

ORDER SHEET  
**IN THE HIGH COURT OF SINDH BENCH AT SUKKUR**  
Spl. Criminal Jail Appeal No. D – 134 of 2022.

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Date	Order with signature of Judge
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Before:  
Mr. Justice Naimatullah Phulpoto, J  
Mr. Justice Amjad Ali Bohio, J

Appellant : Ghaffar Jagirani  
Through Mr. Saffar Ali Jagirani Advocate.

Respondent: The State  
Through Mr. Sardar Ali Shah Rizvi Additional  
Prosecutor General.

Date of Hearing: 03<sup>rd</sup> August, 2023.

JUDGMENT

**AMJAD ALI BOHIO, J:-** Appellant Ghaffar Jagirani was tried by learned Sessions Judge/Special Judge CNS, Khairpur in Special Case No.157 of 2022, emanating from Crime No.11/2022 registered at Police Station, Wada Machiyoon for offence under Section 9(b), Control of Narcotic Substance Act, 1997. The appellant/accused was convicted vide judgment dated 28.11.2022, for offence under Section 9(b) of CNS Act, 1997 and sentenced to suffer R.I for 01 year and 09 months and to pay fine of Rs.13,000/- (Thirteen Thousand). In case of default in payment of fine, appellant was ordered to suffer S.I for four months and fifteen days more. Benefit of Section 382-B, Cr.P.C was extended to the appellant.

2. The facts in brief of the prosecution case as emerged from the contents of first information report and the evidence adduced during the trial are that on 22.05.2022 complainant ASI Khair

Muhammad Gondal alongwith police party left the Police Station vide Roznamcha Entry No.09 at 1500 hours for patrolling. During patrolling, they reached at link road leading from Machi Nako to Khairpur near Ghaffar Shah and saw an individual holding plastic shopper of blue colour who on seeing Government Mobile tried to run towards south, to whom, they suspected, chased and apprehended him strategically at the distance of approximately 15/20 paces at 1530 hours. On enquiry, he disclosed his name as Ghaffar son of Sanaullah Jagirani resident of Ghaffar Shah. Due to non-availability of private persons P.Cs Kamil Khan and Gulshan Ali Mahesar were acted as mashirs. They recovered the plastic shopper, which contained 3 pieces of Charas. The recovered Charas was weighed and it became 800 gram. Case property was sealed at the spot. The Appellant was arrested and such mashirnama of arrest and recovery was prepared in presence of mashirs. Thereafter, appellant and case property were brought at Police Station, Wada Machiyoon where FIR was lodged against him vide Crime No.11/2022 for offence under Section 9(b) of CNS Act, 1997.

3. On the conclusion of investigation, report under Section 173, Cr.P.C was submitted against the accused under the above referred Section of CNS Act, 1997.

4. Trial Court framed charge against the accused under Section 9(b) of CNS Act, 1997 at Exh.2, to which he pleaded not guilty and claimed to be tried.

5. At the trial prosecution examined 03 PWs. Thereafter, prosecution side was closed vide statement dated 29.10.2022 at Exh.6.

6. In his statement recorded under Section 342, Cr.P.C at Exh.7 before the trial Court, appellant denied the allegation regarding recovery of alleged Charas and stated that there is dispute over landed property with Wadero Kehar Khan Jagirani on whose instance he has falsely been implicated in this case. Accused however neither examined himself on oath nor produced any witness in his defence to disprove the prosecution allegations.

7. The counsel for the appellant has contended that the trial Court failed to consider the material discrepancies and contradictions between the evidence of prosecution witnesses; Allegedly, the recovery was made from a link road, and people were available, as deposed by the mashir. However, the complainant's evidence on this crucial point remains silent, and he failed to explain the reason for not associating any private witness; The prosecution failed to examine the in-charge of the Malkhana to establish the safe custody of the parcel. The parcel was dispatched through P.C Saleemullah, who has not been examined, thus resulting in the prosecution's failure to prove the chain of safe custody and secure transmission of the parcel until it was received by the chemical examiner. Additionally, the defense has raised concerns about the contradictions, gaps, and legal uncertainties present in the testimonies of the prosecution witnesses. These factors cast significant doubt on the prosecution's case, leading to the contention that the appellant should be acquitted.

8. On the other hand, learned Additional Prosecutor General opposed the appeal on the ground that the appellant has been

apprehended by police having been found in possession of 800 gram Charas; that P.Ws/police officials have supported the prosecution case by producing the relevant documents. Lastly, he has contended that there are minor contradictions in the evidence of the prosecution witnesses which are not fatal to the case of the prosecution. Lastly, he has contended that the appeal in hand is liable to be dismissed.

9. We have heard the counsel for the appellant, learned Additional Prosecutor General for the State. Additionally, we have re-evaluated the evidence brought on record.

