

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

Criminal Jail Appeal No.D-69 of 2024

Before;

**Mr. Justice Riazat Ali Sahar;
Mr. Justice Ali Haider 'Ada'.**

Appellant : Hussainullah son of Abdullah Pathan, *through* Mr. Abdul Baqi Jan Kakar, Advocate.

The State : *Through* Mr. Aitbar Ali Bullo, Deputy Prosecutor General Sindh.

***Date of Hearing* : 24.06.2026.**
***Date of Decision* : 24.06.2026.**
***Date of Reasons* : 29.06.2026.**

J U D G M E N T

ALI HAIDER 'ADA', J.- Through the instant appeal, the appellant has assailed the judgment dated 16.11.2024 passed by the learned I-Additional Sessions Judge (MCTC), Jacobabad, in Special Case No.40 of 2022, titled as The State versus Hussainullah, for an offence punishable under Section 9(c) of the CNS (Amendment) Act, 2022, arising out of FIR No.168 of 2021 registered at Police Station Saddar Jacobabad. Vide the impugned judgment, the appellant was convicted and sentenced to rigorous imprisonment for 20 years and to pay a fine of Rs.200,000/-. In case of default in payment of fine, he was directed to suffer further simple imprisonment for one year. However, the benefit of Section 382-B Cr.P.C. was extended to him. Being aggrieved by the said judgment, the appellant has preferred the instant appeal.

2. The prosecution case, in brief, is that on 23.09.2021 at about 16:30 hours, pursuant to spy information, complainant ASI Ashiq Ali along with his subordinate staff intercepted Toyota Corolla vehicle bearing No. AUE-348, of accused/appellant Hussainullah at Quetta Road. During

search of the vehicle, 30 slabs of charas were allegedly recovered, having a total weight of 15 kilograms, with each slab allegedly weighing 500 grams. Personal search of the accused resulted in recovery of Rs.2,000/-, CNIC, and vehicle documents. The vehicle was also taken into possession. The recovered contraband was sealed at the spot and a memo of recovery was prepared. On the same day, FIR was registered.

3. After registration of the FIR, usual investigation was conducted and the appellant was sent up for trial. The learned trial Court, after taking cognizance of the matter, supplied the relevant documents to the appellant in accordance with law and, on 23.04.2022, framed the charge against him, to which he pleaded not guilty and claimed trial.

4. In order to prove its case, the prosecution examined PW-1 Noor Muhammad, Clerk of Chemical Examiner's Office Sukkur @ Rohri, who produced the R.C. PW-2 complainant ASI Ashiq Ali was examined, who produced the memo of arrest and recovery, FIR, and relevant Roznamcha entries. PW-3 mashir PC Babal Khan was examined, who produced the memo of site inspection. PW-4 Investigating Officer SIP Muhammad Azam produced the Roznamcha entries and letters relating to transmission of case property to the chemical laboratory. PW-5 PC Muhammad Hanif, being carrier/transporter of the case property, was examined. PW-6 second Investigating Officer SIP Bashir Ahmed produced the chemical report, while PW-7 WHC Israr Ahmed, was also examined.

5. Thereafter, learned State counsel closed the prosecution side. Subsequently, the statement of the appellant under Section 342 Cr.P.C. was recorded, wherein he professed his innocence and prayed for acquittal. After hearing the parties, the learned trial Court passed the impugned judgment, which has been called in question through the instant appeal.

6. Learned counsel for the appellant contended that the prosecution case suffers from material contradictions and inherent infirmities. He argued that no independent witness was associated despite the fact that the place of arrest and alleged recovery was a busy area. He further contended that the prosecution failed to establish an unbroken chain of custody of the alleged recovered narcotics and the evidence brought on record is not confidence-inspiring. He submitted that the prosecution has failed to prove its case against the appellant beyond reasonable doubt; therefore, the appellant is entitled to acquittal.

7. Conversely, learned Deputy Prosecutor General supported the impugned judgment and contended that the prosecution witnesses have fully supported the case. He submitted that the recovery of narcotics has been established through reliable and confidence-inspiring evidence and the learned trial Court rightly convicted the appellant after proper appreciation of the material available on record. He, therefore, prayed for dismissal of the appeal.

