**IN THE HIGH COURT OF SINDH, CIRCUIT COURT, LARKANA**

**Spl. Cr. Appeal No. D – 60 of 2024**

(Sabir Ali and another versus The State)

*Present:*
**Mr. Justice Khalid Hussain Shahani**
**Mr. Justice Muhammad Jaffer Raza**

Date of hearing : 29.07.2025

Date of announcement : 20.08.2025

Mr. Habibullah G. Ghouri, Advocate for the Appellants
Mr. Nazir Ahmed Bangwar, Deputy Prosecutor General.

## J U D G M E N T

**Muhammad Jaffer Raza, J.-** This Criminal Jail Appeal No. D-60 of 2024 has been directed by Appellants (1) Sabir Ali son of Ali Hassan, by caste Umrani and (2) Shafique Ahmed son of Ali Muhammad Abro, who have impugned the judgment dated 10.10.2024, passed by the learned Additional Sessions Judge-I / Model Criminal Trial Court (MCTC), Jacobabad, in Special (CNS) Case No. 10 of 2023, arising out of FIR No.186/2022 registered at Police Station Saddar, Jacobabad, under Section 9(3)(c) of the Control of Narcotic Substances (Amendment) Act, 2022. By virtue of the Impugned Judgment, the Appellants were convicted and sentenced to undergo Rigorous Imprisonment (R.I.) for 14 years each and to pay a fine of Rs.400,000/- each, and in default of payment, to further undergo Simple Imprisonment (S.I.) for one year each, with benefit of Section 382-B Cr.P.C.

2. The facts, as per the FIR, are that on 18.10.2022, at about 1:00 a.m., a police party headed by ASI Abdul Sattar of Police Station Saddar Jacobabad, acting on spy information, intercepted a Toyota Corolla car bearing registration No.BGG-967 near Umrani Laro. Upon search, a white sack containing 100 slabs of charas, each weighing 500 grams (totaling 50 kilograms) was recovered from the trunk of the car. Both occupants of the car, identified as Sabir Ali and Shafique Ahmed were arrested on the spot. Seizure memos were prepared, samples were taken, and the entire recovery

procedure was documented. FIR No.186/2022 was then lodged under Section 9(c) of the CNS Act.

3. Accused Sabir Ali and Shafique Ahmed were formally charged before the trial Court, where they pleaded "not guilty" and claimed trial. During trial, the prosecution examined ASI Abdul Sattar (Complainant), PC Nadir Ali (Mashir of place of incident), PC Waheed Ali (Dispatcher), SIP Ghulam Murtaza, and SIP Ashique Ali. The above noted P.Ws produced documentary evidence including mashirnama of arrest and recovery, FIR, relevant daily diary entries, RC, bank challans, letter to the Chemical Examiner, and the positive chemical report. In their statements under Section 342 Cr.P.C., the accused denied the allegations, claimed false implication, and neither examined themselves on oath nor produced any witness in their defence.

4. The learned trial Court, after hearing both sides and evaluating the evidence, convicted the Appellants as noted above. Hence, the present appeal.

5. Learned counsel has contended that as per FIR, 50 kg of charas was found in 100 pieces. However, only half was sent for sampling before the relevant Chemical Examiner. He has further argued that the alleged recovery was made from the trunk of the car which does not belong to the Appellants and in this regard, he has further contended that neither the owner of the car was produced as a witness and nor was he accused in the above noted crime. He has further averred that author of the FIR and mashir were neither shown as witness and neither have they been examined in the trial. He has further averred that there is no safe custody and safe transmission and the sample (half of what was allegedly recovered) was sent to Karachi through the SSP who subsequently issued a letter to the Chemical Examiner. The said letter, according to learned counsel was not produced as a letter was intended for Rohri and the sample was sent to Karachi. The concealment of the letter, according to learned counsel, casts serious doubts in the report of the Chemical Examiner and the transmission. He has further argued that the sample sent were not desealed in Court and in this regard, he has stated that the Appellants are entitled for acquittal due to unsafe custody and unsafe

transmission. He has further averred that there is serious malafide on part of the prosecution as there was a personal feud between the respective parties and the instant FIR was lodged only to take revenge, intimidate and harass the Appellants. He in this regard, has further averred that the Appellants recorded their statement under Section 342 Cr.P.C. and also produced along with the said statement, a copy of the Nikahnama and freewill which were the basis on which the alleged FIR was lodged.

6. Conversely, learned Prosecutor has argued that all the prosecution witnesses were examined and corroborated the stance taken by the prosecution. In this regard he has supported the Impugned Judgment. He has further averred that there is safe custody and safe transmission and therefore no case of acquittal has been made out by the Appellants. On a specific query by us, learned prosecutor could not explain how long the samples were present in the Malkhana and why the same were sent to Karachi and not Rohri. We have heard both the learned counsels and perused the record.

