

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Appeal No.D-112 of 2023

[Ibrahim vs. The State]

BEFORE:

JUSTICE JAWAD AKBAR SARWAR

JUSTICE SYED FIAZ-UL-HASSAN SHAH

Appellant by : Mr. Manzoor Ahmed Panhwar advocate
State by : Ms. Rameshan Oad D.P.G
Date of Hearing : **13.05.2026**
Date of Decision : **25.05.2026**

J U D G M E N T

SYED FIAZ-UL-HASSAN SHAH, J:- The appellant has challenged the judgment dated 08.09.2023 (**Impugned Judgment**) passed by Special Judge for Control of Narcotics Substances/Model Criminal Trial Court Tando Muhammad Khan (**Trial Court**) in Special Case No.17 of 2023 arisen out of Crime No.13 of 2023 registered at P.S Taluka Tando Muhammad Khan for offence punishable under Section 9(c) of CNS Act, 1997, whereby he has been convicted to suffer R.I for ten (10) years with fine of Rs.1,00,000/- while holding that in case of default in payment of fine amount the appellant shall further suffer S.I for 04 months, hence this appeal.

2. The appellant was charged on 09.06.2023 for the commission of offence punishable under Section 9(1)(3)(c) of CNS Act that on 12.04.2023 at about 0700 hours at SIM Nali link road adjacent to Dargah Shaikh Fareed he was arrested by the police team headed by SHO SIP Sain Dino Buriro and on search found a black colour polythene bag containing six big pieces of chars weighing 2960 grams was recovered from his possession that was sealed at the spot and a memo of recovery and arrest was prepared.

3. On completion of investigation challan was submitted and PW-1 complainant SIP Sain Dino was examined at Ex.4, who produced

roznamcha entries, memo of arrest and recovery and FIR at Ex.04/A to 04/C. Mashir HC Ghulam Abbas was examined as PW-02 at Ex.05, who produced memo of site inspection at Ex.05/A. Malkhana Incharge WHC Hamzo as Ex.03 at Ex.06, who produced entry bearing No.23 of Register No.19 at Ex.06/A. Investigation Officer Inspector Imtiaz Ali was examined as PW-04 at Ex.07, who produced roznamcha entries, letter addressed to chemical examiner, receipt and chemical examiner report at Ex.07/A to 07/F. Then DDP for the State closed the side of the prosecution at Ex.08. Thereafter statement of appellant was recorded under Section 342 Cr.PC at Ex.09 wherein he denied the allegations leveled against him by the prosecution witnesses, however, neither he examined himself on Oath nor produced any defense witness.

4. Learned counsel for the appellant argued that appellant is innocent and has been falsely implicated in this case and the trial Court has not taken into consideration broken safe custody and safe transmission of the case property, therefore, the impugned judgment is not sustainable. He further argued that trial Court has passed the judgment by misreading and non-reading of the evidenced whereas the memo of arrest and recovery (Ex.04/B), entry of Register No.19 (Ex.06/A) and certificate of lab examination (Ex.07/F), all have admitted that the case property containing six large pieces of chars was neither weighed separately nor sealed separately which is in violation of the settled principle of law. He relied upon 2024 SCMR 1408, 2024 SCMR 1517 and 2025 SCMR 751.

5. On the other hand learned Deputy Prosecutor General states that appellant was arrested spontaneously and 2960 grams of chars was recovered from his exclusive possession. He states that safe custody and safe transmission of the case property is not broken and the chemical examination report confirms that it was chars. He lastly states that appellant has rightly been convicted by the trial Court.

6. Arguments heard and record perused.

7. We have carefully examined the foundational document of recovery i.e memo of arrest and recovery dated 12.04.2023 that was prepared at crime scene and produced at Ex.04/B, which states that six large pieces of chars weighing about 2960 grams was recovered from the possession of the appellant. The same had been confirmed by the Raiding officer PW-1 SIP Sain Dino and mashir PW-2 HC Ghulam Abbas. Similarly, PW-3 Malkhana Incharge WHC Hamzo had also confirmed that case property parcel containing 2960 grams of chars was deposited in Malkhana under entry No.23 (Ex.06/A). On examination of entry No.23 (Ex.06/A) it reveals that six pieces of chars weighing 2960 grams was deposited in Malkhana. A further reading of chemical examination report (Ex.07/F) also confirms that one sealed cloth parcel containing black plastic shopper having six dark brown pieces, out of which four pieces each has golden dye imprint gunman and remaining two pieces each has photo of lion each piece weight 500, 452, 504, 502, 500 and 502 grams, that fact was also confirmed by the PW-4 Investigation Officer Inspector Imtiaz Ali in his evidence.

