

JUDGMENT SHEET

**HIGH COURT OF SINDH, CIRCUIT COURT,
MIRPURKHAS**

Criminal Appeal No.D-51 of 2024.

Javed Makrani v. The State.

Present:-

Mr. Justice Miran Muhammad Shah.

Mr. Justice Muhammad Hasan (Akber)

Appellant : Javed Makrani s/o Rasool Bux
Through Asif Choudhry, Advocate.

Respondent : The State through Mr. Ghulam Abbas
Dalwani, Deputy. P.G.

Date of hearing : 03.03.2026.

Date of Decision : 01.04.2026

J U D G M E N T

Miran Muhammad Shah, J:- Through this Criminal Appeal, appellant Javed Makrani son of Rasool Bux has called in question the Judgment dated 06.11.2023 passed by the learned Sessions/Special Judge CNSA, Mirpurkhas in Special Case No.35 of 2023 (Re: The State v. Javed Makrani) arising out of crime / F.I.R No.77 of 2023, registered at P.S Ghariabad for an offence under Section 9(c) of CNS Act-1997 as amended by Act No.XX of 2022, whereby he was convicted for an offence punishable under section 9(c) of CNS Act-1997 as amended by Act No.XX of 2022 to suffer R.I for ten (10) years and to pay fine to the tune of Rs.100,000/- (Rupees One Hundred Thousand only), in case of failure to pay fine he shall suffer S.I for six months. The benefit of Section 382-B Cr.P.C was extended to accused.

2. The facts as incorporated in the FIR are that on 27-08-2023 at 1730 hours at vacant plot in front of house of accused at Murtaza Town, Mirpurkhas, the present accused was apprehended by the

police of PS Gharibabad with a shopper containing four big pieces and one small piece of Chars. On his further personal search another white shopper containing Ice Crystal was also recovered from the pocket of his worn shirt. On weighing of the recovered narcotics, Chars was found 1045 grams and Ice Crystal 60 grams. The recovered property was sealed on the spot. Such mashirnama prepared and accused was brought at P.S. Gharibabad. Hence FIR No.77/2023 under section 9-C of Control of Narcotics Amendment Act, 2022 registered against him.

3. On completion of usual investigation, the police submitted final report under Section 173 Cr.P.C against the accused/appellant. The charge against present appellant/accused was framed to which he pleaded not guilty and claimed trial.

4. At trial, the prosecution to prove its case, examined in all five (06) witnesses, who had produced numerous documents and then learned Prosecutor closed the prosecution side by filing such statement. Thereafter, statement of the appellant/ accused under section 342 Cr.P.C was recorded wherein he denied the allegations being false and claimed his innocence. Further, he did not examine himself on oath as required u/s 340(2) Cr.P.C, nor led evidence in his defense.

5. After hearing the learned State counsel, learned counsel for appellant as well as assessment of evidence available, the learned trial Court passed the Judgment dated 06.11.2023, convicted and sentenced the appellant as stated above. Hence, the appellant preferred instant appeal against the impugned Judgment.

6. The facts of the case have been succinctly stated above, and the evidence presented before the trial court is comprehensively detailed in the impugned Judgment. To avoid repetition, we will refrain from reiterating them here. Instead, we will address the relevant aspects in our findings.

7. The learned counsel for appellant has mainly argued that there are major contradictions in the evidence of prosecution witnesses, which have been ignored by the learned trial Court while deciding the impugned Judgment; that all the prosecution witnesses are interested, set up and officials; that all the material witnesses and

complainant itself contradicted their version regarding the information about the incident; that there are major contradictions in the evidence of the prosecution witnesses, but the same were totally ignored by the learned trial Court. Notwithstanding violation of Section 103 Cr.P.C the investigating officer also failed to record statements of a single person to confirm as to whether the appellant was involved in this crime from ~~any~~^a locality. Learned counsel further argued that there is no any previous criminal record against accused; that the I.O and other witnesses have not produced supported, corroborative and reliable evidence on all the material points, and the material contradictory evidence of complainant and mashir shows that they both were not present at the time of arrest/recovery, and their presence at the place of incident is very doubtful. This case involves a life of an innocent person, who is being victimized due^{to} previous enmity with police and labelled as a supplier of narcotics. The absence of any private mashir in such a critical matter raises questions especially when the prosecution fails to produce neutral witnesses. He prayed that the impugned Judgment may be set-aside and the appellant/accused may be acquitted from the charge.