7. Prior to delineating on the respective submissions of the learned counsels it will first be expedient to lay down the premise for the instant adjudication. In this regard it will be imperative to highlight and reproduce the recent judgment of the Hon'ble Supreme Court in ***Ameenullah versus The State***[1] wherein the Hon'ble Court held as under: -

> *"6. In the case of conviction under the Act of 1997, it is an onerous duty of the prosecution to prove beyond a reasonable doubt that the material recovered from an accused is one of the narcotic drugs defined in the said statute. The most crucial element in proving this factor is the evidentiary value of the report of the government analyst. The credibility and integrity of the chemical examiner's report essentially depends on proving the recovery and, most importantly, the chain of custody. This chain of custody commences from the stage of the recovery of the alleged material and ends at the delivery of the samples to the chemical examiner's office. After the alleged material has been recovered, samples are separated and sealed in accordance with the principles and law enunciated by this Court in Ameer Zeb's case. Then the recovered material has to be taken to the Police Station and kept there in custody by the concerned law enforcement agency. The samples are then to be taken out from the place of storage and transmitted to the concerned government analyst for chemical analysis. The chain of safe custody,*

[1] Criminal Appeal No. 525 of 2022. Judgment dated 18.04.2025. Earlier a similar view was taken by the Hon'ble Supreme Court in the cases of Asif Ali and another Versus The State reported at 2024 SCMR 1408 and Zahir Shah versus The State reported at 2019 SCMR 2004.

*therefore, starts from the recovery till the samples have been received at the office of the government analyst. The integrity of this chain of custody at each stage is fundamental for proving that the material recovered and seized by the law enforcing agency is one of the narcotic drugs contemplated under the Act of 1997. Section 29 of the Act of 1997 provides that in relation to trials ibid it may be presumed that the accused has committed the offence under the Act of 1997 unless the contrary is proved. This Court, while interpreting this provision in the case of Ameer Zeb (supra), after examining its earlier 1 Ameer Zeb v. The State (PLD 2012 SC 380) Cr.A.525/22 judgments rendered in the cases of Kashif Amir and Muhammad Noor2, has held that the initial onus to prove the offence of recovery of narcotic substance from the accused is always on the prosecution and, once it has discharged that onus to the satisfaction of the court, it is only then that the onus shifts to the accused person to establish falsity of the prosecution's allegation against him/her. It has been further observed that the initial onus on the prosecution in such cases includes the onus to prove that the entire substance allegedly recovered is in fact a narcotic substance and such onus can be discharged by the prosecution only if the samples of the recovered substance sent to the chemical examiner for analysis are representative samples of the entire quantity of the recovered substance. It has also been highlighted that, keeping in view the principles for safe administration of justice, a strict standard of proof is required in the case of offences which attract harsh sentences such as have been prescribed under the Act of 1997. The chain of safe custody and transmission thereof becomes crucial for the prosecution to prove its case. The prosecution, by producing unimpeachable evidence, has to prove that the chain of safe custody was unbroken, unsuspicious, indisputable, safe and secure. Any break in the chain of custody or lapse in the control regarding possession of the samples causes doubts relating to safe custody and safe transmission of the samples and, consequently, it impairs and vitiates the conclusiveness and reliability of the chemical report of the government analyst. It, therefore, renders the conviction to be unsustainable. If the prosecution fails in establishing safe custody or safe transmission of the alleged drug then the chemical report of the government analyst becomes doubtful and unreliable3. 2 Kashif Amir v. The State (PLD 2010 SC 1052) and Muhammad Noor and others v. The State (2010 SCMR 927) 3 The State through Regional Director ANF v. Imam Bakhsh and others (2018 SCMR 2039), Amjad Ali v. The State 2012 SCMR 577), Ikramullah v. The State (2015 SCMR 1002) and Zahir Shah alias Shat v. The State (2019 SCMR 2004) Cr.A.525/22.*

*7. If a person who is in charge of the place of storage in the Police Station i.e the Mall Khana or some other responsible person related with its affairs is not produced as a witness nor unimpeachable evidence relating to the record maintained is produced to establish the entry into and taking out of the material and samples from such designated storage place, then the safe custody becomes doubtful and thus breaks the chain. Likewise, if the official through whom the samples are transmitted to the office of the government analyst is not produced, the chain is broken and thus renders the chemical report unreliable or compromised5. It is, therefore, the obligation of the prosecution to prove the allegation against the accused to the satisfaction of the court that the chain of safe custody was unbroken and that safe custody of the samples and their transmission to the office of the chemical analyst were uncompromised beyond any doubt."* (Emphasis added)

8. It is evident from the perusal of the above-noted judgment that an unbroken chain of custody is pivotal to the case of the prosecution and in the absence of the same the accused person is entitled to an acquittal. There is nothing on record to explain as to why the samples were sent for examination to Karachi and not Rohri. The learned prosecutor, as noted above, was unable to explain the same despite being repeatedly probed by us. Further there is no explanation as to why only half the samples were sent for examination[2]. At this juncture it will be relevant to reproduce certain excerpts from the cross examination of the Investigation Officer to establish the lacunas in the case of the prosecution. The same are reproduced below: -

