

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

Criminal Jail Appeal No.D-02 of 2022

Present:

**Mr. Justice Amjad Ali Sahito**  
**Mr. Justice Jan Ali Junejo**

Appellants : 1). Muhammad Ameen s/o Khan Muhammad Nindwani  
Through Mr. Asif Ali Abdul Razak Soomro, Advocate  
2). Akhtar Jan s/o Bacha Gul by caste Pathan  
Through Mr. Muhammad Akbar, Advocate

The State : Through Mr. Ali Anwar Kandhro, Addl.P.G

Date of hearing : 22-04-2025

Date of Judgment : 13-05-2025

**JUDGMENT**

**Jan Ali Junejo, J:-** Appellants named above tried by learned Special Judge (CNSA/MCTC-II), Jacobabad, in CNS Case No.57/2020, outcome of FIR bearing Crime No.171/2020, registered at P.S Saddar Jacobabad, were convicted for an offence punishable under section 9 (c) of Control of Narcotics Substance Act, 1997 and sentenced to suffer rigorous imprisonment for life, with fine of Rs.100,000/-(One Lac) each and in default thereof, to suffer S.I for six (06) months, with benefit of Section 382-B Cr.PC, vide judgment dated 04<sup>th</sup> January, 2022.

2. The gist of the facts, gathered from the FIR is to the effect that on 22.09.2020, complainant/ASI Ashique Ali Lashari alongwith his subordinates while on patrolling, received spy information at Umrani Curve about two persons having Charas, coming from Balochistan in a Car bearing Registration No.AMW-680. On getting tip-off, they started checking at the pointed place and then halted the said Car with two persons, wherein a white color sack was lying at feet side of driver seat while another white color sack was lying on its rear seat. PC Babal Khan and PC Paharuddin were associated as mashirs and both the accused were enquired about their identity to which the driver disclosed his name as Muhammad Ameen Nindwani while the other revealed his identity as Akhtar Jan Pathan. The said two white color sacks on opening, were found containing 10/10 packets of Charas, each wrapped with yellow color shopper, which on weighing came out to be 1000 grams each, making total of 20 K.Gs. On bodily search, cash of

Rs.1000/- with mobile phones (Samsung & Vegotel) were recovered from accused Muhammad Ameen while a Nokia mobile phone was secured from accused Akhtar Jan. The Charas was sealed at the spot. The accused disclosed that the said Charas was handed over to them by accused Naseeb Baloch at Quetta and they were going to deliver it to accused Asif @ Wahab Baloch at Sukkur. Such memo of arrest and recovery was prepared in presence of above said mashirs. Thereafter, the accused along with recovery were then taken to Police Station, where the instant case for an offence punishable under Section 9 (c) CNS Act was registered against them on behalf of the State.

3. The investigation was followed by SIP Abdul Rasheed Brohi, who visited the place of incident, dispatched the recovered contraband Charas to the Chemical Examiner, Sukkur at Rohri, through PC Shahzad, recorded 161 Cr.PC statements of the PWs and on completion of usual formalities, submitted the final report under section 173 Cr.PC against the appellants before the competent Court of law.

4. The present appellants pleaded not guilty to the charge framed against them at Exh.04 and claimed trial.

5. At the trial, the prosecution to establish the accusation against the appellants, examined PW-01 Complainant/ASI Ashique Ali Lashari at Exh.05, he produced memo of arrest/recovery, FIR of the present case and roznamcha entries at Exh.05/A to C. PW-02 Mashir/PC Babal Khan Bhangar at Exh.06, he produced memo of place of incident at Exh.06/A. PW-03 Dispatcher/PC Shahzad Hussain at Exh.07, he produced acknowledgment receipt of the case property with laboratory and joint roznamcha entries at Exh.07/A & B. PW-04 Investigation Officer/SIP Abdul Rasheed Brohi at Exh.08, he produced copy of register No.19, roznamcha entry and chemical report at Exh.08/A to C respectively. Thereafter, the learned State Counsel closed the its' side.

