

THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 472 of 2024

Present: **Mr. Justice Omar Sial**
Mr. Justice Shamsuddin Abbasi

Appellant <><><>
Rehmatullah S/o Habibullah through Mr.
Muhammad Immad Qamar, Advocate

Respondent The State through Ms. Rubina Qadir,
D.P.G.

Date of Hearing : **27.08.2026**

Date of Judgment : **08.09.2026**

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JUDGMENT

SHAMSUDDIN ABBASI, J.- Appellant Rehmatullah son of Habibullah has preferred the instant Criminal Appeal under Section 410, Cr.P.C. read with Section 48 of the Control of Narcotic Substances Act, 1997, calling into question the validity of the judgment dated 20.05.2024, penned down passed by the learned Additional Sessions Judge-IV/MCTC, South Karachi, in Special Case No.75 of 2022, arising out of FIR No.288/2021 registered at Police Station Frere, Karachi South, for an offence under Section 9(c) of the Control of Narcotic Substances (Sindh Amendment) Act, 2021. By virtue of the impugned judgment, the learned trial Court convicted the appellant for an offence punishable under Section 9(c) of the Control of Narcotic Substances (Sindh Amendment) Act, 2021 and sentenced him to life imprisonment along with a fine of Rs.100,000/- and in default of payment thereof to undergo simple imprisonment for one month more. The appellant was also extended the benefit of Section 382-B, Cr.P.C.

2. Briefly stated, the prosecution case is that on 13.11.2021 at about 2230 hours the appellant was allegedly apprehended by the police and 21 packets of charas, wrapped in golden-coloured packing and weighing 21 kilograms, were recovered from his possession. Consequently, the subject FIR was registered against him at P.S. Frere, Karachi South, for an offence punishable under Section 9(c) of the Control of Narcotic Substances (Sindh Amendment) Act, 2021. The alleged recovered narcotic was subsequently sent to the chemical examiner for analysis. After completion of the investigation and receipt of the positive chemical examiner's report, the

police submitted the challan before the Court of competent jurisdiction, whereby the appellant was sent up to face the trial.

3. After submission of the challan, the learned trial Court framed a formal charge against the appellant, to which he pleaded not guilty and claimed trial. Consequently, the prosecution was called upon to prove the charge. In support of its case, the prosecution has examined four witnesses and produced the relevant documentary evidence.

4. Upon completion of the prosecution evidence, the entire incriminating material appearing against the appellant was put to him in his statement recorded under Section 342, Cr.P.C. The appellant denied the allegations levelled against him and pleaded false implication. However, he neither opted to appear on oath under Section 340(2), Cr.P.C. nor produced any witness in his defence

5. After conclusion of the trial and upon hearing the learned counsel for the parties, the learned trial Court, vide the impugned judgment dated 20.05.2024, convicted the appellant for an offence punishable under Section 9(c) of the Control of Narcotic Substances (Sindh Amendment) Act, 2021, and sentenced him as detailed in para-1 (supra), which necessitated the filing of the listed appeal.

6. Learned counsel for the appellant has contended that the impugned judgment is the result of misreading and non-reading of material evidence available on record; that the evidence of the prosecution witnesses being police officials is not confidence inspiring; that despite the alleged place of arrest and recovery being situated in a thickly populated area the prosecution has failed to associate any independent person as a witness to the arrest and recovery; that the prosecution witnesses have made material contradictions and discrepancies on material particulars and most importantly that the prosecution has failed to establish the safe custody and safe transmission of the alleged recovered charas to the chemical examiner. Learned counsel has further argued that the failure to establish an unbroken chain of custody renders the positive chemical examiner's report inconsequential for the purpose of sustaining the conviction. Reliance has been placed upon the judgments of the Hon'ble Supreme Court in *Zahir Shah*

alias Shat v. The State through Advocate General, Khyber Pakhtunkhwa (2019 SCMR 2004) and *Mir Waiz v. The State* (2022 SCMR 2105)

7. Conversely, the learned D.P.G. has supported the impugned judgment and contended that the prosecution case cannot be discarded merely because the witnesses are police officials. According to her, their evidence is consistent, confidence inspiring and sufficiently corroborated by the positive report of the chemical examiner. She maintained that the prosecution has successfully established the recovery of the narcotic from the possession of the appellant and that no material discrepancy had been brought on record which could justify interference with the well-reasoned judgment of the learned trial Court. She, therefore, prayed for dismissal of the appeal.

8. We have heard the learned counsel for the appellant as well as the learned D.P.G. and have carefully examined the impugned judgment, the evidence available on record and the material documents forming part of the case

9. In cases involving recovery of narcotic substance, the prosecution is required to establish through reliable and confidence inspiring evidence an unbroken chain of custody from the time of recovery until the receipt of the representative samples by the Chemical Examiner. It must be shown that the recovered narcotic was properly secured and sealed, deposited in the Malkhana, kept there in safe custody and thereafter transmitted to the chemical examiner without any possibility of tampering, substitution or interference. This requirement is not a mere procedural formality rather it constitutes a substantive safeguard to ensure that the substance subjected to chemical analysis was the very substance allegedly recovered from the accused and that its identity and integrity remained unimpaired throughout.

