

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No.839 of 2024

Present:

Mr. Justice Omar Sial

Mr. Justice Shamsuddin Abbasi

Appellants : 1. *Kashif* through Mr. Anwer Zaib, advocate
2. *Nihal Khan* through Mr. Shah Imroz Khan, advocate

The State : Through Mr. Habib Ahmed, Special Prosecutor, ANF

Date of hearing: 26.03.2026

Date of Judgment: 15.04.2026

JUDGMENT

OMAR SIAL, J. Inspector Nawaz Ali Zardari and his colleagues from the Jackson police station were on patrol duty on 14.09.2023 when they saw two suspicious persons, each holding a plastic bag. Upon seeing the police, one of the two suspects dropped the bag he was holding and ran away, while the other was apprehended by the police party and identified as Kashif. 5700 grams of charas were recovered from the bag Kashif held, whereas 5800 grams of charas were discovered from the bag his colleague had left behind. The accused who escaped was identified by Kashif as Nehal. Kashif was arrested on the spot and taken to the police station, where F.I.R. No. 257 of 2025 was registered against him and Nehal under section 9(1)3(d) of the CNS Act, 1997. On 20.09.2023, Nehal surrendered himself, as he had obtained interim pre-arrest bail by then.

2. Both the accused pleaded not guilty and claimed to be tried. At the trial, the prosecution examined **PW-1 Inspector**

Nawaz Ali Zardari (the officer who arrested Kashif and was the complainant in the case); **PW-2 A.S.I. Adil Nawaz** (witness to Kashif's arrest and recovery); **PW-3 A.S.I. Muhammad Amjad** (the maalkhana in charge) and **PW-4 S.I. Ashfaq Ahmed Abbasi** (the investigating officer).

3. The accused, in their section 342 Cr.P.C. statements, denied any wrongdoing and professed innocence. The learned 2nd Additional Sessions Judge, Karachi West, on 12.12.2024, convicted the accused for having committed an offence punishable under section 9(1)3(d) of the CNS Act, 1997, and sentenced them to fourteen years' imprisonment and a fine of Rs. 400,000 each. It is this judgment that has been challenged through this appeal.

4. We have heard the appellants' learned counsel and the learned Additional Prosecutor General. Our observations and findings are as follows.

5. An area we have looked at closely is the safe custody and transmission of the seized contraband. The record reflects that the arrest and seizure took place at 1900 hours on 14.09.2023. The officer who recovered and sealed the charas was PW-1 Inspector Nawaz Ali Zardari. The Inspector, in his testimony, stated that after the arrest, the accused, Kashif, and the sealed charas were brought to the police station. In his words, "*The secured stuff was with me till the P.S. I handed over the secured stuff to W/ASI Farooq at the P.S.*" The person to whom Inspector Zardari said that he had given the charas to upon his return to the police station, i.e., W/ASI Farooq, was not examined at trial. On the contrary, it was PW-3 A.S.I. Mohammad Amjad Rajput, who testified at trial that he was the maalkhana in charge and that Inspector Zardari had handed over the narcotics to him when he had returned to the police station. The prosecution could have re-examined Inspector Zardari if an explanation or clarification of the anomaly created was required; however, this was not done, and hence, the

person to whom Inspector Zardari said that he had handed over the charas was not the same as the person who said that it was he whom Inspector Zardari had given the narcotics. Safe custody became doubtful. To further create doubt, PW-3 A.S.I. Mohammad Amjad Rajput, the person claiming to be the maalkhana in charge at the trial, stated that after the narcotics had been deposited in the maalkhana, he gave the sealed parcels to the investigating officer on the same day, i.e., 14.09.2023. The investigating officer, i.e., PW-4 S.I. Ashfaq Ahmed Abbasi, in his testimony acknowledged that he had taken the narcotics from PW-3 A.S.I. Mohammad Amjad Rajput, after its deposit on 14.09.2023, however he subsequently redeposited the charas in the maalkhana. PW-3 Rajput, however, testified that *"it is correct to suggest that...Register 19 does not reveal about the handing over of the said parcels to I.O. for investigation"*. PW-3 A.S.I. Mohammad Amjad Rajput did not testify how, by whom, and when the narcotics were taken out again from the maalkhana by the investigating officer on 15.09.2023, when he claims that he took them to the laboratory for analysis. To add to the confusion regarding safe custody created by the prosecution witnesses, a dubious copy of the Register XIX was produced at trial. It could not be confirmed whether the dubious-looking copy was an actual copy from the Register XIX, as the original Register XIX was never produced at trial.

6. The memo of arrest and recovery shows that the charas recovered was wrapped in blue/white tape. The number of pieces was not stated. The contraband sent to the laboratory for analysis has been described as *"02 sealed cloth parcels, each containing a black plastic shopper, containing one packet, which is wrapped in blue and white tape, containing five packets, each wrapped in yellow tape, and each packet contains dark brown big pieces."* The description given by the laboratory does not reconcile with the description given in the memo of arrest. PW-2 A.S.I. Adil Nawaz stated at trial that *"the*

secured charas was in pieces. We did not count the number of said pieces.” PW-1 Inspector Nazwaz Ali Zardari, who seized the charas, had a different view from that of the witness to the recovery. According to Inspector Zardari, “*one piece of charas was lying in the parcel of accused Kashif*”. He did not elaborate on what he had found in the packet attributed to Nehal. Be that as it may, he did acknowledge that the charas shown to him at trial had some writing and inscriptions on the packet, which writing and inscription are not mentioned in the memo of recovery.

7. Given the above, we are of the opinion that doubts emerged in the prosecution’s evidence to establish a safe and unbroken chain of custody and transmission. In line with a series of judgments of the Honorable Supreme Court, a conviction cannot be sustained if safe custody and transmission are not proved. The appeal is therefore allowed and the appellants acquitted of the charge. They may be released forthwith if not required in any other custody case.

JUDGE

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