8. While, refuting the above contentions, the learned Deputy Prosecutor General opposed the appeal on the ground that huge quantity of narcotics were recovered from the possession of the accused. He further contended that the case at hand is a crime against society and is increasing day by day. Lastly, it is argued that though there are minor contradictions in the evidence of prosecution witnesses but the same are not fatal to the case of prosecution. He prayed for dismissal of the appeal.

9. We have carefully heard learned counsel for the parties and scanned the entire evidence as well as the record.

10. There is no doubt that the sale, purchase, and use of narcotics constitute a heinous crime against society. In particular, the recovery of methamphetamine (commonly known as "ice") reflects a grave and dangerous offence affecting the sanctity of our society. However, each case must be decided on its own merits and in light of the evidence produced by the prosecution. Where the prosecution's evidence is not confidence-inspiring and is effectively shattered by the defence during trial, a conviction cannot be sustained merely on account of the nature of the offence.

11. It has been observed that, at times, local police may attempt to foist narcotics upon an accused due to personal grudges or enmity. Therefore, the courts must exercise utmost caution in evaluating such material, as the protection of personal liberty is of paramount importance. It is essential to ensure that an innocent person is not punished and that justice is administered strictly in accordance with the law. The sanctity of law places a heavy responsibility upon the judiciary to dispense justice with due diligence and careful examination of the record. The benefit of doubt must always go to the accused, regardless of the nature of the allegation.

12. In the present case, several lacunae create serious doubt in the prosecution's case, despite the chemical examination report being positive. The evidence reveals that no entry exists on record regarding the dispatch of the recovered narcotics to the Chemical Examiner. Furthermore, the mashirnama of recovery, being the most crucial piece of evidence in narcotics cases was not proved through any mashir, as none was produced in the witness box. This fact was admitted by the Investigating Officer, SIP Imtiaz Ali, in his deposition. This raises a strong presumption that the alleged narcotics were not recovered from the place of incident but were subsequently introduced into the case.

13. It has also come on record that PC Hareesh, on the dictation of the Investigating Officer, prepared the memo of site inspection. However, he was neither cited as a witness in the challan nor examined before the Court. The evidence further discloses material contradictions among the prosecution witnesses. Since all witnesses are police officials, who are expected to be consistent and well-versed with the facts, such contradictions cannot be taken lightly.

14. The appellant has no previous criminal record, a fact confirmed during the hearing of the appeal. It has also emerged from the testimony of prosecution witnesses that the appellant had allegedly been victimized by the police since 2018. Moreover, the appellant's sister had filed an application under Section 491 Cr.P.C. alleging his illegal detention.

15. It is highly improbable that the appellant would be selling or using narcotics outside his own residence, as alleged by the prosecution, since such conduct would expose him to public scrutiny and law enforcement action, thereby damaging his own reputation. Even if the prosecution's case is accepted at face value, it suffers

from non-compliance with Section 103 Cr.P.C., as no independent (private) mashirs were associated with the recovery.

16. The Investigating Officer failed to collect any independent evidence to corroborate the allegation that the appellant was engaged in the sale of narcotics from outside his house. This omission weakens the prosecution's case, and no plausible explanation has been provided for such failure.

17. In cases involving the liberty of an individual, especially where allegations of false implication due to prior enmity exist, the courts must exercise heightened scrutiny. Where the presence of mashirs at the place of incident is doubtful and no private witnesses have been associated, the entire recovery becomes suspect. In such circumstances, the benefit of doubt must be extended to the accused.

18. Accordingly, for the reasons stated above, the judgment dated 06.11.2023 passed by the learned Sessions/Special Judge (CNSA), Mirpurkhas, in Special Case No.35 of 2023 (Re: The State v. Javed Makrani), arising out of Crime/F.I.R. No. 77 of 2023 registered at Police Station Gharibabad under Section 9(c) of the Control of Narcotic Substances Act, 1997 (as amended), is hereby set aside. Consequently, the appellant is acquitted of all charges.