

IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:-
Mr. Justice Omar Sial
Mr. Justice Shamsuddin Abbasi

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Criminal Jail Appeal No.446 of 2025

Appellant	Muhammad Bilal son of Abdul Rasheed through M/s Mudassir Khan and Sanaullah, Advocates.
Respondent	The State through Mr. Muhammad Iqbal Awan, Additional Prosecutor General [Sindh].
Date of Hearing	<u>06.10.2026</u>
Date of Judgment	<u>19.10.2026</u>

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JUDGMENT

Shamsuddin Abbasi, J.- Muhammad Bilal son of Abdul Rasheed, appellant, has called into question the validity of the judgment dated 05.10.2024, penned down by the learned Additional Sessions Judge-I/Model Criminal Trial Court, Karachi East, in Sessions Case No.1212 of 2024 (FIR No.01 of 2024) registered at Police Station Excise, Karachi, for offence under Section 6/9(i)(3)(c) of the Control of Narcotic Substances (Amendment) Act, 2022, through which he was convicted and sentenced to suffer rigorous imprisonment for a period of nine (09) years and to pay a fine of Rs.80,000/- (eighty thousand rupees) with a further sentence of six (06) months' simple imprisonment in lieu of fine, however, the benefit in terms of Section 382-B, Cr.P.C. was extended to him.

2. Short but relevant facts of the prosecution case are that on 26.01.2024 AETO Harji Mal of Police Station Excise, Karachi, accompanied by EC Mehboob Hussain, EC Ghulam Shabbir, EC Abdul Salam, EC Khan Zaman and EC Khuda Bux, proceeded from the P.S. pursuant to spy information and reached Muhammadi Colony, near Muhammadi Masjid, Lasbella Chowk, Karachi, and apprehended a person carrying a black coloured shopping bag, who upon inquiry disclosed his name as Muhammad Bilal son of Abdul Rasheed. Upon search of the bag three packets of charas, wrapped in yellow tape, weighing 3,000 grams were recovered and an amount of Rs.500/- was also recovered from the pocket of his pent. The complainant arrested the accused and secured the narcotic substance under

a memo of arrest and recovery prepared at spot in presence of mashirs EC Mehboob Hussain and EC Ghulam Shabbir and then brought him alongwith the recovered property at P.S. Excise, Karachi, and lodged FIR No.01 of 2024 on behalf of the State.

3. Pursuant to the registration of FIR, the investigation followed and in due course the challan was submitted before the Court of competent jurisdiction, whereby the appellant was sent up to face the trial under the above referred Section.

4. Upon indictment, the appellant pleaded not guilty and claimed trial. At trial, the prosecution has examined AETO Harji Mal (complainant) as PW.1 at Ex.3 and EC Ghulam Shabbir (one of the mashirs of memo of arrest and recovery) as PW.2 at Ex.4. Both witnesses furnished their respective depositions and produced relevant documents in support of the prosecution case. They were duly subjected to cross-examination by the defence. Upon completion of the evidence, the prosecution closed its side vide statement recorded at Ex.5. Thereafter, the appellant was examined under Section 342, Cr.P.C., at Ex.6, wherein he has denied the prosecution case, professed his innocence and pleaded false implication and maintained that the prosecution witnesses are police officials who have falsely deposed against him and that no independent witness has been produced to lend independent corroboration to the prosecution version. He, however, neither opted to make a statement on oath under Section 340(2), Cr.P.C. nor produced any witness in his defence.

5. Upon culmination of the trial, the learned trial Court, after hearing the learned counsel for the parties and evaluating the evidence brought on record, found the appellant guilty of the offence charged with and, thus, convicted and sentenced him in the manner set out in para-1 (supra), which necessitated the filing of the listed appeal.

6. It is contended on behalf of the appellant that he is innocent and has been falsely implicated in this case with malafide intention and ulterior motives as otherwise he has nothing to do with the alleged offence and has been made victim of the circumstances. It is next submitted that the impugned judgment is unsustainable in law as the complainant himself investigated the case despite having effected the alleged recovery thereby

raising serious concerns regarding the impartiality of the investigation. It is also submitted that the prosecution had failed to establish the safe custody of the recovered charas and the safe transmission of its representative samples to the office of the chemical examiner through reliable evidence. He has maintained that in the absence of proof of an unbroken chain of custody, the chemical examiner's report could not safely be relied upon to sustain the conviction. He, therefore, prayed for acceptance of the appeal and acquittal of the appellant by extending him the benefit of doubt. In support of his submissions, the learned counsel for the appellant has placed reliance on the cases of *Muhammad Mansha v The State* (2018 SCMR 772), *Tariq Pervez v The State* (1995 SCMR 1345) and *Kamran alias Kami v The State* (2024 MLD 104&).

