

IN THE HIGH COURT OF SINDH AT KARACHI

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

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Criminal Appeal No.310 of 2026

Appellants	1. Nazeer Ahmed son of Imam Bux. 2. Rashid Mehmood son of Rustam Khan. Through Mr. Liaquat Ali Khan, Advocate.
Respondent	The State through Mr. Ali Anwar Kandhro, Additional Prosecutor General [Sindh].
Dates of Hearing	<u>18.08.2026 and 01.09.2026</u>
Date of Judgment	<u>07.09.2026</u>

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J U D G M E N T

Shamsuddin Abbasi, J.- Nazeer Ahmed son of Imam Bux and Rashid Mehmood son of Rustam Khan, appellants, have called in question the validity of the judgment dated 04.05.2026, penned down by the learned Sessions Judge, Karachi South, in Sessions Case No.1623 of 2025 (FIR No.440 of 2025) registered at Police Station Clifton, Karachi, for an offence punishable under Section 9(i)3(c) of the Sindh Control of Narcotic Substances (Amendment) Act, 2024 ("**Act, 2024**") through which they were convicted under Section 6/9(i)3(c) of the Act, 2024 and sentenced to suffer rigorous imprisonment for a period of nine (09) years each and to pay a fine of Rs.100,000/- each and to suffer simple imprisonment for a further period of one month each in lieu of fine, however, benefit in terms of Section 382-B, Cr.P.C. was extended to them.

2. Briefly stated the prosecution case insofar as relevant for the disposal of the instant appeal is that on 05.08.2025 a police party of P.S. Clifton, headed by SIP Javed Awan, was on routine patrol duty in official mobile when it received spy information that two persons are present in a vacant plot situated opposite Paradise Arcade, Block-9, Clifton, Karachi, possessing charas. Acting upon the said information, the police party proceeded to the pointed place and upon reaching there apprehended two persons, who disclosed their names as Nazeer Ahmed son of Imam Bux and Rashid Mehmood son of Rustam Khan. Their personal search was conducted in

presence of mashirs, namely HC Muhammad Rashid and PC Himmat Ali. During the search, one black shopper containing a white shopper in which one large and two small pieces of charas weighing 1100 grams was recovered from the possession of Nazeer Ahmed along with cash amounting to Rs.1,500/-. Likewise, one black shopper containing one large and two small pieces of charas weighing 1060 grams was recovered from the possession of Rashid Mehmood along with cash amounting to Rs.1,300/-. The recovered charas was secured and sealed at the spot whereafter a memo of arrest and recovery was prepared and upon completion of the necessary legal formalities, both accused along with the recovered case property were brought to P.S. Clifton, where the FIR was formally registered.

3. Pursuant to the registration of FIR, the investigation was followed and in due course a challan was submitted before the Court of competent jurisdiction, whereby the appellants were sent up to face the trial.

4. Upon their indictment, both appellants pleaded not guilty to the charged offence and claimed trial. In support of its case, the prosecution has examined HC Muhammad Rashid as PW.1 at Exh.3, complainant SIP Javed as PW.2 at Exh.4, HC Mirza Muhammad Mazhar Baig (Head Moharrir) as PW.3 at Exh.5 and I.O. SIP Muhammad Yaqoob as PW.4 at Exh.6. They have exhibited certain documents in evidence and were subjected to cross-examination by defence. Thereafter, the prosecution closed its side vide statement Exh.7.

5. The appellants in their respective statements recorded under Section 342, Cr.P.C., at Exh.8 and Exh.9 have denied the allegations imputed upon them by the prosecution, professed their innocence and pleaded their false implication. They alleged that they had been arrested from Sehar Commercial by the police of P.S. Darakhshan and were kept in wrongful confinement during which the police demanded illegal gratification from their families and upon failure thereof, the police shifted them to P.S. Clifton and foisted the present case upon them by planting the alleged narcotic substance. The appellant Rashid Mehmood further stated that his brother, namely Irshad Ahmed, had filed an application under Section 491, Cr.P.C. before the learned Sessions Judge, Karachi South and that upon coming to know about the filing of the said application, the police shifted them from

P.S. Darakhshan to P.S. Clifton where the present FIR was lodged. However, despite having taken the aforesaid specific plea, neither of the appellants opted to appear on oath in terms of Section 340(2), Cr.P.C. to substantiate the same nor did they produce any witness in their defence.

