

HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

Before;

Mr. Justice Jawad Akbar Sarwana.

Mr. Justice Dr. Syed Fiaz ul Hassan Shah.

Cr. Appeal No.D-131 of 2023.

[Hazar Khan and another Vs The State]

Appellants: Hazar Khan and Manzoor Ali **through** M/s Ishrat Ali Lohar and Abid Hussain Chang, Advocates.

The State: Mr. Shahriyar Shar, Special Prosecutor ANF.

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Cr. Rev Application No.D-46 of 2023.

[The State / ANF Vs Hazar Khan & another]

Applicant: **Through** Mr. Shahriyar Shar, Special Prosecutor ANF.

Respondents: Hazar Khan and Manzoor Ali.

Date of hearing: **12.05.2026.**

Date of decision: **25.05.2026.**

J U D G M E N T

Syed Fiaz ul Hassan Shah, J: Both above captioned matters arising out of the same Judgment dated 06.10.2023 one by the appellant against conviction while the other Revision for enhancement of Sentence by ANF, as such, the same are being decided by this Court through a common Judgment.

2. The appellants Hazar Khan and Manzoor Ali have challenged the Judgment dated 06.10.2023, passed by learned Special Judge Control of Narcotic Substance/Model Criminal Trial Court-II/Additional Sessions Judge-IV, Hyderabad in Special Case No.205 of 2022, Re: State vs. Hazar Khan and another, for offence under Section 9-(i), 3(e) Amended CNS Act, 2022, whereby the learned trial court after full-dressed trial convicted and

sentenced the both appellants to suffer R.I for twenty years in view of amended table of Control of Narcotic Substance, 1997 published on 6th September, 2022 Islamabad, being Act No.XX of 2022 and to pay fine of Rs.100,000/-(Rupees One Lac only) each. In case of default in payment of fine they shall undergo S.I for one month more respectively. Benefit of Section 382-B Cr.P.C was also extended to the appellants. However, the State/ANF too dissatisfied with the same Judgment and filed the above captioned Criminal Revision Application for enhancement of fine amount.

3. Briefly stated, the prosecution case, as disclosed in the FIR lodged by SI Munir Ahmed of ANF Hyderabad, is that on 07.10.2022, acting on spy information regarding inter-provincial narcotics smuggling, a police party established a picket near Hyderabad-Mirpurkhas Toll Plaza and intercepted a white Suzuki Mehran bearing registration No.BDJ-527. Two occupants, namely Hazar Khan Brohi and Manzoor Ali, were apprehended. As no private persons agreed to act as mashirs, PC Manzoor Rind and PC Yasir Ali were nominated as mashirs. Upon search, 19 packets of charas concealed beneath the rear seat of the vehicle were recovered, weighing in total 22,500 grams. Samples of 10 grams each were secured for chemical analysis, while the remaining contraband was sealed separately. The police also recovered registration documents, cash, and mobile phones from the accused persons. Thereafter, mashirnama of arrest and recovery was prepared at the spot, and the FIR was accordingly registered.

4. After procedural formalities, copies of documents were supplied to the accused vide Ex.1 in compliance of section 265-C Cr.P.C, and charge was framed against the accused vide Ex.2 in compliance of section 265-D Cr.P.C, to which accused pleaded not guilty and claimed to be tried vide their pleas at Ex.2/A & Ex.2/B.

5. At the trial, the evidence of prosecution recorded, wherein prosecution examined PW-01 complainant/I.O SI Munir Ahmed at Ex.3, he produced attested copy of departure and arrival entries on one page at Ex.3/A, memo of arrest and recovery at Ex.3/B, FIR at Ex.3/C, attested copy