7. Conversely, learned Additional Prosecutor General has opposed the appeal and supported the impugned judgment contending that the alleged recovery of 3,000 grams of charas from the appellant has been established through the evidence of the complainant and the mashir. It is next submitted that the complainant's dual role as complainant and investigating officer would not by itself vitiate the proceedings in the absence of any or malafide on his part. Regarding the safe custody of case property and its safe transmission to the concerned laboratory, he has maintained that the prosecution evidence read in conjunction with the relevant record sufficiently established that the recovered substance had been preserved and transmitted in accordance with the prescribed legal procedure and that nothing has been extracted from the prosecution case to suggest that the chain of custody has been compromised or that the case property has been tampered with at any stage. He, therefore, prayed for dismissal of appeal and maintaining conviction and sentence awarded to the appellant.

8. We have heard the learned counsel for the appellant as well as the learned Additional Prosecutor General and with their able assistance have carefully examined the entire evidence available on record including the impugned judgment.

9. To substantiate its case, the prosecution has examined complainant AETO Harji Mal as PW.1 at Ex.3 and mashir EC Ghulam Shabbir as PW-2 at Ex.2. We have carefully reappraised their evidence in the light of the material available on record and the principles governing the prosecution of offences

under the Control of Narcotic Substances Act. Upon such reappraisal, we find that the prosecution has failed to establish through confidence inspiring evidence the safe custody of the alleged narcotic substance and the safe transmission of its samples to the concerned laboratory. The circumstances surrounding the investigation further compound the doubts in the prosecution case. Record demonstrates that complainant not only effected the alleged recovery and lodged FIR but also conducted the investigation of the case himself. More significantly he additionally assumed the functions of Malkhana Incharge of P.S. Excise, Karachi, and himself made the relevant entry in Register No.XIX regarding the deposit of the alleged case property in Malkhana, however, no appointment order, authorization or other official document issued by the competent authority has been produced to establish that he had lawfully been designated or authorized to discharge the functions of Malkhana Incharge or the Investigating Officer. We are, therefore, of the view that the prosecution has failed to establish the complainant's lawful authority to discharge the functions of Malkhana Incharge while he simultaneously acted as the recovery officer, informant and Investigating Officer. Such concentration of responsibilities particularly when coupled with the absence of satisfactory evidence establishing the safe custody and safe transmission of the alleged narcotic substance necessitates close judicial scrutiny of the investigation and the integrity of the chain of custody.

10. The concern is not merely that the complainant performed multiple functions rather it is that the prosecution has failed to dispel the doubts arising from the combination of these roles and the material deficiencies in proving the custody and transmission of the alleged contraband. The absence of an independent investigation in itself may not invariably be sufficient to warrant acquittal, however, where it is accompanied by substantive deficiencies affecting the integrity of the prosecution evidence, the cumulative effect of such circumstances assumes decisive significance. The Hon'ble Supreme Court has repeatedly emphasized the importance of an impartial investigation and the prosecution's obligation to establish the safe custody and transmission of narcotic samples through reliable evidence. Where the complainant himself undertakes the investigation and the prosecution simultaneously fails to establish the integrity of the chain of custody, such deficiencies when considered cumulatively may render the prosecution case doubtful and disentitle it from the benefit of the statutory presumption under Section 29 of the Control of Narcotic Substances Act,

1997. In this behalf, reliance may well be placed upon the case of *Raham Gul and another v The State* (2026 SCMR 584), wherein the Hon'ble Supreme Court while considering the failure to establish the safe custody of narcotic samples, the withholding of relevant Malkhana registers and the fact that the complainant himself had acted as the Investigating Officer observed as follows:-

“The safe custody of the samples was not established as the relevant malkhana registers were withheld, and the complainant himself acted as Investigating Officer, thereby compromising the neutrality of investigation. In these circumstances, the statutory presumption under section 29 of the CNSA could not be invoked, as the prosecution's own case fell short of the standard of proof required in criminal law. Consequently, the appellants are entitled to the benefit of doubt, which must always go to the accused as of right rather than concession.

7. In light of the above discussion, whilst setting aside the impugned judgment, this appeal is allowed and the conviction and sentences recorded against the appellants are set aside. The appellants are acquitted of the charge. They shall be released forthwith if not required in any other case.”