6. The learned trial Court after hearing the learned counsel for the appellants and the learned prosecutor and upon appraisal and evaluation of the evidence available on record found the prosecution case established against both appellants and vide impugned judgment dated 04.05.2026 convicted and sentenced them in the manner set out in para-1 (supra), which necessitated the filing of the listed appeal.

7. The learned counsel for the appellants while assailing the impugned judgment has mainly contended that the prosecution case is tainted with serious doubt regarding the very manner and time of arrest of the appellants. It is submitted that the appellants were not apprehended from the place alleged in the FIR rather they had already been taken into custody by the police of P.S. Darakhshan and were kept in illegal confinement, which finds material corroboration from the fact that the brother of appellant Rashid Mehmood, namely Irshad Ahmed, was constrained to approach the learned Sessions Judge, Karachi South by filing an application under Section 491, Cr.P.C. seeking recovery of his brother from such illegal detention. It is next submitted that the filing of the said application prior to the registration of the present FIR is a circumstance of considerable significance as it provides contemporaneous support to the plea that the appellants were in police custody before the prosecution claims to have arrested them at the alleged place of recovery. Learned counsel submits that the subsequent shifting of the appellants from P.S. Darakhshan to P.S. Clifton followed by their formal arrest and registration of the present FIR renders the prosecution's version regarding the place and time of arrest highly doubtful. According to learned counsel, the alleged recovery was consequently planted upon the appellants to justify an otherwise unlawful detention. It is urged that where the defence version regarding prior illegal detention is supported by a legal proceeding under Section 491, Cr.P.C. the prosecution was required to satisfactorily explain the appellants' whereabouts and custody before the alleged arrest, failure to do so creates a serious dent in the prosecution case particularly with regard to the alleged recovery. It is further

argued that the prosecution witnesses are all police officials and, therefore, their evidence regarding the arrest and recovery requires cautious scrutiny especially when the defence has raised a specific plea of prior illegal detention. Learned counsel maintains that the alleged recovery cannot cure the inherent doubt surrounding the arrest itself because the prosecution must establish not merely the recovery of narcotic substance but also the lawful apprehension and possession of the same by the appellants. Lastly submitted that the prosecution has failed to prove its case against appellants beyond reasonable doubt and that the appellants are entitled to acquittal by extending them the benefit of doubt.

8. In contra, the learned Additional Prosecutor General has opposed the appeal and supported the impugned judgment contending that the prosecution has successfully established the appellants' guilt through consistent and confidence inspiring evidence. It is next submitted that both appellants were apprehended at the spot and substantial quantities of charas weighing 1100 grams and 1060 grams respectively were recovered from their respective possession, which recovery was effected in the presence of mashirs and duly documented through the memo of arrest and recovery at spot. It is also submitted that the plea regarding prior illegal detention is an afterthought having been introduced by the appellants in their statements under Section 342, Cr.P.C. merely to create doubt in an otherwise straightforward case. The filing of an application under Section 491, Cr.P.C. by the brother of appellant Rashid Mehmood by itself does not establish that the appellants were actually in the custody of the police particularly when there is no order or other independent material on record demonstrating their alleged illegal detention or recovery from P.S. Darakhshan. It is contended that a mere allegation contained in such application cannot displace the direct evidence of arrest and recovery furnished by the prosecution witnesses. It is argued that the alleged discrepancy regarding the place of arrest does not affect the recovery of narcotic substance, which remained intact throughout the investigation. The case property was immediately secured and sealed at the spot, deposited with the Head Moharrir, retained in safe custody and thereafter transmitted to the Chemical Examiner in sealed condition. The Chemical Examiner's report confirmed the substance to be charas thereby providing independent corroboration to the prosecution case. Lastly submitted that the defence has neither produced

any independent evidence nor examined a person who allegedly filed the Section 491, Cr.P.C. application to substantiate the plea of illegal detention. The appellants themselves did not enter the witness box under Section 340(2), Cr.P.C. to support their version. Thus, the alleged prior detention remains an unsubstantiated defence plea and cannot offset the consistent ocular, documentary and scientific evidence available on record and prayed for dismissal of the appeal and maintaining of the conviction and sentence awarded by the learned trial Court.