8. Heard learned counsel for the parties and perused the material available on record.

9. According to the prosecution case, 15 kilograms of charas in the shape of 30 slabs, each weighing 500 grams, were allegedly recovered from the vehicle of the appellant. In narcotics cases, where conviction is based upon recovery of contraband, the prosecution is required to establish the safe custody and safe transmission of the recovered substance with great caution and care.

10. Upon careful examination of the evidence, it appears that the prosecution examined its first witness from the Chemical Examiner's Office, who deposed that on 27.09.2021, one PC Saqib Ali appeared before the laboratory and produced the contraband material for chemical analysis,

which was received under Road Certificate No. 274. The chemical report also reflects that PC Saqib Ali, being dispatch rider, produced the charas before the laboratory. However, said fact is materially contradicted by the other evidence available on record. The Investigating Officer produced Roznamcha entry No.16 regarding the movement of dispatch rider, wherein the name of the dispatch rider is mentioned as Muhammad Hanif and not Saqib Ali. Moreover, Muhammad Hanif was examined by the prosecution as a witness being the alleged dispatch rider. Despite this, neither the Chemical Examiner's Office witness nor the chemical report supported the claim of Muhammad Hanif that he had deposited the case property before the laboratory for chemical analysis. Such contradiction regarding the identity of the person who transmitted the case property to the laboratory creates a serious doubt about the safe transmission and safe custody of the alleged contraband material.

11. The prosecution examined complainant ASI Ashiq Ali as PW-2, who deposed that he had received spy information; however, he failed to take any step to corroborate the same through independent evidence. The complainant, during cross-examination, admitted that he did not associate any private person as mashir during the recovery proceedings. Furthermore, the mashir examined by the prosecution admitted in cross-examination that the place of occurrence was a busy area. It was, therefore, an admitted position that the alleged recovery was effected from a busy place pursuant to prior information, yet no independent person was associated with the recovery proceedings. Although Section 25 of the Control of Narcotic Substances Act, 1997 excludes the mandatory application of Section 103 Cr.P.C. and police officials may be considered competent witnesses, the same does not absolve the prosecution from associating independent witnesses where they are available. The failure to do so creates doubt regarding the genuineness of the recovery

and possibility of false implication cannot be ruled out. Reliance in this regard may be placed upon the judgment of the Division Bench of this Court in **Niaz Ali versus The State, 2026 MLD 215**. Similar principles were laid down in **Muhammad Aslam versus The State, 2011 SCMR 820**, **Ghulam Shabbir and another versus The State, 2023 YLR 153**, **Arsad Ali and another versus The State, 2024 PCr.LJ 1183 (Sindh-DB)**, **Shahzaib alias Wadero Feroze versus The State, 2024 YLR 1298 (Sindh-DB)**, **Danish versus The State, 2025 YLR 1355**, and **Mir Muhammad and others versus The State, 2024 PCr.LJ 370**.

12. Furthermore, the prosecution case, through the deposition of the complainant and mashir, reveals that the words “Steel Town” were allegedly written on 28 slabs of charas. However, the remaining documentary evidence is completely silent regarding such monogram, marking, or description of the case property. Such discrepancy regarding the identity and description of the recovered contraband creates doubt in the prosecution case. Any discrepancy regarding the description, markings, seals, packing, or identity of the case property strikes at the root of the prosecution case and renders the alleged recovery doubtful. Guidance in this regard may be sought from the cases of **Bahawal Shaikh versus The State, 2025 MLD 840**, **Muhammad Arif versus The State, 2023 YLR 2369**, **Ahsan Marfani versus The State, 2022 YLR Note 5**, **Suleman versus The State, 2022 MLD 1612**, and **Asif Khan versus The State, 2021 MLD 1192**.

13. Moreover, the complainant and mashir of recovery and arrest deposed that the charas was lying in a blue-coloured shopper. However, no such blue-coloured shopper was found inside the sealed cloth produced before the Court. The chemical examiner’s report also does not reflect that any contraband material was received along with such blue-

coloured shopper. This omission was further admitted by the complainant during cross-examination, which creates a serious uncertainty regarding the recovered property. Reliance may be placed upon the case of **Zafar Ali Abbasi versus Zafar Ali Abbasi, 2024 SCMR 1773 (Para No.5)** and **Fahad versus The State, 2022 PCr.LJ 279**.