11. The above pronouncement underscores that the statutory presumption under Section 29 of the Control of Narcotic Substances Act, 1997 cannot be invoked to overcome foundational deficiencies in the prosecution evidence particularly where the safe custody of the samples remains unproved and the neutrality of the investigation is compromised. The prosecution must first establish the essential facts constituting its case through legally admissible and confidence inspiring evidence, a statutory presumption cannot substitute for proof of those foundational facts. Reliance may also be placed on the case of *Muhammad Siddique and others v The State* (2024 P.Cr.L.J. 560), wherein this Court while examining the propriety of an investigation conducted by the complainant himself in a case involving a police encounter disapproved such a course of action and emphasized the necessity of an independent and impartial investigation. Relevant extract of the judgment is reproduced below:-

“There seems to be one material discrepancy/loophole in the investigation of instant case. Admittedly, ASI Ali Gul was heading the police party during the encounter with the accused persons; besides, it is ASI Ali Gul who lodged the FIR and has figured as complainant of the case. Despite that he himself conducted investigation of the entire case. Such conduct on the part of police officials has not been appreciated by the Superior Courts, being violative of Police Order (22 of 2002) and Police Rules, 1934. In

fact, in such an eventuality, the Investigating Officer who himself is the complainant cannot be expected to collect and preserve evidence which goes against his case and that such Investigating Officer cannot properly perform duties like an independent and fair Investigating Officer. In the case of Agha Qais v. The State reported in 2009 PCr.LJ 1334, Honourable Lahore High Court, while dealing with this point exhaustively, held as under:

"As pointed out above, P.W.5 acted as complainant, witness and Investigating Officer. Under the law, complainant and accused are two opponent parties. In other words, they are two contesting parties. Role of an Investigating Officer is of a neutral authority whose object is to unearth the truth. The Investigating Officer cannot be a part or a member of a party in a case which he is investigating. In this regard, guidance may be sought from Chapter 25 of Investigation from Police Rules, 1934. Rule 25.2(3) reads as under:-

"It is the duty of an Investigating Officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."

The language of Rule 25.2 above noted clearly requires of an Investigating Officer not to commit himself prematurely to any view of the facts for or against any person. This cannot be expected from an Investigating Officer who himself is a party. As a matter of fact, concept of honest investigation is based on non-partisanship and neutrality. The reason and spirit of separating investigation wing from the operation wing of police also emanates from the same fact which reflects in Article 18 of the Police Order, 2002, therefore, we feel that element of honest, transparent and fair investigation lacks in the instant case. The same point has been discussed by the learned Sindh High Court reported in Nazir Ahmad v. The State PLD 2009 Kar. 191. The Honourable Supreme Court has analyzed the above point from another angle also. According to the Honourable Supreme Court, Investigating Officer is an important witness for the defence also and in case he acts as a complainant and raiding officer, the defence is deprived of his very precious right at the same time and is forced not to depend upon the same. The Federal Shariat Court also observed that such an investigation is biased investigation. (Ashiq alias Kaloo v. State 1989 PCr.LJ 601). In State v. Bashir and others 1998 SC 408, the Honourable Supreme Court observed that "as observed above, Investigating Officer is as important witness for the defence also and in case the head of the police party also becomes the Investigating Officer, he may not be able to discharge his duties as required of him under the Police Rules".

In this context, reference can also be made to the case of Nazeer Ahmed v. The State reported in PLD 2009 Karachi 191, wherein this Court held that Police Officer who himself is the complainant cannot be expected to collect and preserve evidence which goes against his case and that such Investigating Officer cannot properly perform duties of an independent and fair investigating officer. Similar observations were also made in the cases reported as Mohammad Siddique v. The State (2011 YLR

2261 [Karachi]) and Mohammad Akram v. The State (1995 MLD 1532 [Peshawar]).

Even Honourable Supreme Court in the case of Zeeshan alias Shani v. The State (2012 SCMR 428), has not appreciated that in a case of police encounter investigation is conducted by the same investigating agency. It was held as under:

"11. The standard of proof in this case should have been far higher as compared to any other criminal case when according to the prosecution it was a case of police encounter. It was, thus, desirable and even imperative that it should have been investigated by some other agency. Police, in this case, could not have been investigators of their own cause. Such investigation which is woefully lacking independent character cannot be made basis for conviction in a charge involving capital sentence, that too when it is riddled with many lacunas and loopholes listed above,....."

