

THE HIGH COURT OF SINDH KARACHI

**Criminal Appeal No. 208 of 2023**

*(Qamber Vs The State)*

---

<b>DATE</b>	<b>ORDER WITH SIGNATURE(S) OF JUDGE (S)</b>
-------------	---

---

Before:-

Mr. Justice Salahuddin Panhwar

Mr. Justice Adnan-ul-Karim Memon

For hearing of main case

**Date of hearing and order: 27.11.2024**

Mr. Mamoon A. K Sherwany advocate for the appellant.

Mr. Ali Hyder Saleem APG.

\*\*\*\*\*

**J U D G M E N T**

**Adnan-ul-Karim Memon, J:-** This Criminal Appeal, assailing the Judgment dated 14.03.2023 passed by the learned Ist. Additional District & Sessions Judge/MCTC/Special Court (CNS) Karachi Central, passed in Special case No. 109/2022, (*re-The State v Qamber*) whereby the appellant was convicted for the offense under section 6/9 C CNS Act, and sentenced to suffer R.I for 10 years and to pay a fine of Rs. 500,000/- (Rupees Five lac only) and in default thereof, he shall suffer S.I for 25 days more. The appellant was extended the benefit of Section 382-B Cr. P.C. for the period he had already remained (in custody in this case since his arrest). An excerpt whereof is reproduced as under:-

**POINT No.4**

*“As a result of my findings on the Point No.1 to 3 accused Qambar son of Khair Muhammad is proved guilty of committing the offense u/s 6 of CNS Act, 1997 which is punishable under section (C of the said Act.*

*Before parting with this judgment it is pertinent to mention herein that the legislature has brought an amendment to the CNS Act 1997 on 06<sup>th</sup> September 2022 prior to that the same was amended by the provincial assembly of Sindh vide Amended Act 2021 that was passed on 04<sup>th</sup> February 2021. Coming to the case in hands it is noticed that the instant FIR has been registered against the accused on 30.12.2021, hence the offence committed by the accused comes within the purview of the amendment made by Sindh Assembly on 4<sup>th</sup> Feb-2021 in which the punishment for committing the offense punishable u/s 9-C is death or imprisonment for life are imprisonments for a term which may extend the fourteen years and shall also be liable to fine which may be up to one million, if the quantity of Narcotic Drug Category (i) and (ii), the psychotropic substance is controlled substance exceeds the limit specified in clause (b).*

*Since the accused is the first offense, and has no previous criminal record, this court by taking a lenient view convicted the accused Qamber son of Khair Muhammad under section 265-H (ii) Cr. P.C for committing offence u/s section 6 9-C Control of Narcotic substances Sindh Amendment Act, 2021 and sentenced him to suffer R.i 10 years and to pay a fine Rs. 500,000/- (Rupees Five lac only) and in default thereof, he shall suffer S.I for 25 days more. Accused is also an extended benefit of Section 382-B Cr. P.C. for the period he has already remained (in custody in this case since his arrest. The accused is present on bail. He is taken into custody and remanded to jail with a conviction warrant for serving his sentence period as per the jail manual. The bail bond of the accused stands canceled and surety discharged.*

2. Facts of the prosecution case are that Appellant Qamber was arrested on December 30, 2021, by Gulbahar Police, for possession of 310 grams of Ice (Methamphetamine). He was charged under Sections 6 and 9(c) of the CNS Amended Act, 1997, in connection with FIR No. 416/2021 under section 6/9 ( c ), CNS Act 1997, registered at PS Gulbahar, Karachi. The case was investigated by SIP Tanveer Alam, who visited the crime scene, recorded statements of PWs, and deposited the recovered Ice for chemical analysis on 05.01.2022 as per certificate of Chemical Analyzer dated 24.01.2022.

