

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA**  
***Criminal Appeal No. D-40 of 2024***

**Before:**

***Mr. Justice Shamsuddin Abbasi,***  
***Mr. Justice Ali Haider 'Ada'***

Appellant: Muhammad Ismail s/o Meer Khan @ Kuri Mazari, *through* Mr. Habibullah G. Ghouri, Advocate.

Respondent: The State  
*through* Mr. Aitbar Ali Bullo, Deputy Prosecutor General

Date of Hearing: 20.08.2025.

Date of short order: 20.08.2025.

Date of Decision: 26.08.2025.

**J U D G M E N T**

**Ali Haider 'Ada':J.** – Through the instant Criminal Appeal, the appellant has assailed the judgment dated 24.06.2024, passed by the learned Additional Sessions Judge/Special Judge (CNS), Kashmore, in Special Case No.43 of 2023 titled *The State v. Muhammad Ismail*, whereby the appellant was convicted and sentenced to undergo rigorous Imprisonment for a period of nine (09) years and to pay a fine of Rs.80,000/-, and in case of default, to further suffer Simple Imprisonment for eighteen (18) months. However, the benefit of Section 382-B, Cr.P.C. was extended to him. The aforesaid conviction and sentence arise out of Crime No.259 of 2023, registered at Police Station Kashmore, for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act.

2. The brief facts of the prosecution case, in nutshell, are that on 03.12.2023, the complainant ASI Abdul Sattar, along with his subordinates, left the police station for patrolling the area. When they reached near Farooqui Petrol Pump, they received spy information regarding a suspect carrying contraband charas. In pursuance thereof, the police party proceeded to the pointed place, where they saw the suspect holding a black-colored shopper. On seeing the police, the suspect attempted to escape but was apprehended along with the shopper, which, upon

checking, was found to contain 1700 grams of charas. On his personal search, an amount of Rs.200/- was also recovered. Thereafter, after completing the requisite codal formalities, the FIR was registered.

3. After registration of the FIR, the usual investigation was carried out, upon completion whereof the challan was submitted before the competent Court of jurisdiction, and the appellant was sent up to face trial.

4. Thereafter, the learned trial Court took cognizance of the matter and supplied requisite documents to the appellant in compliance with section 265-C Cr.P.C. Subsequently, charge was framed on 24.01.2024, to which the appellant pleaded not guilty and claimed trial. Consequently, the learned trial Court directed the prosecution to adduce its evidence.

5. In pursuance thereof, the prosecution examined PW-1 Barkat Ali, Dispatch Rider of property, who produced and exhibited the road certificate along with relevant entries of his movement. PW-2 Mohib Ali, the Investigating Officer, was examined and during his deposition he produced and exhibited the relevant Roznamcha entries of his movements, the memo of inspection of place of incident, entry of Register No.19, letter addressed to the SSP seeking permission to send the recovered property for chemical analysis, as well as the report of the Chemical Examiner. The prosecution further examined PW-3 Kehar Khan, who acted as mashir in the case, and he produced and exhibited the memo of arrest and recovery. Thereafter, PW-4 Abdul Sattar, the complainant, was examined, who produced the relevant Roznamcha entries along with the copy of the FIR. The prosecution also examined PW-5 Imdad Ali, who was the Incharge of Malkhana, and he produced the relevant Malkhana record. Subsequently, the prosecution closed its side of evidence through statement dated 05.06.2024

6. Thereafter, the statement of the accused under Section 342 Cr.P.C. was recorded, wherein the appellant professed his innocence and prayed for acquittal. After hearing the parties through their respective learned counsel, the learned trial Court proceeded to pass the impugned judgment, which is now under challenge through the present appeal.

7. Learned counsel for the appellant submits that there are major contradictions and inconsistencies in the prosecution evidence, and the prosecution has miserably failed to establish the guilt of the accused. It is further contended that the documentary evidence produced by the prosecution is in direct conflict with the oral testimony of the witnesses. It is urged that the learned trial Court failed to appreciate the material lacunae and inherent flaws in the prosecution case and, instead of extending the benefit of doubt to the appellant, proceeded to convict him without proper appreciation of the doubtful circumstances. Lastly, learned counsel prayed for acquittal of the appellant.

