

IN THE HIGH COURT OF SINDH AT KARACHI

Present:
Mr. Justice Omar Sial
Mr. Justice Shamsuddin Abbasi

Criminal Appeal No.592 of 2023

Appellants : *Aamir Ali and Zain-ul-Abideen* through
Mr. Muhammad Immad Qamar,
advocate

The State : Through Mr. Tahir Hussain Mangi,
Assistant Prosecutor General, Sindh

Date of hearing: 22.04.2026

Date of Judgment: 11.05.2026

JUDGMENT

Omar Sial, J. On 17.12.2020, a party of the CIA police, led by A.S.I. Yar Muhammad Lashari stopped a Prado vehicle and recovered 149 kgs of charas and 5 kgs of opium from it. The vehicle's driver was Aamir Mengal, and the passenger was Zain-ul-Abadin Keerio. Both were arrested, and F.I.R. No. 226 of 2020 was registered under section 9(c) of the CNS Act, 1997.

2. Both accused pleaded not guilty and claimed to be tried. At the trial, the prosecution examined **PW-1 A.S.I. Yar Muhammad Lashari** (complainant); **PW-2 P.C. Rukhsar Ali Brohi** (witness to the arrest and recovery); **PW-3 A.S.I. Abdul Sattar Abro** (registered the F.I.R.); **PW-4 S.I.P Abdul Rashid Brohi** (investigating officer); **PW-5 P.C. Sajid Ali** (courier).

3. In their respective section 342 Cr.P.C. statements, both accused professed innocence and said that they had been arrested a day earlier from a bus. The learned Special Judge (CNS/MCTC-II) Jacobabad vide judgment dated 31.05.2023 at the end of the trial convicted for an offence under Section 9(c) of the Control of Narcotic Substances Act, 1997 and sentenced

them to undergo life imprisonment with a fine of Rs.200,000/- each. In case of a default in payment of fine, further undergo six months of Simple Imprisonment.

4. The appellants' learned counsel, up front, submitted that the conviction cannot be sustained as safe custody and transmission of the narcotics from the point of seizure till its deposit in the chemical laboratory was not proved at the trial. The learned Assistant Prosecutor General acknowledged that a lapse occurred, but relying on **Zain Ali vs The State (2023 SCMR 1669)**, said that it should not upset the conviction. We have heard the appellants' learned counsel and the learned Assistant Prosecutor General and re-appraised the record. Our observations and findings follow.

5. As far as safe custody and transmission is concerned, the record reveals the following:

- (i) Seizure was made on 17.12.2020 between 9:00 a.m and 10:30 p.m. PW-1 by A.S.I. Yar Muhammad Lashari. He testified that he sealed the seized narcotics, took back the narcotics and the arrested accused to the Jacobabad police station, where he handed over both to PW-3 A.S.I. Abdul Sattar Abro. Abro, in his testimony, confirmed that Lashari had handed over the narcotics to him on 17.12.2020 when the F.I.R. was registered at 11:30 p.m.
- (ii) It appears from the testimony of PW-4 S.I. Abdul Rasheed Brohi that the case property was handed over to him by Abro, and then it was he (Brohi) who deposited the case property in the maalkhana. According to Brohi, he took out the case property from the maalkhana on 21.12.2020 and sent it to the chemical analyst for examination at approximately 10:00 a.m. According to Brohi, the maalkhana Incharge at the relevant time was WHC Ghulam Murtaza Sanjrani, and the narcotics were sent to the chemical analyst through P.C. Sajid Ali.
- (iii) PW-5 P.C. Sajid Ali, corroborated with Brohi by testifying that Brohi gave him the case property to take to the chemical analyst on 21.12.2020. Admittedly missing from the entire evidence was the maalkhana

Incharge, WHC Ghulam Murtaza Sanjrani. He did not come to the trial to testify for reasons best known to the prosecution. Brohi acknowledged that he had also not recorded Sanjrani's section 161 Cr.P.C. statement. The safe custody of the case property was not proved for the period 17.12.2020 to 21.12.2020.

- (iv) The original Register 19 was not produced at trial. An attested copy on plain paper was produced, but it does not show who deposited the property or when. Neither did the extract contain the details required by Register 19. No record of when the property was taken out and by whom is reflected in the extract. As a matter of fact, it does not even reveal who deposited the property. The extract from Register 19 was unreliable, and the safe custody of the case property in the maalkhana could not be proved from it.

6. The learned Assistant Prosecutor General is correct that in **Zain Ali vs The State (2023 SCMR 1669)**, the Supreme Court took a different view. With much respect and humility, however, we are swayed towards the series of judgments passed by the Honorable Supreme Court before and after the judgment in the *Zain Ali* case. The Honorable Supreme Court has held that if safe custody and transmission of the seized narcotics are not proved at trial, the benefit of such a lapse will go to the accused.

- (i) 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.”

- (ii) In **Javed Iqbal vs The State (2023 SCMR 139)** the Supreme Court held:

“So the safe custody and safe transmission of the sample parcels was not established by the prosecution and this defect on the part of the prosecution by itself is sufficient to extend benefit of doubt to the appellant. It is to be noted that in the cases of 9(c) of CNSA, it is 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 the sample parcels 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 Bakhsh and others (2018 SCMR 2039), Ikramullah and others 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 an 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.”

(iii) In **Asif Ali and another vs The State (2024 SCMR 1408)** it was observed:

“In the cases under CNSA 1997 it is 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 the 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.”

(iv) In **Muhammad Hazir vs 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 the sealed sample parcels to the concerned Forensic Science Laboratory was established by the

prosecution because neither the Moharrar nor the Constable Shah Said (FC-2391) who deposited the sample parcels 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 tampering with is quite apparent in this 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 Bakhsh and others (2018 SCMR 2039), Ekramullah 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 defect 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 an accused person beyond any reasonable doubt.”

(v) In **Qaiser Khan vs The State (2021 SCMR 363)** the Supreme Court held:

“The Forensic Report reflects that the alleged narcotics were received in the laboratory on 11th December, 2012 but evidence on the 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 The State through Regional Director, ANF v. Imam Bakhsh and others (2018 SCMR 2039).”

(vi) In **Sarfaraz Ahmed vs The State (2024 SCMR 1571)**, the Honorable Supreme Court held that:

“In order to prove the safe custody of the parcels of the contraband, Moharrar (Abdul Qayyum) of PS Kalat has not been produced at the trial by the prosecution. In the cases of "Said Wazir v. The State", "Muhammad Shoaib v. The State" and "Ishaq v. The State" it has been held that due to

non-appearance of the Moharrar at the trial, the safe custody of the parcel of the contraband as well as the sample parcel has not been established by the prosecution. In the case of "Zahir Shah v. The State" it has been laid as follows by this Court:

"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 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."

7. Given the above position of law as clarified by the Supreme Court and observing that in the present case the maalkhana Incharge was not examined nor was a satisfactory copy of the Register 19 produced at the trial, thus safe custody was not proved. Conviction, therefore, cannot be sustained. The appeal is allowed, and the appellants are acquitted of the charge. They may be released forthwith if not required in any other custody case.

JUDGE

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