6. The appellant Muhammad Ameen in his statement recorded under section 342 Cr.PC at Exh.10, denied the allegations leveled against him by the prosecution and stated as under;

*"I am innocent. I have been falsely involved in this case by police due to non-payment of illegal gratification. The police subsequently foisted Charas upon me. Actually, I had come to meet with my relatives from Saudi Arabia. When I was returning, the*

*police arrested me. I informed the police that I was working in Saudi Arabia and had come to meet with my relatives. The police demanded heavy amount Rs.100,000/- for release. Due to non-payment I was booked in this case. Prayed for justice.*

7. Appellant Akhtar Jan in his statement under Section 342 Cr.PC also denied the prosecution allegations by stating as under;

*“I am innocent. Actually I was travelling in the said Car as passenger as I got lift from Driver and sat from Dera Allahyar, District Jafferabad. On 20.09.2020 I was arrested by police near Bolan Petrol Pump Jacobabad. No recovery was effected from said Car within my presence and sight. The police demanded illegal gratification from co-accused Muhammad Amin. On refusal we were booked in this case. I am innocent and pray for justice and mercy”.*

Both the appellants did not examine themselves on oath in disproof of the charge, nor led any evidence in their defence.

8. The learned trial Court after hearing the parties counsel and on assessment of the evidence, convicted and sentenced the appellants vide impugned judgment dated **04.01.2022**, which they have assailed here by preferring the instant appeal through jail.

9. Learned counsel for appellant Muhammad Ameen argued that the appellant being innocent has been implicated in this case falsely by foisting upon him a huge quantity of Charas; that there are material contradictions in the evidence of prosecution witnesses, which have rendered the credibility of their evidence at stake; that it is quite unbelievable and does not appeal to the prudent mind that how such a huge quantity was checked, weighed, separated for chemical analysis and sealed at the spot in such a short span of time; that no record is collected during course of investigation against the appellant in respect of selling Charas, which in fact was never available with the prosecution to suggest that he is previously involved or convicted by any Court of law in offences of like nature, as such, he has falsely been implicated by the police on his failure to grease the palm of police; that the place of recovery is frequented by traffic and public yet not a single passerby there-from was taken to witness the recovery proceedings; that the recovered case property was sent with deliberate delay of three days which has not been explained plausibly; that the Chemical Examiner's report is not with protocol of the test, hence, it has lost its' sanctity in

the eyes of law; that the safe custody/transmission of Charas to the Chemical Examiner has also not been established; that the evidence of such interested witnesses requires independent corroboration, which is also lacking in the present case; that the complainant and his witnesses are police officials and no independent person has been cited to witness the recovery proceedings, which has clearly disregarded the mandatory provisions of Section 103 Cr.PC. He thus concluded that the prosecution has miserably failed to prove its case against the appellant and in such circumstances he is entitled to his acquittal. In support of his contentions, he placed his reliance upon the cases of *Tariq Parvez v. The State* (1995 SCMR-1345), *Javed Iqbal v. The State* (2023 SCMR-139), *Muhammad Hazir v. The State* (2023 SCMR-986), *Lal Jan v. The State* (2023 SCMR-1009), *Said Wazir and another v. The State and others* (2023 SCMR-1144).

10. Learned counsel for appellant Akhtar Jan argued that the present appellant has been arraigned in this case falsely by the police on his failure to pay them illegal gratification, as he being a passenger got lift from co-accused/driver Muhammad Ameen and was unaware about the availability of the Charas in the Car, therefore, he has no nexus with the alleged contraband Charas; that there are several conflicts in the evidence of prosecution witnesses, which has lost credibility of their testimony; that learned trial Court has committed illegality while convicting the present appellant, holding him guilty of the charged offence by way of impugned judgment, which requires interference by this Court. In such situation, the present appellant deserves to be acquitted. He relied upon cases of *Ikramullah and others v. The State* (2015 SCMR-1002), *Mir Muhammad and others v. The State* (2024 P.Cr.LJ-370), *Abdul Waqar v. The State* (2018 YLR-2358), *Rashid v. The State* (2015 P.Cr.LJ-1430) *Arzi Gul and others v. The State and others* (2020 P.Cr.LJ-178), *Ali Akbar v. The State* (2020 YLR-503), *Qaisar Khan v. The State through Advocate General, Khyber Pakhtunkhwa, Peshawar* (2021 SCMR-363), *Zahir Shah alias Shat v. The State through Advocate General, Khyber Pakhtunkhwa* (2019 SCMR-2004), *Sultan Bahadur Yousfzai v. The State* (2024 MLD-1134), *Murtaza v. The State* (2024 MLD-1172) and *Mewa Khan v. The State* (2024 MLD-1467).

