IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Before:
Mr. Justice Khalid Hussain Shahani
Mr. Justice Muhammad Jaffer Raza

Criminal Jail Appeal No. D-13 of 2019

Appellant:	Manan Khan s/o Awal Khan Pathan, Through Mr. Javed Ahmed Soomro, Advocate.
Respondent:	The State Through Mr. Ali Anwar Kandhro, Addl. P.G
Date of hearing:	15-07-2025
Date of Judgment:	22-07-2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J: -- The appellant Manan Khan S/o Awal Khan Pathan, stands convicted for an offence punishable under Section 9(c) of the Control of Narcotics Substance (CNS) Act, 1997, by the learned 1st Additional Sessions/Model Criminal Trial Court (MCTC)/Special Judge for CNS, Kandhkot, vide judgment dated April 6, 2019, in CNS Case No. 31/2017, emanating from FIR No.05/2017 of PS Excise Police Kandhkot Circle. He was sentenced to life imprisonment and a fine of Rs. 100,000/-. In case of default in payment of fine shall undergo S.I for 01 year more, with the benefit of Section 382-B Cr.P.C.

2. According to the prosecution, narrated by complainant Excise Inspector Shamsuddin Chachar (PW-1), on October 19, 2017, at about 1:00 am, he along with his subordinate staff commenced checking at the Excise Check Post near Wardag Patrol Pump. At 9:30 pm, they intercepted a Truck Troller (Registration No. C-2442) coming from Peshawar to Karachi, allegedly driven by the appellant. Upon search, a secret cavity was purportedly discovered in the tool box of the container, from which 34 packets of Heroin Powder, collectively weighing 19 kilograms, were recovered. Samples were

reportedly taken for chemical examination, and the remaining property was sealed. The appellant was then brought to Kandhkot Circle where case was registered. The chemical examiner's report later confirmed the substance as Heroin Powder.

3. The appellant pleaded not guilty to the charge and claimed trial. The prosecution, to prove its case, examined Complainant/Investigating Officer Excise Inspector Shamsuddin Chachar as PW-1 (Ex.6) and EC Irshad Ali as PW-2 (Ex.7). They produced the departure entry, mashirnama of arrest and recovery, FIR, letter for chemical examination, and the chemical laboratory report, along with the appellant's driving license and CNIC. After the close of the prosecution evidence, the statement of the accused under Section 342 Cr.P.C. was recorded (Ex.9), wherein he denied the allegations, claimed false implication, and specifically stated that he was arrested from a hotel at Dera Moar Kashmore while taking dinner and falsely implicated to save the real culprits who were released after bribing the police. He opted not to lead any defense evidence. The learned trial court, after hearing arguments, convicted and sentenced the appellant as aforementioned.

4. The learned advocate for the appellantvehemently contended that the impugned judgment of conviction is unsustainable in law and on facts. He advanced several crucial arguments that the prosecution failed to establish the safe custody and safe transmission of the alleged recovered narcotic substance from the point of recovery until its receipt by the Narcotics Testing Laboratory. He highlighted that essential witnesses, particularly the Head Moharrir (WHC), who would have been in custody of the case property, and/or its bearer who kept or physically transported the samples to the laboratory, were not examined by the prosecution. This omission, he argued, creates a vital break in the chain of

custody, rendering the chemical examiner's report unreliable and inconclusive, thereby impairing the entire prosecution case. He emphasized that as per 2018 SCMR 2039 and 2022 SCMR 1641 (Qaiser and another v. The State), the chain of custody is pivotal, and any break vitiates the conclusiveness of the Government Analyst's report. It was argued that the chemical examiner's report (Ex.6/D) does not adequately transpire the full protocols of the test applied. He asserted that a mere positive report is insufficient without detailing the precise step-by-step methodology used for analysis, as mandated by the law. Drawing strong reliance on 2018 SCMR 2039, he contended that Rule 6 of the Control of Narcotic Substances (Government Analysts) Rules, 2001, is mandatory to the extent that full protocols must be mentioned in the report. Its non-compliance renders the report inconclusive and unreliable, making it incapable of sustaining conviction. He argued that the complainant himself investigated the matter. This, he argued, is a violation of established legal principles and constitutes a procedural error, raising doubts about the impartiality and fairness of the investigation.It was contended that the nuts and bolts of the secret cavity and the torch used during the recovery were not sealed along with the main case property. This lack of proper sealing and documentation of all relevant items further weakens the credibility of the recovery memo and the prosecution's claim of a meticulously conducted recovery.He further argued there was a clear violation of Section 103 Cr.P.C. because no private respectable persons from the locality were associated as mashirs during the recovery proceedings, despite the availability of such persons. While conceding that Section 25 of the CNS Act, 1997, generally exempts the application of Section 103 Cr.P.C. in narcotics cases, he subtly implied that the overall circumstances of the case, coupled with other defects, warranted a

