IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Special Criminal Jail Appeal No. D-37 of 2024

Appellant:	**Imtiaz Ali Shaikh** through his counsel Mr. Rukhsar Ahmed Junejo, Advocate.
Respondent:	**The State**, through Mr. Aftab Ahmed Shar, Additional Prosecutor General.

Date of Hearing: **12-02-2025**
Date of Decision: **12-02-2025**

J U D G M E N T

RIAZAT ALI SAHAR, J- Through this judgment, we intend to dispose of instant Special Criminal Jail Appeal. The appellant, being aggrieved and dissatisfied with the impugned judgment dated 12.02.2024, passed by the learned Additional Sessions Judge-I/Special Judge for Control of Narcotic Substances (CNS), Khairpur, arising out of FIR No.29/2023, registered at Police Station Ahmedpur under offence punishable under Section 9(b) of the Control of Narcotic Substances Act, 1997, has preferred the instant appeal. By the said judgment, the appellant was convicted and sentenced to rigorous imprisonment for five years, along with a fine of Rs. 30,000/-. In the event of default in payment of the fine, he was further directed to undergo simple imprisonment for six months.

2. Precisely, the prosecution's version, as narrated in the FIR, is that on behalf of the State, the complainant stated that on 09.05.2023 at 1300 hours, he, along with police personnel PC-2233 Shahnawaz Shar and PC-958 Mir Hassan Siyal, all in uniform and duly armed, embarked on a patrolling duty within their jurisdiction

in a government vehicle bearing registration No. SPE-630, under the supervision of DPC Hafeezullah Abro, as per Roznamcha Entry No. 11. While patrolling from Link Road Ahmedpur to Wistra, at approximately 1330 hours, they reached Lal Shah-Ja-Tala, where they observed a person approaching from the western side of the road, carrying a blue-coloured plastic bag. Upon noticing the police vehicle and officers in uniform, the individual attempted to flee. Finding his behaviour suspicious, the complainant immediately stopped the vehicle, disembarked along with his staff, tactically surrounded the suspect, and apprehended him at a distance of about 15 to 20 paces. Efforts were made to summon private witnesses, but in their absence, PC Shahnawaz Shar and PC Mir Hassan Siyal were designated as Mashirs. Upon inquiry, the detained individual identified himself as Imtiaz Ali, son of Manzoor Ahmed, by caste Shaikh, resident of Village Nawab Shaikh, Taluka Kingri. The plastic bag in his possession was examined and found to contain "**Hemp**". Upon further questioning, the accused admitted that he consumed and sold hemp and that he had procured the contraband from one Karim Dino, son of Ali Bux, by caste Khuwaja, resident of Village Khuwaja. The recovered hemp was weighed on the spot, amounting to 3,000 grams, and was duly sealed. A personal search of the accused was conducted, but no other incriminating items were found. Finding him guilty of an offence punishable under Section 9(b) of the Control of Narcotic Substances Act, 1997, the complainant formally arrested him and prepared a memo of arrest and recovery in the presence and with the

signatures of the aforementioned Mashirs. Thereafter, the accused, along with the recovered contraband, was taken into custody and transported to the police station, where the present case was registered on behalf of the State.

3. It appears from the record that after completing the usual investigation challan was submitted against the appellant and trial Court framed charge against him to which he pleaded not guilty and claimed trial.

4. The prosecution, in order to establish its case, has examined a total of four witnesses. These include PW-1 Muhammad Sukhiyal Rajper, ASI, PW-2 Shahnawaz, PC, PW-3 Ali Hassan, WHC, and PW-4 Ameer Hussain, Sub-Inspector. Upon recording the testimonies of these witnesses, the prosecution formally closed its side.

5. The trial court recorded the statement of the accused under section 342, Cr.P.C., wherein he pleaded innocence and asserted that he had been falsely implicated in the case.

6. The learned trial Judge, after hearing the learned counsel for the parties and examining the evidence available on record, convicted and sentenced the appellant as mentioned above through the impugned judgment. Consequently, the appellant has preferred the present Criminal Jail Appeal through jail authorities against the said judgment, subsequently the same was represented through his counsel.

