



IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Appeal No.D-75 of 2023

BEFORE:

Mr. Justice Omer Sial,
Mr. Justice Khalid Hussain Shahani

Appellant:

Muhammad Sharif s/o Muhammad
Mithal Katto,
Through Mr. Habibullah G. Ghouri,
Advocate.

State:

Through Mr. Ali Anwar Kandhro,
Additional Prosecutor General.

Date of hearing:

04-03-2025

Date of Judgment:

13-03-2025

J U D G M E N T

Khalid Hussain Shahani, J.- Muhammad Sharif was convicted for offence u/s 9(1)(3)(d) of the Control of Narcotics Substance Act, 1997 in case bearing crime No.37/2023 PS Civil Line, by the learned 1st Additional Sessions Judge (MCTC) Jacobabad; he was sentenced to R.I for 15 years and fine of Rs.500,000/- (five lacs). He would have to remain in jail for one year more, if he not pays the fine, with benefit of section 382-B Cr.P.C.

02. The facts giving rise to the prosecution case are that on 03.04.2023 at about 0045 hours, on spy tip, police party headed by ASI Noor Ahmed Buriro of PS Civil Line, Jacobabad apprehended the appellant being police constable from Kashmore Railway Line near Karimabad Muhalla Jacobabad and effected recovery of 9850 grams Chars. He was arrested, and FIR lodged.

03. Muhammad Sharif pleaded "not guilty" and claimed trial. To substantiate its case, prosecution examined ASI Noor Ahmed (Complainant), PC Anwar Ali (Mashir of arrest and seizer), PC Junaid



Fi
13/3

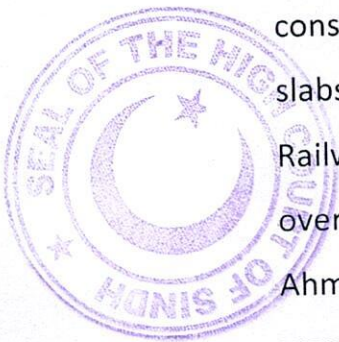
3

Ahmed (carrier of Narcotics samples to Chemical Lab, Rohri), SIP/SHO Mushtaque Ahmed (Investigating Officer), Inspector Ghazanfar Ali (2nd Investigating Officer) and LPC Ashfaqe Ahmed (Purported to be Malkhana In-charge). In his statement u/s 342 Cr.P.C, the appellant denied all wrong doings and claimed, he was taken on 30.03.2023 from his residence situated in Pechuha village, such news item was published in daily "Pehinji Akhbar" and subsequently implicated in the case falsely on 03-04-2023.

04. At the very outset, learned counsel for the appellant submitted, safe custody of the contraband from time of seizer till its deposit to chemical laboratory was not proved at trial. He claimed false implication of the appellant due to departmental intrigue and conspiracy being police official. Several case laws were cited in this respect.

05. Conversely, learned Additional Prosecutor General strongly opposed by submitting that prosecution has successfully proved safe custody of contraband right from seizure till its deposit in chemical laboratory. However, reluctantly agreed, property remains with the WHC being Malkhana Incharge.

06. Glance on the record reflects, the appellant being police constable was arrested on 03.04.2023 at about 0045 hours, and 20 slabs of Chars weighing 9850 grams recovered from him at Kashmore Railway Line, Karimabad Muhalla. ASI Noor Ahmed stated, he handed over custody of accused and case property to I.O/SHO Mushtaque Ahmed soon after lodging of the FIR at 0230 hours. The case property was deposited in Malkhana and subsequently dispatched to Chemical Laboratory through PC Junaid Ahmed on 05.04.2023 with delay of 03 days, which was deposited on the same day. Though LPC Ishtiaque Ahmed examined, said to be the In-charge Malkhana, but he in cross examination testified (I received two parcels of case property and the

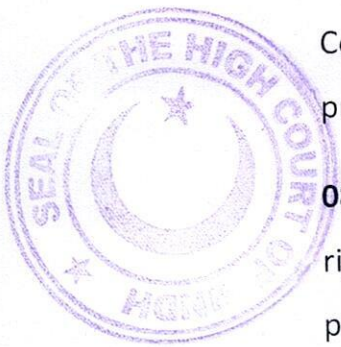


13/3

same two parcels were got out from Malkhana and handed over to SHO. Again says, SHO received back one parcel of sample for sending the same to chemical laboratory). Rule 22.3 of Police Rules 1934, provides, the station clerk is custodian of Government and other property at police station. His duties are further described in Rule 22.7, to be custodian of all Government properties having charge of the storeroom and shall keep the keys thereof and personally superintend all receipts issues there from. Means thereby, the In-charge of Malkhana not examined and an unauthorized person has been examined to fill the lacuna by the prosecution, which is not appreciated. Besides, ASI Noor Ahmed testified by admitting (It is correct to suggest that there are golden stamps on the slabs of Chars which were not mentioned in the memo of arrest and recovery). Contradicting such fact, mashir PC Anwar Ali deposed (It is incorrect to suggest that golden stamps are put on recovered slabs of Chars, but same are not mentioned in the memo of arrest and recovery). The chemical report is silent to such fact, making glaring discrepancy in the prosecution case.