stricter scrutiny of this aspect. He relied upon the case law cited at 2023 SCMR 1669.

5. Conversely, the learned DPG for the State robustly supported the impugned judgment of the trial court. He contended that the prosecution had successfully proved its case against the appellant beyond reasonable doubt. He highlighted that the evidence of PW-1 and PW-2 was consistent and confidence-inspiring, and their cross-examination did not reveal any major contradictions or inherent defects.Regarding the chain of custody, the learned DPG argued that the prosecution witnesses (Excise officials) were trustworthy and had no motive to falsely implicate the accused, who was from another province. He asserted that the slight delay in sending the samples to the laboratory was natural and did not suggest tampering, as affirmed by the trial court. He maintained that police officials are good witnesses, and their testimony should not be discarded merely because they are law enforcement personnel.On the point of the chemical report, he argued that the report was positive confirming the nature of the recovered substance, and the defense had not challenged its authenticity or the methodology during cross-examination. He implied that the protocols, even if not fully detailed, were implicitly followed for a positive result. Concerning the complainant being the investigator, the learned DPG submitted that it is well-settled law that a police officer is not legally prohibited from being both complainant and investigating officer, provided there is no prejudice caused to the accused. He stated that no specific allegation of enmity or mala fide was leveled against the complainant by the accused. He also countered the argument regarding Section 103 Cr.P.C., reiterating the trial court's stance that Section 25 of the CNS Act, 1997, specifically excludes the application of Section 103 Cr.P.C. in narcotics cases, thereby making the non-association of private mashirs non-fatal to the prosecution case.

6. We have meticulously heard the learned counsel for the applicant and the learned DPG for the State, and have painstakingly perused the entire record, including the detailed depositions of PW-1 and PW-2, and the statement of the accused. Our assessment reveals significant contradictions, omissions, improvements, and inherent flaws in the prosecution's evidence that, when viewed cumulatively, lead to the inescapable conclusion that the prosecution has failed to prove the guilt of the appellant beyond a reasonable doubt.

7. Before discussing further, this is the most fundamental and fatal defect in the prosecution's case. The integrity of the recovered narcotic substance hinges entirely on an unbroken and unsuspicious chain of custody from the point of recovery to the chemical analysis. The Honourable Supreme Court, in *The State v. Imam Bakhsh* (2018 SCMR 2039), has unequivocally held this chain to be "pivotal" and that "Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustai1ning conviction." This principle was re-emphasized and expanded upon in *Qaiser and another v. The State* (2022 SCMR 1641), which clearly stated that "In absence of establishing the safe custody and safe transmission, the element of tempering cannot be excluded in this case." The list of precedents cited in the Qaiser judgment further underscores the consistent stance of the Apex Court on this critical aspect.

8. In the present case neither PW-1 nor PW-2, in their detailed depositions, mentioned the examination of the Head Moharrir (WHC) of the police station. The WHC is the official custodian of all case property deposited in the malkhana. The period

between the alleged recovery (early morning October 19, 2017) and the dispatch of samples to the laboratory (morning October 20, 2017) is crucial. Without the WHC's testimony, there is an unexplained gap in the custody chain, leaving it open to the possibility of tampering. This omission, as repeatedly held by the superior courts, is sufficient to discard the entire claim of the complainant and renders it highly doubtful. Reliance is placed on the case of Abdul Ghani Vs. The State (2016 SCMR 608) which reads as under; -