7. Learned defence counsel, Mr. Rukhsar Ahmed Junejo has strenuously contended that the accused is entirely innocent and has

been falsely implicated in the present case. It is asserted that the complainant has maliciously foisted upon the accused a quantity of hemp weighing 3,000 grams, thereby fabricating a baseless charge against him. Furthermore, learned counsel has submitted that the complainant, the mashir, and the Investigating Officer are all police officials, thereby rendering them interested witnesses whose testimony ought to be scrutinised with caution. He has further argued that there has been a glaring violation of Section 103 of the Code of Criminal Procedure, as no independent or private individuals from the locality have been cited as witnesses to the alleged recovery, which significantly undermines the prosecution's case. Additionally, learned counsel has pointed out material contradictions and inconsistencies in the testimonies of the prosecution witnesses, which cast serious doubts upon the veracity of the allegations levelled against the accused. It has further been contended that even the Chemical Examiner's Report is tainted with irregularities and appears to have been manipulated, thereby failing to lend any credence to the prosecution's version of events. In view of these infirmities, learned counsel has emphasised that the case of the prosecution is not free from reasonable doubt and, as such, does not meet the requisite standard of proof beyond reasonable doubt. Lastly, it has been vehemently argued that the accused has been deliberately and falsely booked in the instant case by the police, without any cogent or legally sustainable evidence against him. In light of the aforementioned circumstances, learned

defence counsel has fervently prayed for the acquittal of the accused, in the paramount interest of justice.

8. Conversely, learned Additional P .G representing the State, has vigorously contended that the prosecution has successfully examined its witnesses, all of whom have fully supported the prosecution's version of events. It has been asserted that the accused was apprehended at the scene of the offence, and a substantial quantity of contraband material, namely hemp weighing 3,000 grams, was recovered from his possession, found contained in a plastic shopping bag. The recovered substance was subsequently sent to the Chemical Examiner's Laboratory, which, upon thorough examination, issued a positive report confirming that the property deposited for analysis was indeed "**Hemp**". Furthermore, learned Additional P.G has argued that while the complainant and the mashirs are police officials, their testimonies hold the same evidentiary value as those of private witnesses. He has stressed that the requirement under Section 103 of the Code of Criminal Procedure has been expressly excluded by virtue of Section 25 of the Control of Narcotic Substances Act, 1997, the rationale being that private individuals are generally reluctant to testify against narcotics traffickers due to the imminent threat to their lives in cases of such nature. Additionally, learned counsel has emphasised that, given the significant quantity of hemp allegedly recovered, it is highly improbable that the police would fabricate such a case by incurring substantial financial expenses out of their own pockets merely to falsely implicate the accused. It has further

been contended that there exists no discernible ill will or malice on the part of the police party against the accused, thereby negating any inference of false implication. In view of the overwhelming evidence adduced by the prosecution, it has been vehemently asserted that the recovery of the alleged contraband stands proven beyond the shadow of a doubt. Accordingly, learned APG has prayed for the conviction of the accused in the interest of justice.

9. I have given due consideration to the arguments advanced before me and have meticulously perused the record.

10. The complainant, while adducing evidence before the learned trial court, testified that following the purported arrest of the accused, he formally handed over the case property, including the seized narcotic substance, the accompanying police documents, and the accused himself, to the Investigating Officer, namely SIP Ameer Hussain Mahar, at 1450 hours, as per Roznamcha Entry No. 13. However, in stark contrast, the Moharar/ Incharge *Malkhana* deposed that "SIP Ameer Hussain has handed over the case property." This apparent contradiction raises substantial doubts regarding the chain of custody and the integrity of the prosecution's case. A meticulous examination of Roznamcha Entry No. 13 reveals that it merely records the handing over of a copy of the FIR to SIP Ameer Hussain Mahar, with no mention whatsoever of the case property. This omission is of grave consequence, as it casts serious doubt on whether the alleged contraband was lawfully secured, preserved, and transmitted in accordance with the prescribed legal procedures. It is a settled