11. In Rebuttal, learned Addl.P.G for the State while consenting with the findings of impugned judgment has contended that the prosecution has successfully proved its case against both the appellants who were found with the huge quantity of Charas; that the evidence of prosecution witnesses is consistent with each other on all material aspects of the case, which is further strengthened from the documents produced by them at trial; that the police officials had no hostility to foist such a huge quantity of narcotics substance against the appellants of its own, therefore, learned trial Court has committed no illegality while passing the impugned judgment, which is based upon the sound findings and thus it needs no interference by this Court. He lastly prayed for dismissal of the instant Criminal Jail Appeal.

12. We have heard learned counsel for the parties and have minutely gone through the material made available on record with their able assistance.

13. The overwhelming glance at the material brought on record is entailing that both the appellants were captured by the police party of P.S Saddar Jacobabad, with recovery of huge quantity of 20 kilograms of Charas in shape of 10/10 packets, from two sacks in the Car, driven by appellant Muhammad Ameen. The entire case of prosecution is based upon the evidence of PW-01 Complainant SIP Ashique Ali Lashari, PW-02 Mashir PC Babal Khan and PW-03 PC Shahzad Hussain (the person who received case property from the investigation officer and then taken it to the Chemical Examiner). All these witnesses have narrated the entire episode in a natural manner and remained consistent throughout and their testimony could not be shattered by the defence despite lengthy cross-examination. The said witnesses had no enmity with the accused to falsely implicate in the present case. Even otherwise, a huge quantity of 20 kilograms of Charas in no circumstances can be planted/ foisted against any individual by the police of his own.

14. To prove the safe transmission, the prosecution examined PW-3/ PC Shahzad Hussain(Exh.07), who deposed that while posted at Police Station Saddar Jacobabad on 25.09.2020, he had received two sealed parcels of case property containing Charas relating to this crime from I.O/SIP Abdul Rasheed for depositing it with the office of Chemical Examiner Rohri, which on the same date, he left police station and then

deposited such sealed parcels of case property to the office of Chemical Examiner Rohri and obtained such receipt there-from. On the said date, he returned to police station and handed over such R.C to I.O, who then recorded his 161 Cr.PC statement. In cross-examination, *he deposed that he received parcels in office of Muharar. WHC brought these parcels from Malkhana. At that time, I.O and ASI Ashique Lashari were also present. He denied the suggestion that he was not handed over parcels by the I.O nor he deposited the same with Chemical Examiner, Rohri.*

15. From the evidence, it appears that appellant Muhammad Ameen after taking 20 K.Gs of Charas from one Naseeb Baloch at Quetta were then transporting the same to one Asif alias Wahab Baloch through a Car driven by him but was apprehended by the police officials, as such, he is responsible for possessing such contraband. It is well-settled principle of law as held by the Hon'ble Apex Court that a person on a driving seat shall be held responsible for transportation of such huge quantity of narcotics substance. The reliance in this context is placed upon case of ***Kashif Ameer Vs. The State (PLD 2010 SC-1052)***, wherein the Hon'ble Supreme Court of Pakistan has held that:

***“It is well-settled principle that a person who is on driving seat of the vehicle, shall be held responsible for transportation of the narcotics having knowledge of the same as no condition or qualification has been made in section 9(b) of CNSA that the possession should be an exclusive one and can be joint one with two or more persons. Further, when a person is driving the vehicle, he is incharge of the same and it would be under his control and possession, hence, whatever articles lying in it would be under his control and possession. Reference in this behalf may be made to the case of Muhammad Noor Vs. The State (2010 SCMR-927). Similarly, in the case of Nadir Khan Vs. The State (1988 SCMR-1899). This Court has observed that knowledge and awareness would be attributed to the incharge of the vehicle. Another aspect of the case is that once the prosecution has prima facie established its case then under section 29 of the CNSA burden shifted upon the accused to prove contrary to the plea of the prosecution. Reliance in this behalf may be made to the case of Ismaeel Vs. The State (2010 SCMR-27). Wherein, this Court while relying upon the cases of Muhammad Arshad Vs. The State (2007 SCMR-1378) and Mst.Taj Bibi Vs. The State (2007 SCMR-1591) has held that chemical examiner's report regarding Charas and Opium were sufficient to prove that the substance recovered from the accused was Charas which can be used to cause intoxication; the prosecution had discharged its initial onus while proving that substance was recovered from him whereas the petitioner had failed to discharge its burden in terms, of Section 29 (d) of CNSA.”***