10. To establish the safe custody of the case property, the prosecution has examined PW.4 Shahid Hameed, Head Moharrir/Incharge Malkhana of P.S., who has deposed that on 13.11.2021 while posted as Head Moharrir at P.S. Frere, he received one sealed sack/parcel containing charas along with another parcel containing the personal belongings of the accused and deposited the same in the Malkhana under entry No.67. He further deposed that on the following day i.e. 14.11.2021, the case property was handed over

to PW.3 SIP Muhammad Yaqoob, Investigating Officer, for onward transmission to the chemical examiner. At first glance, this testimony may appear to establish the custody of the case property while it remained in the Malkhana, however, when examined in conjunction with the testimony of PW.3 SIP Muhammad Yaqoob and the report of the chemical examiner, it reveals serious and material gaps in the chain of custody which go to the very identity and integrity of the alleged narcotic substance. Record reflects that the alleged charas was recovered on 13.11.2021 and deposited in the Malkhana on the same day. According to PW.4 Shahid Hameed, the sealed parcel was taken out from the Malkhana and handed over to the investigating officer on 14.11.2021, however, PW.3 SIP Muhammad Yaqoob gave a materially different account by stating that he collected the case property on 15.11.2021 and thereafter deposited it in the office of the chemical examiner on the same day. This contradiction cannot be treated as a mere discrepancy of dates because it concerns the very movement and custody of the narcotic case property during the crucial period immediately preceding its chemical examination. On the other hand, the chemical examiner's report, available at Ex.5/G, reflects that the parcel was received in the office of the chemical examiner on 15.11.2021 and was accompanied by Memorandum No. Nil dated 15.11.2021. If as deposed by PW.4 Shahid Hameed, the case property had already been handed over to the investigating officer on 14.11.2021, the prosecution was required to explain through reliable evidence where the sealed parcel remained from 14.11.2021 until its alleged delivery to the chemical examiner on 15.11.2021. Conversely, if the statement of PW.3 SIP Muhammad Yaqoob is taken as true that he collected the case property on 15.11.2021, then the statement of Malkhana Incharge regarding its handover on 14.11.2021 becomes irreconcilable. No satisfactory explanation has been offered by the prosecution to resolve this material contradiction. More importantly, the prosecution has failed to establish the intervening link in the chain of custody. There is no evidence showing the exact time when the parcel was taken out from the Malkhana, the place where it remained thereafter, the person who kept it in safe custody or the exact time and manner of its delivery to the chemical examiner. There is also no convincing evidence showing that the seal remained intact throughout this intervening period and that the parcel remained in such custody as to exclude the possibility of tampering, substitution or interference. The discrepancy regarding the date

of handover assumes further significance in view of the fact that the chemical examiner's report mentions Memorandum No.Nil dated 15.11.2021. The prosecution has not explained how the case property allegedly handed over to the investigating officer on 14.11.2021 was ultimately transmitted under a Memorandum dated 15.11.2021. This unexplained circumstance creates a further missing link in the prosecution's chain of custody.

11. The Court cannot fill this gap by conjecture or presume that the parcel remained safely in the possession of the investigating officer merely because it was eventually received by the chemical examiner. It is settled that in narcotics cases, mere production of a chemical examiner's report does not by itself establish that the substance examined by the chemical examiner was the very same substance allegedly recovered from the accused. The prosecution must affirmatively prove an unbroken chain showing that the recovered narcotic was properly sealed, securely deposited, continuously kept in safe custody and thereafter safely transmitted to the chemical examiner without any possibility of tampering, substitution or interference. Where a material link in this chain remains unproved, the evidentiary value of the chemical report becomes seriously compromised. In the present case, the prosecution has failed to satisfactorily account for the custody and movement of the case property between 14.11.2021 and 15.11.2021. The testimony of Incharge Malkhana regarding handover case property on 14.11.2021 is contradicted by investigating officer, who claims to have collected the property on 15.11.2021. The chemical examiner's report instead of resolving the discrepancy introduces a further unexplained circumstance by showing receipt of the parcel on 15.11.2021 under Memorandum No.Nil dated 15.11.2021. Thus, the prosecution has failed to establish with confidence inspiring evidence when the parcel left the Malkhana, in whose custody it remained thereafter, how it was transported and whether its seal remained intact throughout. These are not minor or inconsequential discrepancies. They relate directly to the identity, integrity and safe transmission of the case property and, therefore, constitute a material break in the chain of custody. In the absence of reliable evidence establishing continuous safe custody and safe transmission, the possibility of tampering or substitution cannot be safely excluded. Consequently, the chemical examiner's report cannot be treated as reliable corroboration of the alleged recovery and the prosecution has failed to prove beyond reasonable

doubt that the substance examined by the chemical examiner was the same substance allegedly recovered from the accused. Benefit of this material failure of the prosecution must go to the accused.