principle that any lapse in maintaining a clear and uninterrupted chain of custody materially affects the probative value of the alleged recovery, entitling the accused to the benefit of doubt. Furthermore, the *Malkhana* Register suffers from critical deficiencies, as the columns pertaining to the date and the name of the individual recording the entry remain conspicuously blank. This procedural irregularity is *fatal to the prosecution*, as it demonstrates non-compliance with the mandatory legal requirements governing the safe custody and documentation of case property. The absence of proper record-keeping not only undermines the credibility of the prosecution's case but also suggests possible manipulation or mishandling of the alleged contraband. Moreover, upon a thorough scrutiny of the case record, it transpires that the weight of the recovered property appears to have been tampered with, further exacerbating the inconsistencies in the prosecution's version. In view of the foregoing, it is manifestly clear that the prosecution's case is fraught with serious procedural irregularities, thereby rendering it vulnerable to legal scrutiny and significantly weakening its evidentiary worth. Given these substantial lacunae, the benefit of doubt must necessarily accrue in favour of the accused in accordance with the established principles of criminal jurisprudence.

11. A fundamental principle in criminal jurisprudence is the doctrine of *chain of custody*, which dictates that evidence, particularly in cases involving narcotic substances, must be preserved in a manner that ensures its integrity remains

unblemished from the time of seizure until its presentation before the court. Any break, inconsistency, or ambiguity in this chain creates a substantial dent in the prosecution's case. In the instant matter, the prosecution has neither provided a transparent account of the handling and transfer of the alleged contraband nor substantiated the claim that the property was safeguarded against possible tampering, substitution, or contamination. The absence of photographic evidence, independent witnesses, or a verifiable documentation trail raises serious concerns regarding the legitimacy of the alleged recovery.

12. In the legal context, the maxim ***falsus in uno, falsus in omnibus*** (false in one thing, false in everything) applies, meaning that if one part of the evidence is found to be tampered with or unreliable, it casts doubt on the entirety of the evidence. In the present case, the failure of the complainant to follow established procedures raises serious concerns about the credibility of the evidence and casts doubt on the entire prosecution's narrative. In the case of ***Mst. Sakina Ramzan v. State 2021 SCMR 451***, it has been held as follows by the Honourable Supreme Court:-

> ***"The chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples makes the Report of the Chemical Examiner unsafe and unreliable for justifying conviction of the accused".***

13. The absence of independent and neutral witnesses at critical junctures, particularly during the alleged recovery and subsequent

transfer of the case property, further weakens the prosecution's version. While *Section 103* Cr.P.C, which mandates the presence of private witnesses during searches and recoveries, is explicitly excluded in narcotics cases by virtue of *Section 25* of the Control of Narcotic Substances Act, 1997, superior courts have consistently held that such exclusion does not obviate the necessity for the prosecution to justify its failure to procure independent witnesses as seen in the case of ***Azhar Ali alias Zeeba v. The State [2024 MLD Quetta 1407].*** The prosecution's failure to provide any plausible explanation as to why no independent witness was associated with the proceedings gives rise to the presumption "***omnia praesumuntur contra spoliatorem***"—all things are presumed against the one who tampers with or fails to preserve evidence properly. Moreover, the evidentiary value of the Roznamcha Entry itself remains questionable, as it is nothing more than an internal police record, which, by its very nature, lacks independent probative worth unless corroborated by external evidence. The absence of any verifiable means to confirm that the case property remained untainted between the time of its seizure and its supposed transfer to the Investigating Officer raises a reasonable likelihood of tampering, thereby casting grave doubt on the prosecution's assertions.