16. Moreover, the Hon'ble Supreme Court of Pakistan while dismissing the appeal of appellant Hussain Shah by way of the

judgment dated 20-09-2019 passed in **Criminal Appeal No.7-P of 2017**, has held that;-

***“Hussain Shah appellant was driving the relevant vehicle when it was intercepted and from a secret cavity of that vehicle a huge quantity of narcotic substance had been recovered and subsequently a report received from the Chemical Examiner had declared that recovered substance was charas. The prosecution witnesses deposing about the alleged recovery were public servants who had no ostensible reason to falsely implicate the said appellant in a case of this nature. The said witness had made consistent statements fully incriminating the appellant in the alleged offence. Nothing has been brought to our notice which possibility could be used to doubt the veracity of the said witnesses.*”**

17. As regards the contention of learned defence counsel that the prosecution has failed to prove **safe custody/transmission of Charas** to the office of Chemical Examiner and that too with considerable delay. It may be mentioned here that in the cross-examination of PWs, no such question has been raised by the defence that there was tampering with the case property at the police station or during its transmission to the Chemical Laboratory. In this regard, PC Shahzad Hussain in his evidence (Exh.7) deposed that he received sealed parcels of case property on 25.09.2020 from I.O/SIP Abdul Rasheed for depositing it with Chemical Examiner's office, Rohri, which he deposited, as such, the prosecution examined the person who had taken the case property to the Chemical Laboratory and also the Investigating officer of the case. Further, the I.O in his examination-in-chief has deposed that the sample-parcels were deposited on the very day with the Chemical Analyzer for its analysis and such report was received in **positive** which he produced at **(Exh.08/C)** and the report confirms that the parcel received through PC Shahzad Hussain on 25.09.2020, therefore, *it can safely be said that safe chain of custody of the recovered narcotics and its transmission to the Laboratory was not compromised at all.* Reliance in this regard is placed to the case of **Faisal Shahzad Vs. The State [2022 SCMR-905]** and **Ajab Khan Vs. The State [2022 SCMR-317]**.

18. The requirement of Rule 4 of Control of Narcotic Substance (Government Analysis) Rules, 2001 is that the reasonable quantity of sample from the entire narcotics drug, psychotropic substance or the controlled substances seized, shall be drawn on the spot of recovery and dispatched to the office in charge of nearest Narcotics Testing

Laboratory for the test either by insured post or through a special messenger. No question was put by the defence counsel that there was tampering with the case property and it is also confirmed by the Chemical Examiner that two sealed parcels were received at his office on 25.09.2020 in a sealed condition by the hand of PC Shahzad Hussain. Further, Rule 5 of Control of Narcotic Substance (Government Analysis) Rules, 2001 provides a condition that it should be received in the sealed condition in the laboratory. The incharge officer shall observe full protocol by carefully opening and giving a distinct laboratory number. For that, a separate register shall be maintained. All samples shall be passed to the analyst on the same day and kept in safe custody and examine and record weight in the test memorandum. He will compare the markings on the test Memorandums with the markings on the packages envelopes and will ensure that he tests the relevant sample. Rule 6 of C.N.S (Government Analysts) Rules, 2001 further provides that on analysis the result thereof together with full protocols the test applied, shall be signed in quadruplicate and supplied forthwith to the sender as specified in Form-11. Now the question here is whether the report received from the office of the Chemical Examiner is according to Rule 4, 5 & 6 of C.N.S (Government Analysts) Rules, 2001 or not. The requirement of R.4 is only that the parcel/envelope should be received in the office of Chemical Examiner in a sealed condition. We have perused the Chemical Examiner's report available as Exh.08/C, and in our humble view it is according to its' Rule and the full protocol was observed by the office of Chemical Examiner. It is appropriate to reproduce the relevant paragraph of the report, as under;