of entry of Malkhana at Ex.3/D, attested copy of departure and arrival entries of Chemical Lab Karachi at Ex.3/E, letter to Chemical Examiner at Ex.3/F, Road Certificate at Ex.3/G, sample receipt at Ex.3/H, Chemical Examiner's report at Ex.3/I, letter to Excise & Taxation Officer at Ex.3/J, detail of ownership of vehicle at Ex.3/K, Notice of Zonal Incharge Al-BArka Bank at Ex.3/L, reply to said notice at Ex.3/M, another reply of said Bank regarding ownership of the vehicle at Ex.3/N, letter to its previous owner namely Muhammad Ismail at Ex.3/O, statement of previous owner at Ex.3/P, agreement of vehicle at Ex.3/Q, receipt of purchasing the vehicle by accused Hazar at Ex.3/R, and notice to one Khadim Hussain Abro at Ex.3/S. PW-2 mashir PC Manzoor Hussain at Ex.4, PW-3 SI Zahoor Shah as Incharge Malkhana at Ex.5, and PW-4 PC Ameer Hamza, the messenger of sealed parcel at Ex.6, where-after learned SPP for ANF closed the side in evidence of prosecution vide statement at Ex.6.

6. The statements of accused Under S. 342 of Cr.P.C were recorded vide Ex.8 & 9 wherein accused denied the allegations of prosecution and stated that they are innocent and have falsely been involved in this case. They neither testified on oath nor called any defense witness(s).

7. Learned counsel for the appellants argued that the appellants/accused are innocent and have falsely been implicated in this case; that despite having prior "spy information" and conducting the raid in a thickly populated area on a busy public road, the ANF authorities failed to associate any independent private witnesses (*Mashirs*); that the prosecution's reliance solely on subordinate police officials as witnesses, without providing the names of those who allegedly refused to join or taking legal action against them, creates a serious doubt regarding the transparency of the recovery; that there are glaring and material contradictions in the testimonies of the prosecution witnesses (PWs) regarding the time, manner of recovery, and the spot proceedings, police entries of departure and arrival so also the entry in Register No.XIX and failure to comply with original production hence, these inconsistencies vitiate the prosecution's story, yet they were overlooked by the learned

Trial Court while passing the impugned judgment; that according to the FIR, the contraband was allegedly recovered from the backseat of a vehicle and not from the direct physical possession of the Appellants; that the Chemical Examiner's report was never properly exhibited by the learned Trial Court, as no exhibit mark or signature of the Presiding Officer appears on the said document, rendering the same legally inadmissible in evidence; that material contradictions exist in the record, inasmuch as the Chemical Examiner's report was not produced before the trial Court and without marking and exhibit of such report it cannot be said that the case property was charas or otherwise and in its absence, the Appellant is entitled for acquittal, the prosecution failed to establish safe custody and lawful proof of the alleged contraband in accordance with law; that the prosecution failed to produce any corroborative evidence to link the Appellants to the alleged narcotics, making it a case of "foisting" the contraband due to ulterior motives; that the chemical examiner's report is legally defective as it was not issued on the prescribed proforma, violating **Rules 5 and 6 of the Narcotic Substance (Government Analysts) Rules, 2001**. This procedural lapse breaks the chain of custody and renders the recovery unreliable; that the complainant, SI Munir Ahmed, acted as the primary investigator of his own complaint. This dual role is contrary to the principles of a fair trial and impartial investigation, a fact which the learned Trial Court failed to consider; that the prosecution failed to provide evidence of any "specific customer" or any transaction, relying solely on an alleged "confession before the police," which is inadmissible in evidence and carries no legal weight; that it is a settled principle of law that the benefit of even a single reasonable doubt must go to the accused. In the presence of material contradictions, lack of independent corroboration, and procedural lapses, the learned Trial Court erred in convicting the Appellants instead of acquitting them; that neither the video nor the photographs were recorded / captured despite the availability of mobile phone with the officials. The Appellant is first offender. The PW-1 SIP Munir Ahmed worn four hats on his head being SHO, Rading Officer, Complainant and the Investigation Officer in the present where huge quantity of alleged charas was recovered

instead to join other senior officials to strong the prosecution's case which shows the malafides therefore, he prayed for acquittal of the appellants. He relied upon case laws PLD 2022 Sindh 84, 2025 SCMR 704, 2020 SCMR 687, 2018 SCMR 2092, 2025 YLR 1694, 2025 SCMR 923, 2023 SCMR 781 & 2025 YLR 878.