10. According to prosecution's evidence, the appellant Ghaffar was allegedly found in possession of 800 gram Charas. Both mashirs of recovery are police officials though, admittedly private persons were available at the time of alleged recovery but such fact was concealed by A.S.I Khair Muhammad during his evidence and he failed to give any reason for non-associating private person to witness the recovery. The memo of arrest and recovery is silent about availability of private persons to whom the police party asked to act as mashir but they refused as deposed by mashir P.C Gulshan Ali. Thus, it appears that complainant SIP Khair Muhammad deliberately concealed the fact with regard availability of private persons at the time of alleged recovery, therefore, sufficient doubt has been created with regard to alleged recovery in the manner as deposed by the complainant. Reliance in this regard is placed on the case of Taiz Ali v. The State (2018 P Cr. L J Note 30).

11. The prosecution failed to prove safe custody and safe transmission of the sealed parcel as Muharrer, who kept the

sample in the Malkhana from 22.5.2023 to 23.5.2023 and P.C Saleemullah, who delivered the parcel to the Chemical Examiner, were not produced for evidence by the prosecution, therefore, the prosecution failed to prove in establishing it's case against the accused. In this respect reliance is placed upon the case of "Said Wazir and another v. The State and others" (2023 S C M R 1144), which reveals as under:-

"3. Heard and perused the record. It has been observed by us that recovery was effected on 09.06.2016 whereas sample parcels were received in the office of chemical examiner on 13.06.2016 without any plausible explanation as to where remain these sample parcels from 09.06.2016 to 13.06.2016. The safe custody and safe transmission of the sealed sample parcels has also not been established by the prosecution as Moharrar, who kept the sample parcel in the Malkhana and the concerned Constable (FC No. 1374), who delivered the sample parcel to the office of Forensic Science Laboratory, were not produced by the prosecution. Even the prosecution failed to prove the ownership of the vehicle. This court in the cases of Qaiser Khan v. The State through Advocate General, Khyber Pakhtunkhwa, Peshawar (2021 SCMR 363), Mst. Razia Sultana v. The State and another (2019 SCMR 1300), The State through Regional Director ANF v. Imam Bakhsh and others (2018 SCMR 2039), Ikramullah and others v. The State (2015 SCMR 1002) and Amjad Ali v. The State (2012 SCMR 577) has held that in a case containing the above mentioned defect on the part of the prosecution, it cannot be held with any degree of certainty that the prosecution had succeeded in establishing its case against an accused person beyond any reasonable doubt".

12. The Investigating Officer dispatched the parcel for it's delivery to the Chemical Examiner Sukkur at Rohri through P.C Saleemullah but he failed to depose the name of Dispatcher P.C Saleemullah and the prosecution also failed to examine P.C Saleemullah to prove safe transmission of the parcel and it's delivery to the chemical examiner. I.O also failed to produce the entries of departure and arrival back at Police Station at the time of dispatch of parcel for it's delivery to Chemical Examiner. From

perusal of Chemical Report produced by the I.O at Exh.4/D, it appears that the same was dispatched vide memorandum (R.C) No.410 dated 23.05.2022 and it was delivered to Chemical Examiner on 24.05.2022. Thus, in such circumstances in order to establish safe custody of the parcel as well as it's safe transmission upto its delivery to the Chemical Examiner at Rohri, the prosecution was liable to have adduced evidence of dispatcher P.C Saleemullah, who had to explain as to where he kept the parcel from 23.05.2022 to 24.05.2022 because the distance between Police Station Wada Machiyoon of District Khairpur could easily be covered within few hours. Consequently, the prosecution failed to establish the chain of keeping the parcel in safe custody, it's safe transmission and delivery to the Chemical Examiner. The Chemical Report though is in positive confirming the contraband material being Charas but could not be relied upon in absence of safe custody and transmission and thereby the chain of custody had been compromised and in such circumstances false implication of the accused in this case could not be ruled out. The reliance in this regard is placed upon the case of "Lal Bux alias Lal v. The State" (2023 Y L R 321) [Sindh (Hyderabad Bench)].

13. We have arrived at the conclusion that prosecution has failed to prove that the Charas was in safe custody at Malkhana. The delay of one day in receiving the parcel by the chemical examiner lost its authenticity as the prosecution failed to produce Dispatcher P.C Saleemullah to explain about sanctity of the parcel if remained intact.

14. In these circumstances discussed above, sufficient doubt has been created. It is settled law that it is not necessary that there should be many circumstances creating doubt. If there is a single circumstance, which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right. The reliance in this regard, is placed upon case of 'Tariq Parvez v. The State' [1995 SCMR 1345] wherein it has been held by Supreme Court of Pakistan as under:

"For giving benefit of doubt to appellant it is not necessary that there should be many circumstances creating doubts. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as matter of right".

15. For the above discussion and reasons, while allowing the instant appeal, the impugned judgment dated 28.11.2022 is set aside and the appellant is acquitted of the charge. These are the reasons for our short order, announced on 3<sup>rd</sup> August, 2023.

JUDGE

JUDGE