*Net Weight : 10 Kilo gm in each parcel No.1 & 2.*

*Test : Positive.*

*Result : Charas identified.*

*Conclusion: The submitted sample is identified to contain Charas.*

19. The procedural detail is mentioned in the Chemical Examiner's report Exh.08/C about the tests applied do not fall short of "**protocol**". In an unreported case of ***Mushtaq Ahmed Vs. The State & others (Criminal Petition No.370 of 2019)*** the Hon'ble Supreme Court of Pakistan has held that;



***“3... Argument that Forensic report sans protocols as mandatorily required in the case of State Vs. Imam Bakhsh (2018 SCMR 2039), is beside the point and so is a reference to Rule 6 of the Control of Narcotic Substance (Govt. Analysis) Rules, 2001, for the convenience of reference reproduced below:-***

***“Report of the result of test analysis:--After test or analysis the result thereof together with full protocols of the test applied, shall be signed in quadruplicate and supplied forthwith to the sender as specified in Form-II”.***

***The above requires reference to the test applied for analysis, specifically mentioned in Form-II thereof. We have perused the forensic report, relied upon the prosecution, which substantially meets the legal requirements in the following terms:-***

***“Test Performed on Received Item(s) of Evidence***

- 1. Analytical Balance was used for weighing.***
- 2. Chemical spot Tests were used for Presumptive Testing.***
- 3. Case Chromatography-Mass Spectrometry was used for confirmation.***

***Results and conclusions***

***“Item # 01 72.87 gram(s) of blackish brown resinous material in sealed parcel contains Charas”***

***Details mentioned in the Forensic report procedure/test applied do not short of ‘protocol’ as insisted by this court in the supra case. According to the Oxford English Dictionary, 6<sup>th</sup> Edition, the expression “protocol’ in relation to a forensic test means.***

***“A formal or official statement of a transaction or proceedings; spec, a record of (esp. scientific) experimental observations”.***

20. The reliance is also placed on an un-reported case of Hon’ble Supreme Court of Pakistan, vide judgment dated 09-01-2020 passed in ***Criminal Petition No.370 of 2019 Re. Mushtaq Ahmad Vs The State & another;***

***“4. It has been argued before us that the report submitted by the Chemical Examiner did not mention the necessary protocols followed or tests applied but we have seen the said report available on the record of the trial court and have found that the said report not only referred to the protocols adopted but also to the tests applied and, thus, we have not been able to find any deficiency in the said report.”***

21. As regards the arguments of learned counsel for the appellants about violation of Section 103 Cr.PC is concerned, it would be appropriate to refer Section 25 of the Control of Narcotics Substance Act 1997, which reads as under;-

***“25. Mode of making searches and arrest.--- The provisions of the Code of Criminal Procedure, 1898, except those of section 103 Cr.P.C shall mutatis mutandis, apply to all searches and arrests in so far as they are not inconsistent with the provisions of section 20, 21, 22 and 23 to all warrants issued and arrest searches made under these sections.*”**

22. It means that the applicability of Section 103 Cr.P.C in the narcotics cases has been excluded and the non-inclusion of any private witness is not a serious defect to vitiate the conviction. The complainant in his cross examination deposed that they did not see any private person at vardat.

23. So far the evidence of police officials is concerned, they are more competent than others hence, their evidence cannot be discarded merely for the reason of their being as police officials. They have furnished straight-forward and confidence-inspiring evidence and there is nothing on record to show that they have deposed against the accused maliciously or out of any animus thus it cannot be believed that the police officials would plant or foist such a huge quantity of narcotics substance (20 K.Gs) against the accused from their own resources. It is a settled principle of law that the statement of the official witness cannot be discarded only on the pretext that they are police officials. The reference in this context is made to the case of **Zaffar Vs. The State (2008 SCMR-1254)**, the Hon’ble Supreme Court of Pakistan has held that;-

***“Police employees are the competent witnesses like any other witnesses and their testimonies cannot be discarded merely on the ground that they are police officials”***

