

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Appeal No.D-06 of 2024

Present:

Mr. Justice Mahmood A. Khan

Mr. Justice Amjad Ali Sahito

Appellant : Mst. Noor Jahan Wife of Muhammad Sadique, through Mian Taj Muhammad Keerio, Advocate,

Complainant : The State through Mr. Nazar Muhammad Memon, Additional Prosecutor General, Sindh.

Date of hearing : **15.01.2025**

Date of decision : **15.01.2025**

JUDGMENT

AMJAD ALI SAHITO, J;- This judgment shall dispose of the fate of the instant Criminal Appeal filed by the above-named appellant/accused, assailing the judgment dated 11.01.2024, passed by learned Model Criminal Trial Court-I/Special Judge, for Control of Narcotics Substance Act, Hyderabad, in Special Case No.254 of 2022 (*Re.The State Vs. Mst. Noor Jahan*), the outcome of FIR bearing No.274 of 2022, offence under sections 9 (1) 3 (c) of Control of Narcotic Substance Act, 1997, registered with Police Station, Husri Hyderabad, whereby she was convicted for an offence punishable U/S: 6/9 (1) 3 (c) of Control of Narcotics Substance Act, 1997, and sentenced to undergo rigorous imprisonment for *nine years* and to pay a fine of rupees eighty thousand or in default thereof, to undergo simple imprisonment for three months more, with the benefit of Section 382-B Cr.PC.

2. The gist of the prosecution case is that on 04.12.2022 a police party under the supervision of complainant ASI Ashiq Ali Abro was patrolling the vicinity of PS Husri in order to prevent the crime. During visiting, said ASI received

spy information that a lady possessing Chars for sale is available at Ali Asgharabad Colony, Old Station Husri. Police party reached at place of offence at 1700 hours apprehended lady who disclosed her name to be Mst. Nor Jahan and recovered from her possession **2050 grams Chars** which was sealed at spot under the memo of arrest and recovery and with the signatures of witnesses / mashirs HC Muhammad Aijaz and LPC Shahnaz. Then they took the accused, recovered case property at PS where complainant lodged the instant FIR against the accused on behalf of State.

3. After completion of the usual investigation, the investigation officer submitted a report under section 173 Cr.PC before the competent Court of law and thereafter the case papers were supplied to the accused under receipt.

4. The charge against present appellant/accused was framed to which she pleaded not guilty and claimed trial.

5. In order to establish the accusation against the present appellant/accused, the prosecution examined PW-01 complainant/ASI Ashique Ali Abro at Exh.03, he produced numerous documents at trial to support his evidence. PW-02 WHC Hajjan Malkhana Incharge at Exh.04, who kept the property under exhibit 4/A in PS Malkhana after receiving from Investigating Officer Imam Dino Rahipoto. PW-03 is the investigating officer namely Imam Dino Rahipto at Ex.05 recorded the FIR and conducted investigation in this case. Finally PW-04 HC Muhammad Aijaz at Exh.06 acted as mashir and also took the sealed parcel of case property to the chemical examiner Karachi for its analysis. Thereafter, learned State Counsel closed the side of prosecution vide statement kept on record at Exh.07.

6. The appellant/accused in her statement recorded in terms of Section 342 Cr.PC, denied the allegations leveled against her by pleading her innocence. However, she did not examine herself on oath nor led any evidence in her defence.

Appellant/accused Mst. Noor Jahan in her last question stated as under;

“I was not arrested as per prosecution case. I was apprehended by police from my home in day light time and in this respect I produce four photographs (Exh.8/A to Exh.8/D respectively). My daughter Irum has purchased an immovable property from one Verandar Kumar whereon the relatives of vendor (Verandar Kumar) have harassed and extended threats to my daughter Irum whereon she filed Cr.M.A.No.5162/2022 under section 22-A Cr.P.C before the court concerned, in which legal protection was allowed. I produce photocopy of sale agreement and certified copy of Cr.M.A.No.5162/2022 at Exh.8/E & Exh.8/F respectively which are same and correct. I am innocent. The case property is managed and foisted.”