3. A formal charge was framed, and the appellant pleaded not guilty. The prosecution examined PW-1 complainant/ SIP Jawaid Bhatti at Exh 3, he produced documents which were exhibited from Exh 3/A to Exh.3/E. PW-2 PC-Fateh Muhammad was examined at Exh 04. PW-3 SIP/I.O Muhammad Tanveer Alam was examined at Exh. 05, who produced documents that were exhibited from Exh 5/A to Exh 5/F, PW-4 WHC-Faisal was examined at Exh 06., who produced entry No. 134/2022 of register No 19 at Exh.6/A.

4. Statement of the appellant under Section 342 Cr.PC was recorded at Exh. 08, in which he denied the allegations of the prosecution professed his innocence, and claimed his false implication in this case. However, he opted not to examine himself on oath, nor produced any witness in his defense. After completion of the trial, the appellant was found guilty of possessing narcotics (Ice) in terms of Section 6 of the CNS Act, 1997, and was sentenced to 10 years imprisonment and a fine of Rs.500,000/-. The trial court considered the appellant's lack of prior criminal record and the relevant amendments to the law while determining the sentence.

5. The learned counsel for the appellant argued that there were inconsistencies in the prosecution's evidence and that the recovered items were falsely planted on the appellant. Learned counsel for the appellant has contended that the appellant is innocent and has falsely been implicated in this case; that the impugned judgment dated 14.03.2023 passed by the learned trial court is based on misreading and non-reading the evidence and material on record as such arbitrary perverse illegal decision is liable to be set aside. He has further contended that there are contradictions in the evidence of prosecution which does not warrant conviction. He has contended that nothing was recovered from the possession of the appellant and the same recovery was foisted by the complainant on refusal of his illegal demands of payment. He has next contended that there is no direct or indirect evidence available with the prosecution to connect the appellant with the alleged offense. He submitted that the case property was received by the chemical analyzer on 05.01.2022 whereas the alleged offense occurred on 30.12.2021 after a delay of six days, which lacks transparency in the investigation as such a conviction cannot be maintained in such a scenario. He lastly contended that the order passed by the learned trial court is not proper and liable to be set aside and acquitted the accused from the said charge. He prayed for allowing the appeal.

6. The learned Additional PG argued that the prosecution had met their burden of proof in terms of Section 29 of the CNS Act, 1997. He stated that the defense had the burden to prove the appellant's innocence under Section 29 of the CNS Act, 1997, and Article 121 of the Qanoon-e-Shahadat Order, 1984, which he failed to do so, therefore, the decision of the trial court is based on ocular account coupled with recovery of 310 grams of Ice supported by Chemical Examiner Report. He requested this court to dismiss the appeal.

7. We have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

8. The issues for determination are as follows:-

- (i) *Whether the appellant was arrested on December 30, 2021, and 310 grams of ICE was recovered?*

(ii) *Whether the recovered items properly sealed and transmitted to the chemical examiner within the time under the CNS Rules?*

9. The trial court found the testimonies of PW-1 Complainant SIP Jawaid Bhatti, PW-2, PC-Fateh Muhammad, PW-3, SIP/ the investigating officer Muhammad Tanveer Alam, and PW-24, WHC/HM Faisal credible, supported by documentary evidence. It is also opined that the recovered drugs (Ice) were handled and analyzed by the Chemical Examiner. The trial court concluded that the appellant was found guilty of possessing 310 grams of ICE, in violation of the CNS Act.

10. We have noticed that **PW1, SIP Jawaid Bhatti**, testified that they began their patrol at 2:30 AM, received a tip-off at 6:20 AM, and arrested the appellant at 6:30 AM. They spent 45 minutes at the scene, labeled the recovered items, and returned to the police station at 7:30 AM. He further deposed that a site inspection was conducted at 10:15 PM without private witnesses, though prior information.

11. **PW2, PC Fateh Muhammad**, stated that they began their patrol at 8 PM, received a tip-off at 6:20 AM, and arrived at the crime scene at 6:30 AM. SIP Jawaid Bhatti arrested the appellant in a crowded area near Liary Expressway. They spent 45 minutes at the scene, prepared the memo, and returned to the police station at 7:40 AM. HC Kamran was the duty officer. However, he does not disclose the prior information as disclosed by SIP Jawaid Bhatti.