24. In the instant case, no proof of enmity with the complainant or the other witnesses has been brought on the record, thus, in the absence thereof, the competence of prosecution witnesses being police officials was rightly believed. Moreover, a procedural formality cannot be insisted at the cost of completion of an offence and if an accused is otherwise found connected then mere procedural omission and even allegation of improper conduct of investigation would not help the accused. The reference in this context is made to the case of the **State/ANF Vs. Muhammad Arshad (2017 SCMR-283)**, wherein the Hon’ble Supreme Court of Pakistan has held that;-

***“We may mention here that even where no proper investigation is conducted, but where the material that comes before the Court is sufficient to connect the accused***

***with the commission of crime, the accused can still be convicted, notwithstanding minor omissions that have no bearing on the outcome of the case”.***

25. Even otherwise, mere status of one as an **official** would not alone prejudice the competence of such witness until and unless he is proved to be **interested**, who has a motive, to falsely implicate an accused or has the previous enmity with the person involved.

26. It is now settled proposition of law that by afflux of time in the case of transportation or possession of narcotics, technicalities of procedural nature or otherwise should be overlooked in the larger interest of the Country, if the case stands otherwise proved, the approach of the Court should be dynamic and pragmatic, in approaching true facts of the case and drawing correct and rational inferences and conclusions while deciding such type of cases. The Hon'ble Supreme Court of Pakistan in the case of **Ghulam Qadir Vs. The State** reported in (**PLD 2006 SC-61**) has held that:-

***“S.9(c)--Appreciation of evidence---No acquittal on technicalities---Court in such like cases are supposed dispose of the matter with dynamic approach, instead of acquitting the drug paddlers on technicalities.”***

27. On re-assessment of evidence of the prosecution witnesses, we find it confidence-inspiring and trustworthy; as such appellant Muhammad Ameen was transporting 20 K.Gs of Charas through a Car and was arrested on 22.09.2020 at 0900 hours from Quetta road near Umrani curve. The version of complainant ASI Ashique Ali has been fully corroborated by mashir of arrest and recovery, which is substantiated with the memo of arrest and recovery (Exh.05/A), and FIR (Exh.05/B), as well as the Chemical Examiner's report in **positive** produced by the I.O/SIP Abdul Rasheed at (Exh.08/C).

28. No previous enmity, ill-will or grudge has been alleged or proved against prosecution witnesses to implicate appellant Muhammad Ameen in this case falsely. The prosecution successfully discharged its lawful duty thereby shifting the burden upon him within the meaning of Section 29 of the Act. Such burden would require the accused to firstly cause a dent in the prosecution case and secondly to establish at least justify the possibility of false implication or foistation of huge quantity of

Charas but the defense has failed to do so. While recording his statement in terms of Section 342 Cr.P.C, the appellant Muhammad Ameen has taken the defence plea that he being innocent has been involved in this case falsely by the police with foistation of Charas upon him, when he failed to pay illegal gratification to the police but strangely, he failed to produce any material or a person in support of his plea except the disclosure of his being implicated falsely, without producing cogent evidence during the course of his statement. In cross-examination to advocate for accused Muhammad Ameen, PW-01 Complainant ASI Ashique Ali deposed that ***“It is incorrect that this false case has been lodged against the accused by foisting Charas upon him.”***

29. There is no denial to the fact that appellant Muhammad Ameen was driving the Car containing a huge quantity of Charas. No convincing material has been produced by him denying the fact that how it is possible that he was not having any knowledge about the Charas present in his Car, which he was driving all the way. It is hard to believe that the driver had no idea or knowledge about the contents and articles being transported by him or present in his Car on which he was driving. The deeper analysis of the whole prosecution evidence i.e, the recovery of a huge quantity of narcotics, the happening of occurrence on the place, during day time; sealing the entire material in a prescribed manner and sending the same to the Chemical Examiner, report of the Chemical Examiner and the evidence of the prosecution witnesses when evaluated conjointly leaves no room to conclude that appellant Muhammad Ameen is a real perpetrator.