07. Record further reflects, the contradictory statements have been furnished by the witnesses regarding preparation of memo of site inspection. I.O/SHO Mushtaque Ahmed claimed, he was its author. Contradicting such fact, mashir PC Anwar Ali deposed, it was prepared by WPC Nadeem.

08. In the light of Article 10-A of the Constitution of Pakistan, the right to a fair trial is an inviolable fundamental right of every accused person. This constitutional safeguard mandates that the prosecution ensure the production and examination of all the material witnesses. Failure to examine crucial witnesses particularly the In-charge Malkhana, constitutes a serious legal lapse that directly impacts the credibility of prosecution case.



[Handwritten signature]
13/3

5

09. In numerous Judgments, the august Supreme Court has held that if safe custody and transmission of seized Narcotics is not proved at trial, the benefit of such a lapse will go to the accused.

10. In the case of Zahir Shah V. The state (2019 SCMR 2004) it was observed:

"This court has repeatedly held that safe custody and safe transmission of the drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory must be satisfactorily established. This chain of custody is fundamental as the report of the Government Analyst is the main evidence for the purpose of conviction. The prosecution must establish that the chain of custody was unbroken, unsuspecting, safe, and secure. Any break in the chain of custody, i.e safe custody or safe transmission, impairs and vitiates the conclusiveness and reliability of the Report of the Government Analysis, thus rendering it incapable of sustaining conviction".

11. In the case of Javed Iqbal V. The State (2023 SCMR 139) it was held:

"So the safe custody and safe transmission of the sample parcel was not established by the prosecution and this defect on the part of prosecution by itself is sufficient to extent benefit of doubt to the Appellant. It is to be noted that in the cases of 9(c) of NSA, it is the duty of prosecution to establish each and every step from the stage of recovery, making sample parcels, safe custody of sample parcel and safe transmission of sample parcel 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 Buksh and Others (2018 SCMR 2039), Ikramullah and other V. the State (2015 SCMR 1002) and Amjad Ali V. the State (2012 SCMR 577), wherein it was held that 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



f, 13/3

6

prosecution had succeeded in establishing its case against the 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. In the case of Asif Ali and another V. The State (2024 SCMR 1408) it was observed:

"In the cases under CNSA, 1997 it was 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 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".

13. In the case of Muhammad Hazir V. The State (2023 SCMR 986) it was observed:

"After hearing the learned counsel for the appellant as well as the learned State counsel and perusing the available record along with the impugned judgment with their assistance, it has been observed by us that neither the safe custody nor the safe transmission of sealed sample parcels to the concerned Forensic Science Laboratory was established by the prosecution because neither the Muharar nor the constable Shah Said (FC-2391) who deposited the sample parcel in the concerned laboratory was produced. It is also a circumstance that recovery was affected on 10-02-2015 whereas the sample parcels were received in the said laboratory on 13-02-2015 and prosecution is silent as to where remained these sample parcels during this period, meaning thereby that the element of tempering with is quite apparent in the case. 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 Baksh 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 defects on the part of prosecution it cannot be held with any degree of certainty that prosecution has succeeded in establishing

f-12/3



its case against accused person beyond any reasonable doubt”.

14. In the case of Qaiser Khan V. The State (2021 SCMR 363), the Supreme Court held:

“The Forensic Report reflects that the alleged narcotics were received in the laboratory on 11 December, 2012 but evidence on record is silent that where the same remained for two days i.e from 9th December, 2012 to 11th December, 2012. Similarly evidence regarding safe transmission of alleged recovered narcotics to the laboratory for chemical analysis is also missing. The law in this regard is settled by now that if safe custody of narcotics and its transmission through safe hands is not established on the record, same cannot be used against the accused. Reliance in this regard can well be placed on the cases of Mst. Razia Sultana V. The state and another (2019 SCMR 1300) and State through Regional Director, ANF V. Imam Buksh and others (2018 SCMR 2039)”.

15. In the light of dictum laid down by the august Supreme Court and observing that in the present case, Malkhana In-charge not examined, and thus safe custody and safe transmission were not proved. Hence, the defense taken by appellant not lost of sight that on March 03, 2023, he was apprehended from his village Pechuha, such news item published in daily “Pehinji Akhbar” placed on the record and subsequently implicated in the case at the behest of ASI/Incharge-15 Tariq Tareen and DSP Soomro. Conviction, therefore, cannot be sustained. As a result, impugned judgment is set aside, appeal allowed, and the appellant is acquitted of the charge. He is released forthwith, if not required in other custody case.



Certified to be True Copy

Assistant Registrar

(Khalid Hussain Shahani)
Judge 13/3
Sd/-
(Omar Sial)
Judge 13/3