

**JUDGMENT SHEET
IN THE HIGH COURT OF SINDH, KARACHI**

Present:
Mr. Justice Muhammad Iqbal Kalhoro.
Mr. Justice Syed Fiaz ul Hassan Shah.

Cr. Appeal No.321 of 2023

Appellant: Guldar Shah through Raja Babar Hamid, Advocate.
Respondent: The State through Mr. Habib Ahmed, Special
Prosecutor ANF.
Date of hearing: 12.02.2026.
Date of decision: 12.02.2026

JUDGMENT

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Muhammad Iqbal Kalhoro, J. Appellant was arrested by ANF police on 05.11.2020 at about 0950 hours from gate No.15 Keamari Karachi, when he was found cleaning a Trailer bearing registration No.JV-5529 about which information regarding availability of narcotics in it had already been received by ANF. From search of the Trailer, 18 packets of Charas each weighing 2 K.Gs was recovered from behind the driver seat. In the investigation, name of other accused also transpired who were stated to be facilitators, abettors etc. of the appellant.

2. Resultantly an FIR No.53/2020 was registered against the appellant and in the course of trial, charge against him was framed to which he pleaded not guilty. Prosecution examined four witnesses including I.O. and complainant, who have produced all necessary documents. Thereafter statement of appellant was recorded u/s 342 Cr.P.C. He pleaded his innocence and led defence to support it by examining himself on oath u/s 340(2) Cr.P.C.

3. The trial court then vide impugned judgment has convicted him u/s 9-C CNS Act, 1997 and sentenced to suffer imprisonment for life with fine of Rs.100,000/-, in default to suffer imprisonment for one year more.

4. We have heard defence counsel, who has stated that appellant is innocent and has been falsely implicated in this case; the spy information was against co-accused Muhammad Umar and not against the appellant; the appellant is alleged to be washing/ cleaning the pointed trailer but

there is no evidence that he was either in knowledge of the narcotics available in the said trailer. No evidence has been brought on record that he was the driver of the said trailer. On the contrary I.O. in cross examination has admitted that appellant is neither driver nor cleaner of the said trailer.

5. On the other hand, learned Special prosecutor ANF has supported the impugned judgment.

6. We have perused material available on record including evidence of the parties. The best case brought by prosecution against appellant is that the appellant was found cleaning the trailer when on spy information against the main accused Muhammad Umar, ANF reached the spot to apprehend him and recover the alleged narcotics. It is not the case of the prosecution that appellant was either driver or cleaner of the trailer or that he was in knowledge of the narcotics which was found available behind the driver seat in shape of two sacks containing 18 packets wrapped in yellow solution tape.

7. I.O. has admitted in cross-examination that appellant was not found inside the trailer nor standing over it, which implies that he was not in control of the vehicle. He further has admitted in cross-examination that from personal search of appellant no document connecting him with the trailer such as registration book, route permit etc. was recovered. He has also admitted that during investigation it transpired that trailer belonged to Megistic Logistic Company. He has also admitted that registered driver of the vehicle was somebody else. Per him, the container was duty free, and was being supervised by Custom Authority on way from Karachi to Chaman; and that only the driver registered with the company was authorized to drive such trailer. His cross-examination also points out that as per Carrier Manifest, the driver of the vehicle was one Shabir. He has admitted that he has not produced any document to establish that appellant was driver of the said Trailer.

8. The important thing which has come in the evidence of both the complainant and mashir is that after his arrest, appellant was asked specifically about availability of narcotics in trailer but he showed his ignorance and then on a search carried out by ANF on its own, two

sacks/bags containing Charas were recovered from behind the seat of driver. Now, on one hand, prosecution case is vague over the fact whether appellant was driver of the trailer or not as the I.O. has admitted in his cross-examination that some other person was the driver of the said trailer. And, on the other hand, in the entire prosecution case, no evidence has been brought on record suggesting that appellant was in knowledge of availability of alleged narcotics in the trailer. On the contrary, evidence of material witnesses including the complainant who had arrested the appellant from the spot show that appellant was found ignorant of presence of narcotics inside the trailer, when questioned.

9. The question regarding responsibility of a driver and cleaner has a number of times come under discussion before the Supreme Court and it has always held that a person who is on driving seat of the vehicle shall be held responsible for transportation of the narcotics, for he being on wheel is understood to have knowledge of all the articles including the narcotics available in his vehicle. This premises is founded on the ground that a person who is driving the vehicle is incharge of the same and anything or everything which is available in the vehicle would be considered to be in his control and possession.

10. Regarding responsibility or liability of the cleaner, his case has always been considered weak on the premises that being cleaner he is not understood to have knowledge about presence of any cavities or narcotics therein in the vehicle. To support this view various case laws can be cited. In case of Hassan Shah & others ¹, the Supreme Court has maintained conviction and sentence of the driver but acquitted cleaner on the ground that there was no evidence showing that he was in knowledge of the narcotics. In case of Kashif Amir², the Supreme Court has defined liability of the driver in the terms as reproduced above. In the case of Muhammad Noor & others ³, the Supreme Court has maintained conviction and sentence of the driver on the same proposition that he being in possession of vehicle is in possession of articles lying therein and has acquitted the other accused found available in the vehicle alongwith driver on the

¹ PLD 2020 SC 132

² PLD 2010 SC 1052

³ 2010 SCMR 927

ground that there was no evidence to show that either they were in joint possession or control of the vehicle or that they had any concern or dealt with the case property.

11. The ratio of the cited case laws establishes that in all such cases where narcotics is recovered from the vehicle, the driver is held responsible on the ground that he is in possession of the vehicle and therefore, entire articles available therein would be considered under his control. In all such cases, the cleaner has been extended benefit of doubt on the opposite premises: that he being cleaner is not incharge of the vehicle or the articles lying therein. In the present case also, the prosecution has not even alleged in clear terms that appellant is cleaner of the said vehicle. But even if it is assumed that he was cleaner of the vehicle as he was found washing it on the day of recovery, he cannot be held responsible for presence of narcotics found available behind seat of the driver because there is nothing on record to show that he either was enjoying joint possession or had a conscious knowledge or control of the narcotics, so recovered.

12. Therefore, the case against the appellant is not free from doubt. It is a well settled that if a single circumstance creates a reasonable doubt in a prudent mind regarding guilt of an accused, its benefit must be extended in favour of the accused as a matter of right and not grace.

13. For the foregoing discussion, We, allow this appeal, set-aside the impugned judgment and acquit the appellant from the charge. Appellant shall be released forthwith if not required in any other case.

The Cr. Appeal stands disposed of and these are the reasons of our short order dated 12.02.2026.

Judge

Judge