12. **PW-3 SIP/1.O Muhammad Tanveer Alam** deposed that we left the police station at 10:15 PM on a police mobile and arrived at the crime scene within 15 minutes. No private person was present to witness the site inspection. He spent 30 minutes at the scene. He returned to the police station at 10:50 PM and personally sent the recovered Ice for chemical analysis. He denies any allegations of unfair investigation or false testimony. However, he has failed to disclose the factum as to why he kept the alleged 310 grams of (Ice) and delivered it to the Chemical Analyzer on 05.01.2022, though the alleged recovery was made on 30.12.2021, which shows that the case property was not despatched for 6 days which creates doubt in the prosecution story.

13. **PW4, WHC Faisal**, testified that he received a sealed parcel, Rs. 200, and a mobile phone as evidence in FIR 416/2021. He recorded this in register on entry No. 134/2022 (Exh. 6/A). He handed over the 310 grams of Ice to the IO the next day. If his statement is believed to be correct question arises as to why the I.O. kept the case property with himself for five days and dispatched it to the Chemical Analyzer on 05.01.2022, which creates doubt in the prosecution story.

14. We have noticed that the sample of purported narcotics was received by the chemical analyzer on January 5, 2022, from the I.O of Gulbahar Police Station, though the alleged recovery was made on December 30, 2021. The sample must be sent to the lab within 72 hours of seizure. All items in the police station's storeroom must be recorded in Register No. XIX. In the present case, the prosecution failed to send the drug sample to the lab within 72 hours as required by the law. The prosecution has not provided a valid reason for the 6-day delay. The issue raised has created reasonable doubt, but the lower courts failed to consider this aspect of the case in favor of the appellant. On the aforesaid proposition, we are guided by the decisions of the Supreme Court in the cases of *Asif Ali v The State* **2024 SCMR 1408**, *Muhammad Hazir v The State* **2023 SCMR 986**, *Qaiser & another v The State* **2022 SCMR 1641**.

15. According to the version of the prosecution, they failed to associate the private witnesses to oversee the recovery proceedings in terms of the ratio of the judgment passed by the Supreme Court in the case of *Zahid Sarfaraz Gill v The State* **2024 SCMR 934** whereby it has been held that the police and members of the Anti-Narcotic Force failed to record or photograph at the time of search of the accused when search, seizure or arrest is made, as the law permits the use of modern device or techniques.

16. In the cases under CNSA 1997 the prosecution must establish every step from the step of recovery, making of the sample parcel, safe custody sample for transfer, and safe transmission of the sample transfer 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. On the aforesaid proposition, we are fortified to the decision of the Supreme Court in the case of *Mst. Sakina Ramzan v The State* **2021**

**SCMr 451, *Qaiser Khan v The State* 2021 SCMR 363.** In the instant case statement of prosecution witnesses revealed that a sample parcel of the Ice allegedly recovered on 30.12.2021 were handed over to the Investigating Officer for transmission to the office of the Laboratory on 31.12.2021 and the same was received by the office of Chemical Analyzer on 05.01.2022 i.e. much beyond 72 hours of the seizure in violation of Rule 4(2) of Rules of 2001 for which no plausible explanation has been offered by the prosecution.

17. All the above material illegalities/infirmities have created reasonable doubt in the case of the prosecution. Therefore, conviction and sentence awarded by the trial court to the appellant vide judgment dated 14.03.2023 in Special Case No. 109 of 2022 is not sustainable under the law and is liable to be set aside.

18. Given the prosecution's failures, we conclude that the prosecution has not proven the charges against the appellant beyond reasonable doubt as it is established law that the prosecution must prove each step in the drug chain, recovery, sampling, custody, and transmission to the lab. If any link is missing, the accused benefits from the doubt.

19. The lower courts misjudged the evidence, leading to the wrongful conviction. We overturned the conviction and acquitted the appellant vide short dated 27.11.2024 with the direction that the appellant be released forthwith in the present crime if not required in any other custody case.

20. The above are the reasons for our short order dated 27.11.2024.

JUDGE

JUDGE