7. The learned trial Court on evaluation of the evidence and after hearing the counsel for the parties, convicted and sentenced the appellant/accused vide **Judgment dated 11.01.2024**, which she has impugned before this Court by preferring instant Criminal Appeal.

8. Mian Taj Muhammad Keerio, learned Counsel for the appellant inter-alia contended that as per prosecution the sample was sent to chemical examiner on 05.12.2022 through HC Muhammad Aijaz and received on 09.12.2022 with delay of five days when the office of chemical examiner situated at Karachi can be reached safely within three hours, hence tampering with the case property during search period could not be ruled out so also safe custody and safe transit of alleged Narcotics substance has not been proved by the prosecution witnesses; that the appellant is innocent and has been falsely implicated in this case at the instance of relatives of Verandar Kumar with whom there is an immovable property dispute; that alleged incident took place at a thickly populated area but no independent person has been cited as witness; that there are material contradictions in the evidence of both the prosecution witnesses which created doubt in the prosecution and it is a well settled law that if a single circumstance creates doubt, its benefit goes to the accused, but the learned trial court did not

consider the same. He added that the alleged narcotic substance was not recovered from exclusive possession of the appellant. Learned counsel next submitted that no question was put to the appellant in her statement u/s 342 Cr.P.C regarding description of alleged narcotics alleged to have been found on the chars. He submitted that impugned Judgment is the result of non-reading and misreading of the evidence and is liable to be set aside. Learned counsel further contended that prosecution has failed to bring independent and trustworthy evidence against the appellant to prove charge against her, therefore, her conviction is liable to be set-aside. He lastly contended that the prosecution has failed to prove its case against the appellant, thus according to him under the above-mentioned facts and circumstances, the appellant is entitled to her acquittal

9. On the other hand, Mr. Nazar Muhammad Memon, Additional Prosecutor General for the State while supporting the impugned judgment has argued that the prosecution has proved its case against the appellant who was found in possession of huge quantity of narcotic substance; that the police officials had no enmity to foist such a huge quantity of charas upon the appellant at their own; he thus lastly prayed for dismissal of instant appeal.

10. We have heard learned counsel for the appellant, learned Additional Prosecutor General for the State and have minutely gone through the record with their able assistance.

11. It appears from the record that alleged Chars weighing **2050** grams was effected from the appellant Mst. Noor Jahan on 04.12.2022 and investigating officer Imam Dino Rahipoto sent case property on 05.12.2022 for its chemical examination. However, according to PW-3 / investigating officer SIP Imam Dino Rahipoto that he wrote a letter to SDPO Husri, Hyderabad for obtaining necessary permission to send the case property for chemical examination. He has produced such letter at Ex.05/K which is available at page No.34 the paper book. It reflects that on 05.12.2022 through HC Muhammad Aijaz the

case property / Chars was sent to the office of chemical examiner wherein it is clearly written that said Chars was sent through HC Muhammad Aijaz for its chemical examination and report along-with photocopies of FIR, memo of arrest so also permission letter of the SDPO Husri. If, it is true that on 05.12.2022 the Chars was sent to the office of Chemical Examiner through HC Muhammad Aijaz but the report received from office of chemical examiner available in paper book at Ex.05/L reflects that Chars received on 09.12.2022 with memorandum of dated 05.12.2022 through HC Muhammad Aijaz. However, during the evidence, the I.O of the case has tried to clarify that on 09.12.2022 after obtaining the case property from Incharge Malkhana of Police Station Husri, he handed over to HC Muhammad Aijaz for depositing the same in the office of chemical examiner Karachi for its examination and report. However, it is not clear that after receiving the property from the I.O, HC Muhammad Aijaz has again deposited the same in the Malkhana or not. It has not been established by the prosecution that where and whose custody the sample parcel remained from **04.12.2022 to 09.12.2022**, therefore, safe custody and safe transmission is not proved. It is also shrouded in mystery as to where and in whose custody the sample parcel remained. So the safe custody and safe transmission of the sample parcels was not established by the prosecution and this defect on the part of the prosecution by itself is sufficient to extend benefit of doubt to the appellant. It is to be noted that in the cases of 9(c) of CNSA, it is duty of the prosecution to establish each and every step from the stage of recovery, making the 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 in such like offences the benefit must have been extended to the accused. Reliance in this behalf can be made upon 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) and **Javed Iqbal v. The State** [2023 SCMR 139] wherein the Hon'ble Supreme Court of Pakistan has held as under:

“In a case containing the above mentioned defects 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. So the prosecution has failed to prove the case against the petitioner and his conviction is not sustainable in view of the above mentioned defects.”