> *"It is correct to suggest that I have not produced my departure and arrival entries of patrolling nor mentioned serial numbers. When I received the documents of the present case, from perusal, the FIR was in handwriting of WPC Israr Ahmed. Mashirnama of arrest & recovery was in handing writing of WPC Abdul Ghani Bhutto. … One 161 Cr.P.C. statement was in handwriting of WPC Israr Ahmed while another 161 Cr.P.C. was handwriting of WPC Abdul Ghani Bhutto. It is correct to suggest that I have not made both constables i.e. WPC Israr Ahmed and WPC Abdul Ghani Bhutto as witnesses in the present case. It is correct to suggest that in memo of arrest & recovery, it is not mentioned that WPC Abdul Ghani Bhutto was with patrolling party or was present at the place of recovery at the time of incident. It is correct to suggest that in memo of site inspection, it is not mentioned that WPC Israr Ahmed was alongwith me at the time of inspecting of the place of wardat. It is correct to suggest that in memo of site inspection our departure entry is not mentioned. It is fact that I did not record statement of any local person from the place of incident. It is fact that near place of incident there are many shops of different kind. It is fact that near place of incident there are pickets of Rangers and Police at some distance. It is fact that there is proper checking at both pickets. I did not make enquiry from both pickets. I also did not record 161 Cr.P.C. statements from the persons posted at both pickets. On 18.10.2022 I wrote a letter to SSP Jacobabad for acquiring permission to send the case property to Chemical Examiner through PC Waqar Ali Lashari…….I had gone through the contents of such permission letter received from SSP Jacobabad and there was clerical mistake as it was mentioned the sending of case property to Chemical Examiner Sukkur @ Rohri and thereafter same was correct and sent the case property to Chemical Examiner Karachi.…It is correct to suggest that I have not produced the same letter in any evidence……It is fact that in police diaries I have not mentioned about making correction of Chemical Examiner's Officer from Sukkur @ Rohri to Karachi……It don't know that prior to this incident Toufique Ahmed, the brother of accused Shafique Ahmed Abro contracted love marriage with Mst. Sanam and such cases were also registered on the instance of Faiz*

[2] Mir Muhammad and others Versus The State reported at 2024 P.Cr.L.J 370. Conviction appeal was allowed, amongst other grounds on the sample being a fraction of the alleged recovery.

> *Muhammad Brohi……It is fact that I did not enquire about the owner of recovered vehicle."* (Emphasis added)

9. Perusal of the cross examination reproduced above, will reflect that the owner of the vehicle was not enquired from. The same to our mind is inexplicable. Further, it is evident from the perusal of the cross-examination reproduced above that the alleged recovery was made from a populated place which was not far from the pickets mentioned hereinabove. However, no private witness has been examined by the prosecution in this regard. The same, in similar circumstances, was held to be a ground of acquittal (amongst other grounds) by a learned divisional bench of this court in the case of **Mir Muhammad** (supra) wherein it was held as under: -

> *"We are conscious of the fact that provisions of section 103, Cr.P.C are not attracted to the cases of personal search of accused in narcotic cases but where the alleged recovery was made on a road (as has happened in this case), omission to secure independent mashirs, particularly, in police case cannot be brushed aside lightly by this court. Prime object of section 103, Cr.P.C is to ensure transparency and fairness on the part of police during course of recovery, curb false implication and minimize the scope of foisting of fake recovery upon accused."*

10. It is a settled principle of criminal jurisprudence that the prosecution has to establish every element of the offence beyond all reasonable doubt[3] and it is held that sufficient doubt exists in the present case for the Appellants to be acquitted of the charge. In light of the myriad contradictions, incomplete testing of samples, inexplicable sampling at Karachi and no private witnesses being examined, amongst other grounds expounded above, it is held that the prosecution has failed to prove its case beyond the threshold required for prosecution and the evidence presented by the prosecution is legally insufficient to uphold the noted conviction.

11. We have deliberately refrained from taking into consideration the documents produced by the Appellants during recording of their statement under Section 342 Cr.P.C as they refrained to examine themselves on oath under Section 340 (2) Cr.P.C.

---

[3] Rehmatullah vs. The State reported at 2024 SCMR 1782.

In that regard it is specifically held that the said documents are devoid of any evidentiary value[4] and cannot be considered by us in the instant appeal. Irrespective of the same, the Appellants are entitled to an acquittal for the reasons already deliberated upon hereinabove.

11. Resultantly, this Criminal Appeal is allowed. The Impugned Judgment of conviction and sentence dated 10.10.2024, passed by the learned trial court is hereby set aside. The Appellants, Sabir Ali son of Ali Hassan, by caste Umrani and Shafique Ahmed son of Ali Muhammad Abro are acquitted of the charge. He shall be released forthwith if not required in any other custody case.

JUDGE

JUDGE

[4] Sirajuddin Versus Allah Bux and 2 others reported at 2016 P.Cr.L.J 726. Similar views were expressed by a learned Divisional Bench of the Balochistan High Court in the case of The State versus Muhammad Kaleem Bhatti reported at 2015 YLR 2214. Relevant paragraph Number 9.