14. Furthermore, the Investigating Officer deposed that on 23.09.2021 he received the case property and deposited the same through WHC of the police station under an entry made in Malkhana Register No.19. However, upon perusal of the said entry, it appears that firstly the same was prepared on plain paper instead of the prescribed format, and secondly, the name of the depositor was not mentioned therein. There is also no clear indication as to when and by whom the case property was deposited. Such deficiency creates doubt regarding the safe custody of the contraband material and the prosecution failed to establish an unbroken chain of custody. In this regard, reliance may be placed upon the judgment of the Hon'ble Supreme Court in the case of **Irshad Khan versus The State, 2026 SCMR 87**, wherein it was held that:

10. ".....Furthermore, the extracts of Registers Nos. 19 and 21 were tendered in evidence as Ex.PW3/1 and Ex.PW3/2, when we examined the extract of Register No. 19, it appears to be on plain paper; therefore, its exhibition was rightly objected to by the defence counsel.

15. The major flaw and discrepancy which seriously affects the prosecution case relates to the quantity and description of the alleged recovered charas. According to the prosecution, 15 kilograms of charas contained in 30 slabs/pieces were recovered from the vehicle of the appellant. However, the chemical examiner's report reflects that the weight of the charas was 13 kilograms and 400 grams, comprising 40 slabs/pieces. Such material inconsistency regarding the weight and number of slabs of the recovered contraband creates a serious doubt about the substance of the alleged

recovery. Reliance in this regard may be placed upon the cases of **Khawaja Muhammad Asif versus The State, 2025 YLR 1819** and **Wakeel versus The State, 2024 PCr.LJ 592**.

16. Furthermore, the chemical examiner received the case property on 27.09.2021, whereas the alleged recovery was made on 23.09.2021. Thus, there was an unexplained delay of about four days in transmitting the case property to the chemical laboratory. In absence of any plausible explanation and when the safe transmission is not established, the prosecution case becomes doubtful. Reliance may be placed upon the judgment of the Hon'ble Supreme Court in the case of **Mst. Sabran Bibi versus The State, 2026 SCMR 703**.

17. In addition, the prosecution case is that the contraband was recovered from Toyota Corolla bearing registration No. AUE-348. However, the prosecution failed to establish the ownership of the said vehicle or any lawful connection of the appellant with the vehicle. No documentary evidence regarding verification or ownership of the vehicle was produced during trial. The Investigating Officer also failed to investigate the actual owner of the vehicle, which was an important aspect of the case. Such failure on the part of the prosecution further weakens the prosecution story and creates doubt regarding the alleged recovery. Reliance in this regard may be placed upon the cases of **Sultan Bahadur Yousfzai versus The State, 2024 MLD 1134** and **Ghulam Shabbir versus The State, 2023 YLR 153**.

18. In view of the above discussion, the prosecution failed to establish the safe custody, safe transmission of the alleged recovered narcotics through an unbroken chain of evidence. The deficiencies and contradictions available on record make it difficult to rely upon the prosecution case. Guidance in this regard may be sought from the judgments of the Hon'ble Supreme Court in **Muhammad Iqbal versus The State, 2025 SCMR 704**, **Abdul Haq versus The State, 2025 SCMR 751**,

Asif Ali and another versus The State, 2024 SCMR 1408, Javed Iqbal versus The State, 2023 SCMR 139, Qaiser Khan versus The State, 2021 SCMR 363, Mst. Sakina Ramzan versus The State, 2021 SCMR 451, and Zubair Khan versus The State, 2021 SCMR 492.

19. It is a settled principle of criminal jurisprudence that even a single circumstance creating reasonable doubt in the mind of a prudent person regarding the guilt of an accused is sufficient to extend the benefit of doubt. Reliance in this regard may be placed upon the case of **Ahmed Ali versus The State, 2023 SCMR 781.**

20. For the foregoing reasons, the prosecution has failed to prove its case against the appellant beyond reasonable doubt. Consequently, the instant appeal was allowed, the impugned judgment was set aside and appellant was acquitted vide short order dated 24.06.2026, whereby the jail authorities were directed to release him forthwith, if he was not required in any other case. These are the detailed reasons in support of the said short order.

JUDGE

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