12. The most serious infirmity, however, concerns the chain of custody. According to the prosecution case, the alleged three kilograms of charas were recovered from the appellant on 26.01.2024 and deposited in the Malkhana on the same day. The entry available at Ex.3/E further indicates that the case property was taken out of from the Malkhana on 27.01.2024 at 10:00 am for transmission to the office of the chemical examiner. On the other hand, the chemical examiner's report, available at Ex.3/G, records that the property was received on 29.01.2024 through Memorandum No.06 dated 29.01.2024, thus, the prosecution's own documentary evidence discloses a material discrepancy between the date on which the property was allegedly taken out from the Malkhana and the date on which it was actually received by the chemical examiner. The explanation furnished by the complainant that Saturday and Sunday were holidays does not satisfactorily resolve this discrepancy. Even if the intervening days were holidays that circumstance does not explain why the property was taken out from the Malkhana on 27.01.2024 when its formal transmission was effected under a Memorandum dated 29.01.2024. The prosecution has not furnished any convincing explanation as to where the property remained during this intervening period, who retained its custody or under what arrangements its integrity and the condition of its seals were preserved. The discrepancy assumes greater significance because the complainant himself maintained the Malkhana record, yet no independent and reliable evidence has been produced to dispel the resulting doubts. The Hon'ble Supreme Court of Pakistan in the case of *Said Wazir and another v The State and others* (2023 SCMR 1144) held that where the prosecution fails to establish the safe custody and safe transmission of narcotic samples particularly in the absence of reliable

evidence from the officials responsible for their custody and delivery, the conviction cannot safely be sustained and relied upon the principles enunciated in *Qaiser Khan v The State* (2021 SCMR 363), *Mst. Razia Sultana v The State* (2019 SCMR 1300), *The State through Regional Director ANF v Imam Bakhsh* (2018 SCMR 2039), *Ikramullah and others v The State* (2015 SCMR 1002) and *Amjad Ali v The State* (2012 SCMR 577). Applying these principles to the facts before us, the prosecution's failure to reconcile the documentary discrepancy and establish an unbroken chain of custody renders the chemical examiner's report unsafe as a basis for sustaining the appellant's conviction. We are, therefore, of the considered view that the prosecution has failed to establish beyond reasonable doubt that the substance received and examined by the chemical examiner was maintained in safe custody and transmitted without interruption or possibility of interference from the time of its recovery. The positive chemical examiner's report by itself cannot cure this foundational defect. The complainant's combined roles, the absence of documentary authorization for his functioning as Malkhana Incharge and the unexplained discrepancy in the dates of removal of case property from the Malkhana and its receipt in the office of chemical examiner when considered cumulatively create serious and reasonable doubt regarding the integrity of the prosecution case.

13. It is a settled principle of criminal justice that a single circumstance creating reasonable doubt in a prudent mind is sufficient to entitle an accused to its benefit as a matter of right and not as a concession. We are, therefore, unable to sustain conviction and sentence awarded to the appellant. The appeal is allowed, the impugned judgment is set aside and the appellant is acquitted of the charge by extending to him the benefit of doubt. He shall be released forthwith if not required to be detained in connection with any other case.

14. Before parting with this judgment, we may observe that acquittal in this case has been occasioned by the serious lapses and procedural irregularities attributable to AETO Harji Mal. The observations recorded hereinabove reveal that the said officer assumed multiple roles as complainant, Investigating Officer and Malkhana Incharge without placing on record any documentary authorization issued by the competent authority for his appointment as Malkhana Incharge or the Investigating Officer. Furthermore, material discrepancies concerning the safe custody of the case

property and its safe transmission to the office of chemical examiner have seriously undermined the prosecution case and rendered it unsafe to sustain the conviction. Office is, therefore, directed to communicate a copy of this judgment to the Secretary, Excise, Taxation and Narcotics Control Department, Government of Sindh, for information and appropriate departmental action against AETO Harji Mal. The competent authority is directed to conduct an independent examination of the matter, determine responsibility for the aforesaid lapses and take such departmental action as may be warranted under the applicable rules after affording the officer concerned a fair opportunity of hearing. The competent authority shall also ensure that effective administrative safeguards and supervisory mechanisms are put in place to prevent the recurrence of such illegalities, irregularities and procedural lapses in similar cases in future particularly in relation to the investigation of narcotics offences, the safe custody and handling of case property and its secure and duly documented transmission to the chemical examiner. Strict compliance with the prescribed legal procedure shall be ensured so that no prosecution case is prejudiced and the ends of justice are not defeated by negligence or procedural lapses on the part of the officers / officials entrusted with the performance of their statutory duties.

15. This Criminal Jail Appeal No.446 of 2025 stands disposed of in the foregoing terms.

JUDGE

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