kando Khan and the appellant, but instead between the appellant and one Talah Muhammad. Notably, the name of Talah Muhammad does not appear in the official ownership record, nor has the Motor Registration Authority confirmed him as the legal owner of the truck. This creates a serious disconnect between the oral evidence, documentary proof, and official registration record. The Investigating Officer has failed to reconcile this inconsistency and deliberately refrained from joining the actual registered owner, Kando Khan, in the investigation or the trial proceedings. No effort appears to have been made by either the complainant who is the investigating officer to interrogate or include the registered owner in the inquiry, which reflects a deliberate omission and creates a significant loophole in the prosecution's case. From a legal standpoint, even assuming arguendo that an agreement to sell was executed, such an agreement does not constitute conclusive proof of ownership unless and until the registration of the vehicle is officially transferred in accordance with law. Ownership of a motor vehicle is governed by statutory provisions and must be evidenced through proper transfer as per the records of the competent registration authority. For ready reference, Section 32 of the Motor Vehicles Ordinance, 1965 is reproduced below:-

> ***32. Transfer of ownership.— (1) Within thirty days of the transfer of ownership of any motor vehicle registered under this Chapter, the transferee shall report the transfer to the registering authority within whose jurisdiction he ordinarily resides and shall forward the certificate of registration of the vehicle to that registering authority together with the prescribed fee in order that particulars of the transfer of ownership may be entered therein.***
>
> ***(2) A registering authority other than the original registering authority making any such entry shall communicate the transfer of ownership to the original registering authority.***

23. In view of this provision, mere execution of an agreement to sell without registration transfer does not absolve the registered owner from responsibility. The continued registration of the truck in the name of Kando Khan legally binds him as the owner, unless and until the registration is lawfully changed. The failure of the prosecution to associate the registered owner or to properly investigate the chain of ownership renders the case doubtful and materially affects its credibility. Guidance is drawn from the judgment of the Honourable Supreme Court in ***Jeehand v. The State*** **(2025 SCMR 923).**

24. During the course of cross-examination, the complainant himself admitted that appellant Najeebullah merely took a lift in the truck from co-appellant Abdul Razzaque, who was driving the vehicle. It also surfaced during the investigation, and was admitted by the complainant/investigating officer, that Najeebullah had no knowledge whatsoever of the presence of the contraband *(*charas*)* allegedly recovered from the vehicle. This crucial fact clearly exonerates Najeebullah from any conscious possession, knowledge, or criminal intent elements essential to establish guilt under the relevant provisions of the Control of Narcotic Substances Act. Despite this clear position emerging from the investigation, the investigating officer failed to exercise his discretion or legal authority to declare Najeebullah innocent or to recommend his discharge at the investigative stage. It is a settled principle of law that the investigation officer is not a mere post office; rather, he is expected to act judiciously and fairly, based on credible information and material collected during investigation. Where the investigation reveals that a person is innocent, it is not only within the authority but also the duty of the investigating officer to exclude such person from the challan and to recommend discharge under the law. The failure to do so in the present case indicates either gross negligence or a deliberate attempt to falsely implicate Najeebullah despite clear knowledge of his non-involvement. This also amounts to abuse of process and a violation of the principle that prosecution must proceed only against those against whom sufficient and credible evidence exists. The prosecution's own witness (the complainant) having testified to Najeebullah's lack of knowledge about the contraband, the continuation of proceedings against him undermines the fairness of the trial and entitles him to benefit of doubt.

25. The prosecution's reliance on the chemical report in the present case is gravely misplaced, as it fails to meet the requisite evidentiary standard for establishing the presence of narcotics beyond reasonable doubt. The report indicates that the test applied was the Fast Blue Salt test, which, by all standards,

is merely a presumptive test, a preliminary screening tool that can suggest the presence of certain controlled substances. According to the guidelines issued by the United Nations Office on Drugs and Crime (UNODC), the proper procedure for narcotic substance analysis involves two distinct stages: Presumptive Test, these are initial, rapid tests to indicate the possible presence of narcotic substances and confirmatory Tests, these are scientifically advanced and accurate techniques required to legally establish the nature and identity of the substance beyond any doubt. The UNODC guidelines explicitly categorize confirmatory methods as chromatographic techniques, such as: Gas Chromatography (GC) High-Performance Liquid Chromatography (HPLC) Gas Chromatography-Mass Spectrometry (GC/MS). This deficiency in applying a valid confirmatory test strikes at the root of the prosecution's case, as the chemical report is a key piece of evidence for proving the offence under the Control of Narcotic Substances Act. The absence of GC, HPLC, or GC/MS testing renders the chemical report inconclusive and legally unreliable. In this regard, reliance is placed on the judgment in ***The State v. Imam Bakhsh*** **(2018 SCMR 2039), s**imilarly, in ***Najeeb Ullah and another v. The State*** **(2025 YLR 1170)**. In light of the above, the chemical examination report in the instant matter is grossly insufficient to sustain conviction, and the accused is entitled to benefit of doubt as per settled principles of criminal jurisprudence.

26. For the foregoing reasons, it is held that the prosecution has failed to establish its case against the appellants beyond any shadow of doubt. It is a well-settled principle of law that even a single loophole or circumstance creating doubt in the prosecution case is sufficient to extend the benefit of doubt to the accused. In this regard, reliance is placed upon the case of ***Ahmed Ali v. The State*** **(2023 SCMR 781)**, wherein the Hon'ble Supreme Court has reiterated that the benefit of doubt must always go in favour of the accused.

27. It has been observed that appellant Abdul Razzaque has preferred two separate appeals against the same judgment; one being Criminal Appeal No. D-35 of 2024 in his individual capacity, and the other being Criminal Jail Appeal No. D-43 of 2024, filed jointly with his co-accused Najeebullah. In view of the availability of the latter appeal, Criminal Appeal No. D-35 of 2024 has become infructuous. Accordingly, Criminal Appeal No. D-35 of 2024 is hereby dismissed as infructuous.

28. For the reasons discussed above, the instant appeal is allowed. Consequently, both appellants, namely Abdul Razzaque and Najeebullah, are

hereby acquitted of the charge arising out of Crime No. 01 of 2023, registered at Police Station Excise Circle, Shikarpur, for the offence punishable under Section 9(c) of the Control of Narcotic Substances Act. Accordingly, the judgment dated 13.05.2024, passed by the learned Additional Sessions Judge-I/MCTC/Special Judge CNS, Shikarpur, whereby the appellants were convicted and sentenced, is set aside. The appellants shall be released forthwith, if not required in any other custody case.

29. It has been observed that in the present case the complainant committed serious illegalities and procedural irregularities in the course of investigation, apparently with the object of shielding the real culprits from the charge. When a case involves the recovery of a huge quantity of contraband, it is expected that the investigating officer would adopt strict and transparent measures in order to ensure fairness; however, the complainant/Investigation Officer failed to do so, which reflects deliberate negligence, if not collusion. Accordingly, the higher authorities of the department are directed to examine the conduct of the complainant/Investigation officer by holding his legal accountability. The Secretary, Excise and Taxation Department, Sindh, as well as the Director General, Narcotics Control, Excise and Taxation Department, Sindh, are directed to seriously look into the matter and to take appropriate action against him. They shall also ensure that proper preventive measures are adopted in future to curtail the practice exhibited in this case. The Secretary is further directed to ensure the establishment of a proper Malkhana (store room) in every Excise Police Station across the Province of Sindh, as mandated under the Police Rules, 1934. He shall also ensure that Register No.19 is duly maintained in each Excise Police Station in strict compliance with the said Rules.

JUDGE

JUDGE