8. Conversely, learned counsel for the State has opposed the appeal and submitted that there is no element of malice or ill will on the part of the complainant in involving the appellant in this case; hence, the question of foisting recovery is ruled out. It is further contended that the ocular as well as documentary evidence adduced by the prosecution are consistent and corroborative, leaving no room for doubt. Therefore, the appellant is not entitled to acquittal, and the impugned judgment merits confirmation.

9. Heard the arguments advanced by learned counsel for the parties and perused the material available on the record with due care and caution under judicial scrutiny.

10. The prosecution case commenced with the complainant receiving spy information at Farooqui Petrol Pump, which fact also stands admitted through the prosecution evidence. It is noteworthy that the said petrol pump is situated in a busy locality; however, despite having prior information, no effort was made by the raiding party to associate any independent witness to corroborate the alleged recovery. No plausible explanation in this regard has been furnished by the prosecution. Furthermore, while the place of incident has been shown as Khosa Bridge, which is also admittedly a busy area, yet again no independent witness was cited to support the prosecution version. This omission creates a serious dent in the prosecution case, as there is no independent corroboration available on record to substantiate the guilt of the accused. In this context, reliance is placed upon the case of *Shahzaib alias Wadero*

*Feroze v. The State* (2024 YLR 1298) and further fortified by the case of *Arshad Ali and another v. The State* (2024 P.Cr.L.J 1183). Guidance can be sought from the judgment of the Division Bench of this Court in the case of *Danish v. The State* (2025 YLR 1355), wherein it was held that:

*11. Also to note is that, the incident took place at Mureed Goth, near Qureshi colony gate Lyari Expressway surrounded by population, but no independent witness has been associated for arrest and recovery which is clear violation of the provisions of Section 103 Cr.P.C. It appears that investigating officer has failed to discharge his duties in the manner as provided under the law. It is noteworthy that investigating officer was well aware of the fact that no independent and private person was associated by the complainant to act as mashir of arrest and recovery, therefore, he was under obligation to make positive efforts and arrange an independent witness while visiting the place of incident, but no such indication is available on record.*

11. Further guidance is available from the judgment of this Court in the case of *Mir Muhammad and others v. The State* (2024 PCr.LJ 370), wherein a Division Bench of this Court has held that:

*“...It is settled principle that judicial approach has to be a conscious in dealing with the cases in which entire testimony hinges upon the evidence of police officials alone. We are conscious of the fact that provisions of section 103, Cr.P.C are not attracted to the cases of personal search of accused in narcotic cases but where the alleged recovery was made on a road (as has happened in this case), omission to secure independent mashirs, particularly, in police case cannot be brushed aside lightly by this court. Prime object of section 103, Cr.P.C is to ensure transparency and fairness on the part of police during course of recovery, curb false implication and minimize the scope of foisting of fake recovery upon accused. There is also no explanation on record why no any independent person either from the place where they received spy information or from the place of incident has been joined to witness the recovery proceedings though it was a day time incident. No doubt police witnesses were as good as other independent witnesses and conviction could be recorded on their evidence, but their testimony should be reliable, dependable, trustworthy and confidence worthy and if such qualities were missing in their evidence, no conviction could be passed on the basis of evidence of police witnesses.”*

12. Another important aspect of the matter is that the Investigating Officer deposed that he handed over the case property to the Incharge Malkhana for depositing the same. Even the Incharge Malkhana, when

examined, testified that upon receipt of the property from the Investigating Officer, he himself deposited and kept it in the Malkhana. However, this version stands contradicted when the entry of Register No.19 is perused, which reflects that the depositor of the property was the Investigating Officer himself instead of the Incharge Malkhana. This contradiction creates a serious doubt regarding the safe custody of the case property. Furthermore, a close scrutiny of the said entry demonstrates that the document produced is merely a writing on plain white paper and not on the prescribed format of Register No.19, which, under the rules, contains distinct columns for recording the name of the depositor, the date of deposit, description of property, and remarks. The entry relied upon by the prosecution discloses no such columns; it only mentions the name of the depositor (shown as the Investigating Officer) along with the property details, which further undermines its evidentiary value and authenticity. For ready reference, *Rule 22.70 of the Police Rules, 1934* provides:

*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 be 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.