9. We have heard the learned counsel for the appellants as well as the learned Additional Prosecutor General and have carefully examined the entire evidence available on record with their able assistance.

10. The objection regarding non-compliance with Section 103, Cr.P.C. is misconceived. The provisions of Section 103, Cr.P.C. are not of universal application in every case of recovery particularly where the recovery is effected under the special scheme of the Control of Narcotic Substances Act. Proceedings relating to search, seizure and recovery of narcotic substances are governed by the special law, which constitutes a self-contained statutory framework and prescribes its own safeguards and procedure. Therefore, the provisions of Section 103, Cr.P.C. cannot be invoked so as to invalidate an otherwise lawful search and recovery merely on the ground that private persons from the locality were not associated with the proceedings. It is a well settled that the mere non-association of private witnesses does not by itself render the recovery of narcotics doubtful or vitiate the prosecution case. The primary question for determination is whether the evidence of the official witnesses is confidence inspiring and whether the prosecution has established the recovery through a consistent and reliable chain of evidence. Where the official witnesses have remained consistent on material particulars and their testimony is supported by the documentary record, safe custody, safe transmission of the recovered substance and the Chemical Examiner's report, the absence of independent witnesses cannot be treated as a fatal defect. Moreover, Section 103, Cr.P.C. itself contemplates association of respectable inhabitants where circumstances permit. It does not lay down an inflexible rule that every recovery must invariably be witnessed by private persons. In narcotics cases, particularly those involving recovery from a person requiring immediate action, insistence upon association of private

witnesses cannot be allowed to defeat otherwise reliable official evidence. Consequently, the contention that the recovery is rendered doubtful merely because the requirements of Section 103, Cr.P.C. were not complied with has no force. The legality and reliability of the recovery have to be assessed on the touchstone of the special law and the evidence available on record and not by mechanically importing Section 103, Cr.P.C. into the proceedings. Where the prosecution evidence establishes the recovery in a confidence inspiring manner and the chain of custody remains intact, non-compliance with Section 103, Cr.P.C. does not by itself furnish a ground for extending benefit of doubt to the accused.

11. The principal thrust of the defence is that the appellants had been taken into custody prior to the alleged date of arrest and that the narcotic substance was subsequently foisted upon them. In support of this plea, reliance has particularly been placed upon the application allegedly filed by Irshad Ahmed, brother of appellant Rashid Mehmood, under Section 491, Cr.P.C. We have examined this contention with due care, but find the same wholly unconvincing.

12. The prosecution has established the chain relating to the safe custody and safe transmission of the recovered narcotic substance through cogent and consistent evidence. PW.3 HC Mirza Muhammad Mazhar Baig being the Head Moharrir of P.S. Clifton has categorically deposed that upon return to the police station, the complainant handed over him two sealed parcels containing the recovered narcotic substance which he deposited in the Malkhana and retained in safe custody under an entry in Register No.XIX. He further deposed that on 06.08.2025 the said sealed parcels were handed over to the investigating officer for transmission to the office of Chemical Examiner. The Investigating Officer PW.4 SIP Muhammad Yaqoob has corroborated this aspect of the prosecution case and stated that he received the case property in sealed condition from the Head Moharrir and deposited the same with the office of the Chemical Examiner on 06.08.2025. The Chemical Examiner's report, available at Exh.6/G, confirms that the samples were received on the same date and upon examination were found to contain charas. Nothing material has been brought on record in the cross-examination of these witnesses to discredit their testimony regarding the safe custody and safe transmission of the case property to the office of

Chemical Examiner. Thus, the chain of custody stands satisfactorily established and there is no circumstance on record suggesting that the recovered substance was tampered with, substituted or otherwise interfered with while in police custody.

