

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Jail Appeal No.D-08 of 2024

[Nasreen vs. The State]

BEFORE:

JUSTICE JAWAD AKBAR SARWAR

JUSTICE SYED FIAZ-UL-HASSAN SHAH

Appellant by : Mr. Abdullah Soomro advocate
State by : Mr. Altaf Hussain Khokhar DPG
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 07.10.2023 (**Impugned Judgment**) passed by the Model Criminal Trial Court-I/Special Judge Control of Narcotics Substances Hyderabad (**Trial Court**) in Special Case No.216 of 2022 arisen out of Crime No.157 of 2022 registered at P.S Bhattae Nagar under Section 9(c) of CNS Act, whereby she was convicted to suffer R.I for nine (09) years with fine of Rs.80,000/- while holding that in case of default in payment of fine amount the appellant shall further suffer S.I for 03 months.

2. The appellant was charged on 26.11.2022 for the commission of offence punishable under Section 9(c) of CNS Act that on 16.10.2022 at about 2200 hours at Wadhu Wah road near Samanabad street Bhattae Town Bhattae Nagar Hyderabad was arrested by the police team headed by SIP SIP Allah Bachayo, who was accompanied by lady Police Constable Fozia Mumtaz, who apprehended the appellant and on search found a black colour shopping containing two large and one small pieces of chars weighing 1180 grams 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 mashir HC Asghart Ali was examined at Ex.3, who produced memo of arrest

& recovery and memo of place of incident at Ex.03/A and 3/B. SIP Allah Bachayo the raiding officer was examined as PW-2 at Ex.4, who produced departure entry at Ex.04/A and FIR at Ex.04/B. HC Rasheed Ahmed was examined as PW-3 at Ex.05, who produced malkhana entry No.71 at Ex.05/A. Investigation Officer Inspector Shafi Muhammad was examined as PW-4 at Ex.06, who produced station diaries, permission letter dated 17.10.2022, letter dated 29.10.2022, sample receipt, letter written to Chemical Examiner and chemical examiner report at Ex.06/A to 06/I. Lady Police Constable Fozia Mumtaz was examined as PW-05 at Ex.07, who confirmed the recovery of case property from the possession of the appellant. 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. wherein she denied the allegations leveled against her by the prosecution witnesses, however, neither she examined herself 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 memo of arrest and recovery (Ex.03/A), entry of Register No.19 (Ex.06/A) and certificate of lab examination (Ex.06/I), all have admitted that the case property containing two large and one small 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 1180 grams of chars was recovered from her 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 16.10.2022 that was prepared at crime scene and produced at Ex.03/A, which states that two large and one small pieces of chars weighing about 1180 grams was recovered from the possession of the appellant Nasreen W/o Imdad Ali. The same had been confirmed by the mashir PW-1 HC Asghar Ali and Raiding officer PW-2 SIP Allah Bachayo. Similarly, PW-3 Malkhana Incharge HC Rasheed Ahmed had also confirmed that case property parcel containing 1180 grams of chars was deposited in Malkhana under entry No.71 (Ex.05/A). On examination of entry No.71 (Ex.05/A) it reveals that three pieces of chars weighing 1180 grams was deposited in Malkhana. A further reading of chemical examination report (Ex.06/l) also confirms one sealed cloth parcel containing black plastic shopper having two big and one small dark brown pieces, that fact was also confirmed by the PW-4 Investigation Officer Inspector Shafi Muhammad in his evidence.

8. We have, however, noted from all above three exhibits as well as oral testimony recorded by the prosecution witnesses, that two large and one small piece of charas, the case property, was not weighed separately. Furthermore, these three 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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