8. On the other hand, learned Special Prosecutor, ANF supported the impugned judgment by submitting that the accused were arrested on the spot with a huge quantity of recovery of charas. However, he urged that the impugned judgment is based on misreading and non-reading of law and is against the provision of special law and its applicability; that the Control of Narcotic Substances (CNS) Act, 1997, is a special enactment, which underwent significant statutory modifications via the **Amended Act No. XX of 2022** (published in the Gazette of Pakistan on September 6, 2022). The State counsel emphasizes that under the revised sentencing criteria of **Sections 6 and 9(1)3(e)** of the amended Act, the legislature has prescribed mandatory minimum penalties for the quantity of contraband recovered in the instant case. Specifically, for the category of recovery involved, the law mandates a sentence of imprisonment which may extend to life but shall not be less than twenty years, alongside a compulsory fine of no less than **Rs.800,000/- (Eight Hundred Thousand)**. Lastly, he prayed that the Appeal filed by the Appellants may be dismissed, while the Revision Application may be allowed with enhancement of fine amount.

9. We have heard the counsel for the parties and perused the record.

10. We have carefully examined the record. It appears from the evidence of PW-1 SI Muneer Ahmed that the Presiding Officer had referred Chemical examination report at Exh.3/I in the following manner:

"I produce attested copy of departure and arrival entries on one page at Ex.3/A, memo of arrest and recovery at Ex.3/B, FIR at Ex.3/C, attested copy of entry of Malkhana at Ex.3/D, attested copy of departure and arrival entries of Chemical Lab Karachi at Ex.3/E,

letter to Chemical Examiner at Ex.3/F, Road Certificate at Ex.3/G, sample receipt at Ex.3/H, Chemical Examiner's report at Ex.3/I..”

11. Although Exh.3/I referred in the evidence of PW-1 but the original report of Chemical Laboratory was not marked as Exh. 3/I by the Trial Court nor the Presiding Officer has put his signature on it.

12. We have further noted that in the testimony of PW-1, the Trial Court has recorded the Chemical Examiner report at Ex.3/I, but in the statement of the Appellant being Accused which was recorded under Section 342(2) Cr.P.C, the following Question No.3 framed by the Trial Court:

“That, it has also been deposed by PWs that the above recovered property was deposited in Maalkhana vide entry No.252 of Register No.19 and thereafter its sample parcels were sent to Chemical Examiner Office vide letter Ex.3/F, and such sample receipt vide Ex.3/H and **positive report is produced in evidence at Ex.3/J**. What you have to say?”

Emphasize added

13. The original Chemical Laboratory report was neither marked as Exh.3/I by the Trial Court nor signed by the Presiding Officer. At this appellate stage, it cannot be determined whether the said report was ever produced before the Trial Court at the relevant time, whether the same report now available in the R&P was in existence then, or whether it was altogether a different report. The record further reveals inconsistency: in the testimony of PW-1, the Trial Court referred to the Chemical Examiner’s report as Exh.3/I, while in the statement of the Appellant under Section 342(2) Cr.P.C., Question No.3 referred to a “positive report” produced in evidence as Exh.3/J. This contradiction is material and casts serious doubt on the availability and authenticity of the report during trial.

14. From the record, it is evident that the Chemical Examiner’s report was never properly exhibited or signed by the Presiding Officer. The inconsistencies between **Exh.3/I** and **Exh.3/J**, coupled with the absence of proper marking, demonstrate that the report was not produced during evidence. This omission fatally weakens the prosecution’s case.

15. In light of these deficiencies, the impugned judgment cannot be sustained. The appeal is allowed, the conviction and sentence are set aside, and the matter is remanded to the Trial Court for a **de novo trial**, with directions to conclude evidence afresh and deliver a fresh judgment after hearing both parties in accordance with law.

16. Since Appeal No. D-131 of 2023 remand, Criminal Revision Application No. D-46 of 2023 has become infructuous and stands disposed of accordingly.

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