12. Record further reveals that complainant Ashique Ali Abro in his chief deposed that **“on 04.12.2022 I was posted at police station Husri, Hyderabad and on same date, I along with HC Muhammad Aijaz, LPC Gul Naz, PC Nazeer Ahmed and DHC Ghulam Ali left police station for area patrolling and prevention of crimes within jurisdiction on police mobile No.SPE-263, vide departure roznamcha entry No.16 at about 1600 hours.** While, he in his cross examination stated that **“WPC namely Liaquat has prepared memo of arrest and recovery on my dictation who has not been cited as witness/mashir in this matter nor his name has been shown in any police paper.** Surprisingly, nowhere it is mentioned either in FIR or any police document including police diary that WPC Liaquat was ever accompanied with complainant ASI Ashique Ali Abro and police party on the day of incident viz.04.12.2022 when the alleged recovery of Chars was made from appellant Mst. Noor Jahan then how he prepared memo of arrest and recovery on the dictation of said Ashique Ali Abro, as such, presence of said Liaquat is become doubtful suggesting that all the formalities were completed at police station but not at spot.

13. The prosecution also examined HC Muhammad Aijaz who took the case property under entry No.09 for depositing the same in office of chemical examiner whereas, **PW-2 HC Hajjan** who is alleged to have received case property from investigating

officer and kept it in Malkhana, has admitted in his cross that ***“It is correct to suggest that I have not produced roznamcha register of police station, pertaining to the entry No.09 consequence thereof the HC Muhammad Aijaz left police station along with case property for depositing the same in the office of chemical examiner Karachi..... It is correct to suggest that malkhana entry No.103 of register No.19 does not show the time for depositing the case property.*** It is crystal clear from the admission of said HC Hajjan that he has failed to produce single entry showing movement with regard to leaving of police station by HC Muhammad Aijaz to deposit case property at chemical examiner’s office, therefore, it could be safely concluded that prosecution has failed to prove that actually HC Muhammad Aijaz visited office of chemical examiner for depositing case property or the same has been foisted upon the appellant.

14. The overall discussion involved a conclusion that the prosecution has failed to prove the guilt against the present appellant beyond any reasonable doubt and it is a well-settled principle of law that for creating the shadow of a doubt, there doesn't need to be many circumstances. If a single circumstance creates reasonable doubt in the prudent mind, then its benefit is to be extended in favour of the accused not as a matter of grace or concession, but as a matter of right. The reliance is placed on the case of **Muhammad Masha v. The State (2018 SCMR-772)**, wherein the Hon’ble Supreme Court of Pakistan has held that:

“4. Needles to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then accused would be entitled to the benefit of such doubt, not as a matter of grace and concession but as a matter of right. It is based on the maxim, “it is better that ten guilty persons be acquitted rather than one innocent person be convicted”. Reliance in this behalf can be made upon the cases of Tariq Pervez v. The State(1995 SCMR-1345),

Ghulam Qadir and 2 others v. The State(2008 SCMR-1221), Muhammad Akram v.s The State(2009 SCMR-230) and Muhammad Zaman v.s The State(2014 SCMR-749).

15. In this case, the learned trial Court has not evaluated the evidence in its true perspective and thus arrived at an erroneous conclusion by holding the appellant guilty of the offence. Resultantly, the instant appeal was allowed through our short order dated 15.01.2025. Consequently, the conviction and sentence awarded to the appellant were set-aside and she was acquitted of the charge. She was ordered to be released from the custody forthwith if she was not required in any other case/crime and these are the reasons for the same.

JUDGE

JUDGE

Muhammad Danish