> *"2. There is hardly any occasion for discussing the merits of the case against the appellants because the record of the case shows that safe custody of the recovered substance as well as safe transmission of samples of the recovered substance to the office of the Chemical Examiner had not been established by the prosecution in this case. Nisar Ahmed, S.I./SHO complainant (PW1) had stated before the trial court that he had deposited the recovered substance at the Malkhana of the local Police Station but admittedly the Moharrir of the said Police Station had not been produced before the trial court to depose about safe custody of the recovered substance. It is also not denied that Ali Sher, H.C. who had delivered the samples of the recovered substance at the office of the Chemical Examiner had also not been produced during the trial so as to confirm safe transmission of the samples of the recovered substance. It has already been clarified by this Court in the cases of 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) that in a case where safe custody of the recovered substance or safe transmission of samples of the recovered substance is not proved by the prosecution through independent evidence there it cannot be concluded that the prosecution had succeeded in establishing its case against the appellants beyond reasonable doubt."*

9. PW-1 stated, "Sample was sent for chemical examination through EC Shahzado." Similarly, PW-2 stated, "EC Shahzad went at the Laboratory alongwith the samples at morning time on 20.10.2017." However, EC Shahzado (or Shahzad) was not produced or examined as a witness. His testimony was indispensable to

confirm the condition of the sealed parcels upon receipt, their continuous integrity during transit, and their proper delivery to the Chemical Examiner. This omission further creates a chink in the armor of the prosecution's chain of custody, making the chemical examiner's report worthless and unreliable for justifying conviction.The cumulative effect of these omissions directly impacts the sanctity of the Chemical Examiner's Report, making it unsafe to rely upon for conviction, as the possibility of tempering cannot be excluded.

10. Beyond the chain of custody, the very substance of the chemical report itself is defective. As per 2018 SCMR 2039 (Section d), Rule 6 of the Control of Narcotic Substances (Government Analysts) Rules, 2001, is mandatory to the extent that "full protocols of the test applied" must be mentioned in the Government Analyst's report. The judgment clearly states, "Non-compliance of Rule 6, in this context, will render the Report of the Government Analyst inconclusive and unreliable."The Chemical Examiner's Report (Ex.6/D) merely states a positive result without detailing the specific tests conducted (e.g., presumptive tests, confirmatory tests), the reagents used, the procedures followed, or the scientific parameters for evaluation. This omission is not a mere technicality but strikes at the root of the report's scientific credibility and evidentiary value. The defense is deprived of the ability to verify the accuracy and methodology of the analysis, making the report fundamentally flawed and incapable of forming the basis of a conviction.

11. Under Article 10-A of the Constitution of Pakistan, the right to a fair trial is an inviolable fundamental right of every accused. This constitutional safeguard mandates that the prosecution ensure the production and examination of all material witnesses. The failure to examine crucial witnesses, particularly the In-charge Malkhana,

constitutes a significant legal defect that directly undermines the credibility of the prosecution's case.

12. The august Supreme Court has consistently held that if the safe custody and transmission of seized narcotics are not proven at trial, the benefit of doubt must be extended to the accused.

13. 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, unsuspicious, safe, and secure. Any brake 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".*

14. 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 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".

15. 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".

16. 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 its case against accused person beyond any reasonable doubt".

17. PW-1, Excise Inspector Shamsuddin Chachar, explicitly deposed that he was both the "complainant as well as Investigation

Officer of this case." While case law indicates this may not always be fatal, it is a procedural irregularity that has been consistently viewed with suspicion by superior courts. The person initiating the criminal process, by lodging the FIR, is expected to maintain a detached position from the subsequent investigation to ensure impartiality. When the same individual investigates their own complaint, it creates a potential for bias and a conflict of interest, thereby raising legitimate doubts about the fairness and objectivity of the investigation. In the context of other glaring flaws, this factor significantly contributes to the overall cloud of suspicion over the prosecution's case.