13. The defence has sought to derive considerable advantage from the application under Section 491, Cr.P.C. allegedly filed by Irshad Ahmed on 05.08.2025, wherein it was stated that Rashid Mehmood had been apprehended by the police and was being kept in illegal confinement since 02.07.2025. We are unable to attach any evidentiary weight to the said application. Firstly the document by itself is merely an assertion of the applicant, which has not been exhibited, hence cannot be treated as proof of the facts stated therein unless those assertions are independently established through legally admissible evidence. More importantly, the circumstances surrounding the filing of the application render the defence version highly doubtful. If Rashid Mehmood had been illegally detained by the police since 02.07.2025 it remains wholly unexplained why no application under Section 491, Cr.P.C. or any other complaint regarding such alleged prolonged illegal detention was moved for more than one month. The application has admittedly been filed on 05.08.2025 i.e. after more than one month of the alleged detention commencing from 02.07.2025. Such unexplained silence substantially undermines the credibility of the plea taken by the defence.

14. There is yet another material circumstance which renders the said application unreliable. Appellant Rashid Mehmood in his statement recorded under Section 342, Cr.P.C., did not maintain the same version as set out in the application under Section 491, Cr.P.C. Rather, he stated that he had been arrested by the police four days prior to the alleged incident. This assertion is manifestly inconsistent with the specific plea contained in the application under Section 491, Cr.P.C. according to which he had been in police custody since 02.07.2025. The contradiction is not a minor discrepancy concerning an incidental detail, it goes to the very root of the defence version regarding the alleged date and duration of illegal detention. The appellant, therefore, himself has furnished a version which conflicts the case set up through the said application. We are conscious of the fact that an application under Section 491, Cr.P.C. may in an appropriate case

constitute a relevant circumstance regarding a plea of illegal detention, however, its mere filing cannot by itself establish the truth of the allegations contained therein. In the case in hand, the application was filed on 05.08.2025 despite the allegation that the appellant had been detained since 02.07.2025. No satisfactory explanation has been furnished for such prolonged silence. More significantly, the appellant's own statement regarding his alleged arrest four days prior to the occurrence contradicts the date of detention asserted in the application. The defence has also not produced any independent evidence to establish that the appellants were actually in the custody of P.S. Darakhshan before the alleged arrest in the present case. The person who allegedly moved the application has not been examined to substantiate its contents nor has any order or subsequent judicial proceeding been brought on record demonstrating that the appellants were found to be in illegal custody. In these circumstances, the Section 491, Cr.P.C. application appears to have been brought into existence as an afterthought apparently to lend support to the plea of false implication and planted recovery. We, therefore, find no justification to place reliance upon it particularly when it is contradicted by the appellant's own statement and is unsupported by any independent evidence. A defence plea which is internally inconsistent and unsupported by reliable material cannot dislodge otherwise confidence inspiring evidence adduced by the prosecution witnesses.

15. The prosecution evidence when examined as a whole presents a consistent account of the arrest and recovery. The recovery of substantial quantities of charas from the respective possession of the appellants is supported by the evidence of the complainant and mashir, the recovered substance was secured and sealed at the spot, its subsequent safe custody in the Malkhana has been duly proved, the sealed parcels were thereafter transmitted to the Chemical Examiner and the Chemical Examiner confirmed the substance to be charas. The defence has failed to identify any material break in this chain. Mere suggestions of false implication or planting of the narcotic substance unsupported by convincing evidence cannot prevail over such a coherent chain of incriminating circumstances.

16. It is a settled principle that the prosecution is required to prove its case beyond reasonable doubt, but the doubt must be reasonable and arise

from the evidence on record. A self-contradictory defence plea cannot be converted into a ground for acquittal. In the case in hand, the alleged illegal detention, which constitutes the foundation of the defence plea of planted recovery has not been established rather the material relied upon by the appellants in support of that plea suffers from inherent contradiction and unexplained delay. Conversely, the prosecution has satisfactorily established the recovery as well as the safe custody and transmission of the recovered narcotic substance. We, therefore, find that the learned trial Court has correctly appreciated the evidence and reached a conclusion fully supported by the material available on record. The appellants have failed to point out any material illegality, misreading or non-reading of evidence warranting interference by this Court. The conviction recorded against them is based upon reliable and legally admissible evidence and does not suffer from any infirmity. Consequently, the impugned judgment calls for no interference and the conviction and sentence awarded to the appellants through impugned judgment dated 04.05.2026 are maintained.

17. The Criminal Appeal No.310 of 2026 stands dismissed on the foregoing terms.

JUDGE

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