30. No illegality or irregularity and mis-appreciation of evidence were found, so far as his case is concerned. The case of the prosecution is based upon the appraisal of the evidences, supported with reasons placed on record. No incriminating evidence was produced to show misreading and omission from consideration of the evidence. The incomes of narcotics are largely utilized in anti-state/terrorist activities which this country has been facing for decades and it obviously has affected the society at large. When the prosecution can prove its case on its salient features then unnecessary technicalities should not be

allowed to hamper very purpose of the law on the subject. Reliance is placed in case of **FAISAL SHAHZAD v. THE STATE (2022 SCMR 905)**.

31. It is a trite proposition of law that items recovered from the vehicle in possession of the driver are presumed to be assenting to be in his control and in his knowledge. If the drugs are secured from the possession of an accused then it is normally believed that he has a direct relationship with the drugs and the burden of proof that he did not know the same lies heavily on him. We in this regard would like to refer to a judgment given by the Hon'ble Supreme Court in the case of **Muhammad Noor Vs. The State reported in 2010 SCMR 927**, wherein the Hon'ble Court observed as under:

**8. As regards Driver of the vehicle, it is important to note that when he is driving the vehicle, he is Incharge of the same, therefore, it would be under his control and possession. Hence, whatever articles lying in it would be under his control and possession. The liability of the driver, in view of provisions of section 27 of P.P.C., has been considered by this Court in the case of Sherzada v. State 1993 SCMR 149, wherein it was observed as under:-**

**The next point raised by the learned Counsel was that it is provided in section 27, P.P.C. that when property is in the possession of wife, clerk or servant on account of that person, it is in that person's possession within the meaning of this Code. The learned Counsel argued that the appellant was a driver, hence an employee of the owner of the car and even if he is admitted to be in possession of the contraband article on behalf of the owner, he cannot be said to be liable for that possession. But this argument of the learned Counsel is without force on the face of it because section 27, P.P.C. is confined to the Pakistan Penal Code only, as the words "within the mean of this Code" appearing in that section clearly indicate. This section has not been made applicable to the Prohibition (Enforcement of Hadd) Order, 1979 as is evident from Article 26 of that Order where certain other provisions of the P.P.C. have been made applicable.**

**This Court in the case of Adil Ahmed v. Deputy Collector, C & CE 1991 SCMR 1951 has observed that in view of provisions of Customs Act, the drivers and owners were both responsible.**

**In the case of Rab Nawaz v. The State PLD 1984 SC 858, the liability of drivers was again considered and lenient view was taken, as they expressed their ignorance about the contents and claimed to be simple carriers. In the present case the appellant did not claim to be carrier.**

**This Court in the case of Nadir Khan v. State 1988 SCMR 1899 has observed that knowledge and awareness would be attributed to the Incharge of the Vehicle. The relevant portion reads as under:-**

***“We have gone through the evidence on record and find that the petitioners had the charge of vehicle for a long journey starting from Peshawar and terminating at Karachi. They had the driving license also. As being person Incharge of the vehicle for such a long journey, they must be saddled with the necessary knowledge with regard to the vehicle and its contents”.***

32. Having concluded above, and while relying upon the case laws of the Hon’ble Apex Court, we are of the unanimous view that the prosecution has successfully established the charge of transportation of a huge quantity of narcotics substance through a Car against appellant Muhammad Ameen being its driver, beyond a shadow of any reasonable doubt. Consequently, the Criminal Jail Appeal in his respect being devoid of merits is **dismissed** accordingly. The conviction and sentence awarded to him by the learned trial Court are hereby **maintained**. The case law relied upon by his defence counsel, on being distinguishable facts and circumstances, are not helpful to his case.

33. So far as the case against appellant Akhtar Jan is concerned, no tangible material was collected by the investigation officer during investigation or even produced up to close of the trial, which may justify the involvement of appellant Akhtar Jan with the recovery of alleged contraband Charas from his exclusive possession. In that situation, the prosecution has miserably failed to prove guilt against appellant Akhtar Jan beyond shadow of reasonable doubt, therefore, the conviction and sentence awarded to him by learned trial Court is set aside and he is **acquitted** of the charged offence by extending him benefit of doubt. Let the release writ be issued for appellant Akhtar Jan, directing the concerned jail authority to release him forthwith in the present case, if his custody is no more required in any other case.

**JUDGE**

**JUDGE**