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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Before:

Mr. Justice Omar Sial

Mr. Justice Khalid Hussain Shahani

Criminal Appeal No.D-56 of 2023

Bachal Khoso

V/S

The State

Appellant:

Bachal son of Muhammad Khoso
Through Mr. Safdar Ali G. Bhutto,
Advocate.

State:

Through Mr. Aitbar Ali Bullo, Deputy
Prosecutor General, Sindh.

Date of Hearing:

11.03.2025

Date of Decision:

20.03.2025

J U D G M E N T

Omar Sial, J.- Bachal Khoso was arrested on 02.03.2023 while holding a bag with 1100 grams of charas. F.I.R. No. 35 of 2023 was registered under section 9(c) of the Control of Narcotic Substances Act, 1997, at the Kashmore police station.

2. The appellant pleaded not guilty and claimed to be tried. At trial, the prosecution examined **S.I. Riaz Ahmed Soomro** (the complainant), **Manzoor Ahmed Shaikh** (witness to the arrest and recovery), **S.I. Mohammad Iqbal Jakhriani** (the investigating officer), **P.C. Barkat Ali** (the courier), **WHC Ashique Hussain** (the maalkhana in charge). In the section 342 Cr.P.C. statement, Bachal professed innocence and wanted his mother to appear as a witness in his defense. His mother, Mai Sayani, was the only defense witness. At the end of the trial, the appellant was sentenced to nine years imprisonment and a fine of Rs. 80,000.

3. We have heard the learned counsel for the appellant and the learned Deputy Prosecutor General. Our observations and findings are as follows.

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4. S.I. Riaz Ahmed said at trial that he had found "charas in the shape of different sizes" from Bachal's possession. The witness to the recovery, P.C. Manzoor Ahmed Shaikh, also testified that charas in "the shape of different pieces" were recovered from the appellant. The number of the "pieces" of charas was not specified in the memo of arrest and recovery. All that the memo says is that 1100 grams of charas in pieces was recovered. It is important to note that the English translation of the arrest and recovery memo is inaccurate and, in fact, misleading. Both, in unison, also testified that the seized pieces of charas were sealed on the spot. The witnesses did not testify how the charas was wrapped. Once back at the police station, according to S.I. Riaz Ahmed and P.C. Manzoor Ahmed, the sealed charas was handed over to S.I. Mohammad Iqbal Jakhrani. When the sealed packet of the charas was opened at trial, not pieces of charas but three slabs of charas, all wrapped in plastic, came out of it. P.C. Manzoor Ahmed admitted at trial that the recovery memo does not mention that three slabs of charas were found. Tampering with the property cannot be ruled out. Another fact also indicates tampering. On 24.05.2023, the trial court noted that the property had been de-sealed in court. The note that the learned judge affixed does not say that the property was resealed with the Court's seal. Given the foregoing, it remained unexplained how, once again, the property in a sealed condition was presented in court when the case's investigating officer, S.I. Mohammad Iqbal, was examined at trial a week later. We also find it surprising that the investigating officer, who allegedly received the charas in a sealed condition, sent it to the chemical laboratory in a sealed condition, and then ostensibly presented in court in a sealed condition could identify the charas at trial as being the same charas that was seized without the sealed packet being opened? The charas that was identified in a sealed condition by S.I. Mohammad Iqbal and no request to desal it was made by the prosecution when S.I. Mohammad Iqbal was examined, miraculously was presented in an unsealed condition once again by the maalkhana in charge on 17.06.2023. Yet further doubt regarding tampering is raised when the road certificate issued to take the charas from the police maalkhana to the chemical laboratory was issued on 05.03.2023, but the charas did not reach the chemical laboratory till 07.03.2023. W.H.C. Ashique Hussain did not testify at trial that he had issued the road certificate (as claimed by S.I. Mohammad Iqbal), nor did he testify when and to whom was the charas handed over once taken out on 05.03.2023. Contrary to the prosecution case, WHC Ashique Hussain testified that it was S.I. Riaz Ahmed Soomro (and not


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S.I. Mohammad Iqbal, as claimed by the prosecution) who had removed the charas from the maalkhana. He admitted that he had not put an entry for taking out the charas in Register 19. Neither does the depositing entry in the Register have the signature of the W.H.C. or the S.I Mohammad Iqbal.

5. Yet further doubt regarding tampering was raised when the W.H.C. Ashique Hussain testified at trial that S.I. Mohammad Iqbal had sealed the charas *after* registering the F.I.R. The prosecution claim throughout had been that the recovered charas was sealed on the spot and sent to the chemical analyst in that same sealed condition. The contradiction is apparent and does not require further comment.

6. For the above reasons, we conclude that the prosecution failed to establish safe custody and transmission of the narcotics from the time of seizure until their deposit in the chemical laboratory. In line with a series of Supreme Court judgments that if safe custody and transmission is not proved at trial, a conviction cannot be sustained, the impugned judgment is set aside, and the appeal is allowed.


Judge


Judge 20/3/25

Manzoor