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IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA

Crl. Appeal No. D-21 of 2024

**PRESENT:**

**Mr. Justice Omar Sial,**

**Mr. Justice Khalid Hussain Shahani,**

Appellant : Babar Brohi,  
through Mr. Asif Ali Abdul Razak Soomro,  
Advocate.

Respondent : The State, through Mr. Ali Anwar Kandhro,  
Additional Prosecutor General.

Date of hearing : 30.01.2025.

Date of Judgment : 06.02.2025.

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

**Omar Sial, J.-** Babar Brohi was convicted for an offense under section 6 of the Control of Narcotic Substances Act of 1997 by the 1<sup>st</sup> Additional Sessions Judge, Shikarpur. On 08.04.2024, he was sentenced to 20 years and fined Rs. 800,000. He would have to remain in jail for another 5 years if he did not pay the fine.

2. The facts that led to the case registration against Brohi are as follows: On 25.09.2022, a police party led by A.S.I. Ali Dino was on routine patrol duty when they found a suspicious person. The person, who happened to be Brohi, was detained and searched. Ten kilograms of charas were recovered from his plastic shopping bag. He was arrested, and the F.I.R. registered.

3. Brohi pleaded 'not guilty' and claimed trial. A.S.I. Ali Dino Mangi (the complainant and the officer making the arrest and recovery), WHC

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Toufique Ahmed (the maalkhana in charge), S.I. Allah Dino Mangrio (the investigating officer of the case), P.C. Saifullah Korejo (eyewitness and the policeman who witnessed arrest and recovery) were examined by the prosecution. In his section 342 Cr.P.C. statement, the applicant denied all wrongdoing.

4. We have heard the learned counsel for the appellant and the learned Additional Prosecutor General. With their assistance, we have also reviewed the record of proceedings. Our observations and findings are as follows.

5. Ali Dino Mangi (the complainant and the officer making the arrest and recovery) testified at trial that he was posted at the Garhi Yasin police station a month before the alleged arrest and recovery. This prosecution witness categorically admitted, *"It is correct to suggest that I lodged this case as per directions of superior officers. It is correct to suggest that police officers handed over charas to me, and I lodged F.I.R. against the present accused. It is correct to suggest that nothing was recovered from the possession of the accused. It is correct to suggest that the present accused is innocent in this case."* This witness was not declared hostile, and thus, his testimony went unchallenged.

6. P.C. Saifullah Korejo was the witness to the arrest and recovery. He stated at trial, *"I do not know anything in this regard. I was present at the P.S., where my signatures were obtained by WHC. I, therefore, cannot identify the accused who is present in the court today."* This witness was declared hostile and cross-examined by the State counsel. Nothing fruitful or beneficial to the prosecution was revealed in the cross-examination. The witness stood his ground, saying he knew nothing about the arrest and recovery.

7. Both, the complainant and the witness, essentially testified that the incident had not occurred and that the contraband was handed over to them by some police officers to be foisted upon the appellant.

8. The maalkhana entry produced by WHC Toufique Ahmed to show that the case property was deposited in the maalkhana is dubious. A

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duplicate copy of an entry was made with no date or time on it. It does not even say who deposited the case property. The investigating officer allegedly produced no entry to show who retrieved the case property and when. The chemical analyzer report shows that one sealed parcel was deposited at the laboratory, and ten slabs of charas emerged. The prosecution case was that 12 slabs of charas were recovered. The discrepancy is apparent. Safekeeping of the narcotics was not established.

9. We are surprised at the trial court's decision in light of the evidence presented at trial. Sufficient doubt had crept into the prosecution case, which should have benefitted the accused. The appeal is allowed. The impugned judgment is set aside. The appellant may be released forthwith if not required in any other custody case.

  
JUDGE  
JUDGE

Qazi Tahir PA/\*


Hylcon

- 1) - R. Hylcon & main case
  - 2) - R. Hylcon & MA 1425/24 (426)
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30.01.2025

- Mr. Asy on behalf Razzale former Advocate for the Applicant.
  - Mr. Ali Anwar Adh. P.A
- Arguments heard. Reserved  
for Judgment.

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