In this context, reliance is placed upon the case of *Muhammad Qaseem vs The State* 2025 P Cr. L J 328, as it was held 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.*

13. During scrutiny, it also transpired from the record that, according to the Chemical Examiner's report, three black-brown patties and one small piece of substance were received for analysis. However, such description of the case property is noticeably missing in the entire documentary as well as ocular evidence adduced by the prosecution. The memos prepared at the spot are completely silent with respect to the description and the shape of the recovered property. Furthermore, the complainant himself stated that the recovered case property bore a monogram with the name 'Jannisar', yet this important fact was never incorporated into any of the prosecution documents. Such omissions create serious doubt regarding the safe transmission, identity, and genuineness of the case property allegedly recovered from the appellant. In this context, reliance is placed upon the cases of *Bahawal Shaikh v. The State* (2025 MLD 840), *Muhammad Arif v. The State* (2023 YLR 2369), and *Ahsan Meerani v. The State* (2022 YLR Note 5).

14. Moreover, the contraband material, as per the Chemical Examiner's report, consisted of three patties along with one small piece. However, the prosecution not only failed to establish this aspect during trial but also omitted to mention the exact weight of each piece in order to corroborate the raiding proceedings. In narcotics cases, the law places a strict duty upon the prosecution to prove every link of the chain of recovery, custody,

and safe transmission of the contraband. When the prosecution is unable to establish the recovery process in its entirety, or when doubts arise regarding the description, shape, weight, or even the alleged monogram on the case property, the benefit of such doubt must go to the accused. In such circumstances, it is difficult to hold that the prosecution has proved its case beyond the shadow of doubt so as to justify a conviction. In this context, reliance is placed upon *Qalandar Shah v. The State and another* (2021 YLR 2349) and *Ansar Abbas alias Pakori v. The State and another* (2021 P.Cr.L.J 138).

15. According to the prosecution, the incident allegedly took place on 03-12-2023, and the case property was stated to have been deposited in the Malkhana. However, the so-called entry of Register No.19 does not disclose the date of deposit. Furthermore, as per the Chemical Examiner's report, the property was received in his office on 07-12-2023, i.e., after an unexplained delay of more than 72 hours. This unexplained delay casts serious doubt upon the safe custody as well as the safe transmission of the contraband articles, thereby creating a fatal dent in the prosecution case. In this regard, reliance is placed upon *Nadir Hussain v. The State* (2025 YLR 487), *Bachando v. The State* (2023 YLR 2622), and *Lal Bux alias Lal v. The State* (2023 YLR 321).

16. From the entire case, it has emerged on record that the prosecution has utterly failed to establish the safe custody and safe transmission of the case property, and also did not prove the unbroken chain of custody. Once such basic requirements are found missing, no option is left but to extend the benefit of doubt to the accused. The Hon'ble Apex Court in number of judgments has consistently held that where the prosecution fails to prove the chain of safe custody and transmission of narcotics, the conviction cannot be sustained. Reliance is placed upon *Abdul Haq v. The State* (2025 SCMR 751), *Muhammad Iqbal v. The State* (2025 SCMR 704), *Asif Ali and another v. The State* (2024 SCMR 1408), and *Javed Iqbal v. The State* (2023 SCMR 139).

17. In view of the above circumstances, if even a single loophole comes on record, the benefit thereof must go to the accused, ultimately entitling

him to acquittal. Support is drawn from the case of *Qurban Ali v. The State* (2025 SCMR 1355).

18. For the foregoing reasons and discussion, as, the instant appeal was allowed vide short order dated 20.08.2025, whereby the appellant was acquitted of the charge arising out of Crime No.259/2023, registered for the offence punishable under Section 9(c) of the CNS Act. Consequently, the impugned judgment dated 24.06.2024, passed by the learned trial Court in Special Case No.43/2023, whereby conviction and sentence were awarded, was set aside, and the appellant was ordered to be released forthwith, if not required in any other custody case. These are the detailed reasons of the short order of even date.

*JUDGE*

*JUDGE*

*Asghar Altaf/P.A*