18. A detailed examination of the depositions of PW-1 and PW-2 reveals further discrepancies and omissions. As such, PW-1 (Shamsuddin) states their departure from the office was "1:00 am" and they reached the check point. They saw the truck at "09:30 pm." This is highly confusing. If they left at 1:00 am (presumably on October 19th or 20th), seeing a truck at 9:30 pm (which is earlier than 1:00 am) is illogical. Even if it means 1:00 pm (as suggested by PW-2), then 9:30 pm for interception means a lengthy period. PW-2 (Irshad Ali) states, "I left our office along with other staff... vide roznamcha entry No:01 at 1.00 pm" and "We reached at the place of recovery at half pm." He also says, "My duty timings starts from 02:00 pm. Duration of our duty time is 08 hours. Amir Kalwar was duty officer before our arrival. Our duty timings ends up to 10:00 pm." These statements contain significant contradictions regarding the precise timing of departure, arrival at the check post, and duty hours, making the sequence of events unclear and casting doubt on the prosecution's narrative of continuous vigilance and discovery. The discrepancy between "1:00 am" (PW-1) and "1:00 pm" (PW-2) for departure is a fundamental contradiction.

19. PW-2 Irshad Ali admitted during cross-examination, "It is fact that nut bolt available in the property are not mentioned in the mashirnama of arrest, search and recovery." Furthermore, PW-1 stated, "It is fact that the types of the currency notes are not mentioned in the FIR." These omissions in the key recovery document (mashirnama) and FIR, regarding items crucial to the alleged discovery and seized property, undermine the meticulousness claimed by the prosecution and make the recovery doubtful.PW-1 stated, "EC Waheed and EC Irshad were conducting the weight and measurement of the case up to 1 kg." However, PW-2 (Irshad Ali) states, "I was conducted the weight of the packets. There was computerized balance for weight with us. The capacity of measurement of the balance was up to 20 KGs." This presents a contradiction regarding who exactly conducted the weighing and the capacity of the balance used. Such discrepancies in crucial procedural details weaken the prosecution's case.PW-2 stated in cross-examination, "It is fact that white colored packet have not been disclosed by me in the statements under section 161 Cr.P.C but I have stated that all 34 packets including 04 packets of one kilograms were recovered from the accused." This is a clear improvement from his earlier statement recorded under Section 161 Cr.P.C. (which is generally expected to be a complete account of facts). New facts emerging in court testimony that were not mentioned in earlier police statements without plausible explanation render the later testimony unreliable. The case of Syed Saeed Muhammad Shah & others Vs the State (1993 SCMR 550) explicitly states that "Statements recorded by the police after delay and without explanation are to be ruled out of consideration." While this specific instance is an improvement rather than a delayed statement, the principle of unreliability applies when new details emerge without justification.Both PWs admitted that other staff were checking "other

vehicles" at the time of the incident. This strongly suggests the availability of private respectable persons from the locality or passing public who could have been associated as mashirs, as envisioned by Section 103 Cr.P.C. While Section 25 of the CNS Act, 1997, relaxes the strict application of Section 103 Cr.P.C., the non-association of independent witnesses in the presence of such apparent availability, when combined with the other defects, adds to the overall suspicion regarding the genuineness and transparency of the recovery.

20. The appellant, Manan Khan, in his Section 342 Cr.P.C. statement, vehemently denied the prosecution story, claiming false implication and stating he was arrested from a hotel at Dera Moar. He attributed the case to the "deeply interested" excise police. The rule of giving the benefit of doubt is a fundamental rule of caution and prudence. It is consistently held by the August Courts of Pakistan that if there is any circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused will be entitled to the benefit not as a matter of grace and concession but as a matter of right."

21. The numerous contradictions, omissions, improvements, and procedural irregularities discussed above collectively create not just one, but multiple circumstances that generate a reasonable doubt in a prudent mind about the guilt of the appellant. The prosecution has miserably failed to establish the charge against the appellant beyond a reasonable shadow of doubt on the basis of legally admissible, confidenceinspiring, trustworthy, and reliable evidence.

22. For the foregoing reasons, and in light of the detailed assessment of the evidence revealing significant contradictions, omissions, improvements, and fatal flaws, which cumulatively create a reasonable doubt, we find that the prosecution has miserably failed

to prove the charge against the appellant, Manan Khan, beyond a reasonable doubt. Consequently, this Criminal Jail Appeal is allowed. The impugned judgment of conviction and sentence dated April 6, 2019, passed by the learned 1st Additional Sessions/Model Criminal Trial Court (MCTC)/Special Judge for CNS, Kandhkot, is hereby set aside. The appellant, Manan Khan, is acquitted of the charge. He shall be released from judicial custody forthwith, unless required in any other case.

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Asghar Altaf/P.A