12. The principle is well settled that the prosecution must establish each and every link in the chain commencing from recovery and preparation and sealing of the samples, their deposit in the Malkhana, safe custody therein, their withdrawal, safe transmission and eventual receipt by the chemical examiner. In *Asif Ali and another v. The State* (2024 SCMR 1408), the Hon'ble Supreme Court has reiterated that *"In the cases under CNSA 1997 it is the duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and safe transmission of the sample parcels to the concerned laboratory. This chain has to be established by the prosecution and if any link is missing, the benefit of the same has to be extended to the accused."* The same principle has consistently been emphasized in *Ikramullah and others v. The State* (2015 SCMR 1002), *Amjad Ali v. The State* (2012 SCMR 577), *The State through Regional Director ANF v. Imam Bakhsh and others* (2018 SCMR 2039), *Mst. Razia Sultana v. The State* (2019 SCMR 1300), *Qaiser Khan v. The State* (2021 SCMR 363), *Javed Iqbal v. The State* (2023 SCMR 139), *Said Wazir and another v. The State* (2023 SCMR 1144), *Lal Jan v. The State* (2023 SCMR 1009) and *Sarfaraz Ahmed v. The State* (2024 SCMR 1571).

13. Applying the above principle to the present case, we find that the prosecution has failed to establish the safe custody and safe transmission of the representative samples beyond reasonable doubt. Although the prosecution has attempted to prove deposit of samples in the Malkhana, it has failed to account for its custody and movement after they were taken out on 14.11.2021 and before their receipt by the Chemical Examiner on 15.11.2021. This is not a mere discrepancy in dates or an inconsequential procedural lapse; it constitutes an unexplained break in the chain of custody at a material stage. It was the prosecution's responsibility to establish by affirmative and trustworthy evidence that the samples examined by the chemical examiner were the very samples prepared from the narcotic allegedly recovered from the appellant and that their identity, seals and integrity remained intact throughout. That burden has not been discharged.

14. It is equally settled that the accused is not required to prove that tampering or substitution actually took place. The prosecution must itself establish such a chain of custody as would exclude a reasonable possibility of tampering, substitution or interference. Once the prosecution fails to account for a material link in the chain, the resulting doubt necessarily operates in favour of the accused. In the case in hand, the unexplained period between 14.11.2021 and 15.11.2021 has not been satisfactorily accounted for. Consequently, this Court cannot safely conclude that the representative samples received and examined by the chemical examiner were maintained in continuous, secure and untampered custody from the time of their alleged preparation until their receipt in the laboratory. We are conscious of the fact that the prosecution has produced a positive chemical examiner's report. Nevertheless, such report cannot be considered in isolation from the foundational requirement of proving the identity and integrity of the samples. A positive chemical analysis may establish the nature of the material actually examined, but it does not, in the absence of an established chain of custody, prove that the material examined was the same substance allegedly recovered from the appellant. The evidentiary nexus between the alleged recovery and the substance examined by the chemical examiner therefore remains doubtful.

15. The prosecution must stand on the strength of its own evidence and cannot derive any advantage from the failure of the accused to establish his defence. In the case in hand, the burden to explain the custody and movement of the samples during the intervening period rested entirely upon the prosecution. Since that burden has not been discharged, the resulting doubt goes to the very identity and integrity of the representative samples and consequently to the evidentiary value of the chemical examiner's report. It is a settled principle of criminal jurisprudence that an accused is entitled to the benefit of even a single reasonable doubt emerging from the prosecution evidence. Such benefit is not a concession or grace but a matter of right. The prosecution is required to prove its case beyond reasonable doubt, and a conviction cannot be sustained on the basis of conjectures, probabilities or assumptions. In the case in hand, the failure to establish the safe custody and safe transmission of the representative samples creates a reasonable doubt regarding the integrity and identity of the material subjected to

chemical analysis. That doubt must necessarily be resolved in favour of the appellant.

16. For the foregoing reasons, we are of the considered view that the prosecution has failed to establish an unbroken chain of safe custody and safe transmission of the representative samples from the alleged recovery until their receipt by the Chemical Examiner. The unexplained gap in the custody of the case property constitutes a material defect going to the root of the prosecution case. Consequently, the positive chemical examiner's report standing alone cannot safely be relied upon to sustain the conviction. Accordingly, the instant Criminal Appeal No.472 of 2024 is allowed. The conviction and sentence recorded by the learned trial Court through impugned judgment dated 20.05.2024 are set aside and the appellant Rehmatullah son of Habibullah is acquitted of the charge by extending him the benefit of doubt. He shall be released forthwith if not required to be detained in connection with any other custody case.

JUDGE

JUDGE