8. We have, however, noted from all above three exhibits as well as oral testimony recorded by the prosecution witnesses, that six pieces of charas, the case property, was not weighed separately. Furthermore, these six pieces of chars were admittedly sealed in the same plastic shopper jointly, which is in flagrant violation of the dictum laid down by the Supreme Court in the case of **Muhammad Hashim vs. The State reported in PLD 2004 SC 856** and followed in the case of **Sarfraz vs. The State reported in 2024 SCMR 1571**. Therefore, the prosecution has failed to discharge its onus of proof with regard to safe custody and safe transmission of the case property commencing from arrest and recovery, preparation of foundational document i.e memo of arrest and recovery, its sealing, deposit in the official Malkhana, its taking out from the Malkhana to the chemical examination lab and re-deposit to official Malkhana until it is produced before the trial Court

during evidence. It also reveals that all three pieces were neither weighed separately nor handled separately, which is in violation of the principle of safe custody and safe transmission.

9. The prosecution is under a bounden duty to establish, through cogent and confidence-inspiring evidence, both the safe custody and safe transmission of the case property. Any break, omission, or failure in proving this continuous chain of custody renders the evidentiary value of the recovered substance doubtful, and consequently, conviction and sentence under the *ibid* Act cannot be sustained. In **Jeehand vs. The State (2025 SCMR 923)**, it has been held that it is the duty of the police and prosecution to establish that the case property remained in safe custody at all times.

10. In narcotics cases, stricter standards apply. It is by now well-settled that the prosecution, in cases involving narcotics, must successfully pass a twofold test with regard to the case property. Firstly, it must establish the lawful recovery, seizure, and incorporation of the case property in the challan, coupled with unimpeachable proof of its safe custody. This requires preparation of contemporaneous documents free from doubt, reflecting accurate description, proper sealing, and deposit of the case property in the Malkhana under duly maintained record. Secondly, the prosecution must affirmatively prove the safe transmission of the case property, i.e., its movement from safe custody to the Chemical Laboratory, and thereafter its return and production before the Court as admissible evidence. Each stage of this process must be supported by reliable documentary and oral evidence, ensuring an unbroken chain of custody. Any deviation, omission, or infirmity in either of these essential requirements warrants drawing an adverse inference against the prosecution, thereby entitling the accused to acquittal. This principle has been consistently reiterated by the Hon'ble Supreme Court of Pakistan in a catena of judgments, including *Ikramullah v. The State* (2015 SCMR 1002), *The State v. Imam Bakhsh* (2018 SCMR 2039), *Abdul Ghani v. The State* (2019 SCMR 608), *Kamran Shah v. The*

State (2019 SCMR 1217), Mst. Razia Sultana v. The State (2019 SCMR 1300), Faizan Ali v. The State (2019 SCMR 1649), Zahir Shah alias Shat v. State through A.G. KPK (2019 SCMR 2004), Haji Nawaz v. The State (2020 SCMR 687), Qaiser Khan v. The State (2021 SCMR 363), Mst. Sakina Ramzan v. The State (2021 SCMR 451), Zubair Khan v. The State (2021 SCMR 492), and Gulzar v. The State (2021 SCMR 380), Mst. Sakina Ramzan v. The State (2021 SCMR 451), Qaiser and another v. The State (2022 SCMR 1641), Muhammad Hazir V. The State (2023 SCMR 986), Javed Iqbal v. The State (2023 SCMR 139), Asif Ali and another V. The State (2024 SCMR 1408).

11. In view of the aforesaid discussion the impugned judgment is hereby set aside. The appellant is acquitted of the charge and shall be released forthwith, if not required in any other case.

JUDGE

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