14. Another critical lapse in the prosecution's case pertains to the Chemical Examiner's Report, which, far from lending credibility to the prosecution's version, is itself mired in procedural irregularities. The report, which purportedly confirms the nature of the seized

substance, suffers from unexplained delays, inconsistencies, and a lack of clarity regarding the transit of the contraband to the forensic laboratory. The doctrine of *in dubio pro reo*—when in doubt, favour the accused—thus assumes paramount significance, as the prosecution bears the sole burden of establishing guilt beyond reasonable doubt. Any ambiguity in forensic reporting or the chain of custody must necessarily be resolved in the accused's favour. Moreover, in cases involving narcotics, where the penalties are severe and the presumption of guilt weighs heavily against the accused, the principle of ***"fiat justitia ruat caelum"*** (let justice be done though the heavens fall) mandates strict adherence to procedural safeguards to prevent wrongful conviction. The learned trial court's failure to account for these glaring procedural lapses reflects a misapprehension of the law and an erroneous appreciation of evidence, thereby further vitiating the conviction recorded against the appellant.

15. The prosecution's case is further weakened by the failure of the Investigating Officer to ensure transparency and neutrality in the investigative process. It is a settled principle that an accused person is entitled to a fair and impartial inquiry, free from any taint of bias or prejudice, as enshrined in the maxim ***"nemo debet esse judex in propria causa"*** (no one can be a judge in his own cause). The present case, however, is marked by a conspicuous absence of due process, as the investigation remained exclusively within the control of police officials, all of whom are inherently interested parties. The courts have repeatedly held that an investigation

conducted in such a manner not only erodes the credibility of the prosecution's version but also contravenes the cardinal principle of natural justice—***audi alteram partem*** (let the other side be heard as well). It is also pertinent to note that the prosecution has failed to establish any independent motive for the accused to be carrying such a significant quantity of contraband in broad daylight, in a conspicuous manner, without any attempt to conceal his identity or evade detection until the moment of police intervention. The improbability of such a scenario, when viewed in conjunction with the procedural infirmities highlighted above, further reinforces the inference that the case against the accused is riddled with reasonable doubt.

16. In light of the foregoing, it is manifestly clear that the prosecution has failed to discharge its burden of proving the accused's guilt beyond reasonable doubt. The principles of ***"in dubio pro reo, falsus in uno, falsus in omnibus,* and *fiat justitia ruat caelum"*** collectively demand that, where there exist material contradictions, lapses in the chain of custody, absence of independent corroboration, and forensic irregularities, the benefit must necessarily be extended to the accused. The learned trial court, in convicting the appellant despite these glaring infirmities, committed a grave miscarriage of justice, which must be rectified in the interest of equity and fairness. The Supreme Court in this regard has explained the term "***the accused is favourite child of law"*** in ***Muhammad Riaz v. Khurram Shehzad and another [2024 SCMR 51]*** as under:

> *12. We are mindful of the phrase that "the accused is the favourite child of law" but it is somewhat enlightening to understand why this axiom was not coined contrariwise to say "the victim is the favourite child of the law". The substratum of this concept is based on the farsightedness and prudence, 'let a hundred guilty be acquitted but one innocent should not be convicted'; or that it is better to run the risk of sparing the guilty than to condemn the innocent. The raison d' tre is to assess and scrutinize whether the police and prosecution have performed their tasks accurately and diligently in order to apprehend and expose the actual culprits, or whether they dragged innocent persons in the crime report on account of a defective or botched-up investigation which became a serious cause of concern for the victim who was deprived of justice. The philosophy of the turn of phrase "the accused is the favourite child of law" does not imply that the Court should grant any unwarranted favour, indulgence or preferential treatment to the accused, rather it was coined to maintain a fair-minded and unbiased sense of justice in all circumstances, as a safety gauge or safety contrivance to ensure an evenhanded right of defence with a fair trial for compliance with the due process of law, which is an integral limb of the safe administration of criminal justice and is crucial in order to avoid erroneous verdicts, and to advocate for the reinforcement of the renowned doctrine "innocent until proven guilty".*

17. Accordingly, this Court finds that the prosecution has failed to prove its case beyond a shadow of reasonable doubt. Therefore, by our short order dated 12.02.2025, impugned judgment of conviction and sentence was set aside and the appellant, *Imtiaz Ali*, son of *Manzoor Ahmed*, was acquitted of the charge under *Section 9(b) of the Control of Narcotic Substances Act, 1997*. He was ordered to be released from custody forthwith unless required in any other case. These are the reasons of our short order.

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