

**IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD**  
**Criminal Appeal No.D- 44 of 2015**

**Before;**

Mr. Justice Muhammad Iqbal Mahar  
Mr. Justice Irshad Ali Shah

**Appellant:** Jalal son of Yousif Pahore,  
Through Mr. Hussain Bux Solangi, Advocate

**State:** Ms. Sana Memon, A.P.G

**Date of hearing:** 28.08.2019  
**Date of decision:** 28.08.2019

**J U D G M E N T**

**IRSHAD ALI SHAH, J.** The appellant by way of instant appeal has impugned judgment dated 29.04.2015 passed by learned Ist Additional Sessions Judge /Special Judge (CNS) Dadu, who has convicted the appellant for an offence punishable under Section 9(c) of the CNS Act for being in possession of 2 Kg of the charas and sentenced him to undergo Rigorous Imprisonment for five years with fine of Rs.20,000/-and in case of failure of the appellant to make payment of fine to undergo Simple Imprisonment for two months.

2. It is contended by learned counsel for the appellant that the appellant being innocent has been involved in this case falsely by the police at the instance of his political rival and the evidence of the prosecution produced before learned trial court being doubtful in its corrector has been believed by learned trial court without lawful justification. By contending so, he sought for acquittal of the appellant.

3. Learned A.P.G for the State by supporting the impugned judgment has sought for dismissal of the instant appeal.

4. We have considered the above arguments and perused the record.
5. As per complainant SIO/SIP Ali Akber and PW mashir PC Ghulam Qadir, the appellant was apprehended by them and on such was secured from him the charas which was weighed to be two kilograms, out of it was taken out 100 grams of the charas for chemical examination. The sample so drawn was sent to the chemical examiner with unexplained delay of five days, same could not be overlooked. As per report of the chemical examiner, the charas which was sent to him for chemical examination was 200 grams. How this happened? No explanation to it is offered by the prosecution. The conclusion which could be drawn of the such inconsistency would be that the sample of the charas, other than the one which has allegedly been secured from the appellant has been sent to the chemical examiner. Neither the incharge of the "malkhana" to ensure the safe custody of the charas, nor the person who taken the sample of charas to the chemical examiner to ensure the safe dispatch and delivery has been examined by the prosecution. In these circumstances it could be concluded safely that the prosecution has not been able to prove its case against the appellant beyond shadow of doubt.
6. In case of **Ikramullah & ors vs. the State (2015 SCMR-1002)**, it has been observed by Hon'ble apex court that;

*"In the case in hand not only the report submitted by the Chemical Examiner was legally laconic but safe custody of the recovered substance as well as safe transmission of the separated samples to the office of the Chemical Examiner had also not been established by the prosecution. It is not disputed that the investigating officer appearing before the learned trial Court had failed*

*to even to mention the name of the police official who had taken the samples to the office of Chemical Examiner and admittedly no such police official had been produced before the learned trial Court to depose about safe custody of the samples entrusted to him for being deposited in the office of the Chemical Examiner. In this view of the matter the prosecution had not been able to establish that after the alleged recovery the substance so recovered was either kept in safe custody or that the samples taken from the recovered substance had safely been transmitted to the office of the Chemical Examiner without the same being tampered with or replaced while in transit”.*

7. In case of ***Tariq Pervaiz vs the State (1995 SCMR 1345)***. It has been held by the Hon’ble apex court that:-

*“For giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating reasonable doubt in a prudent mind about the guilt of accused, then he would be entitled to such benefit not as a matter of grace and concession but of right.”*

8. In view of above, the conviction and sentence recorded against the appellant by way of impugned judgment could not be sustained, it is set aside. Consequently, the appellant is acquitted of the offence for which he was charged, tried and convicted by learned trial Court. The appellant is present in court on bail, his bail bond is cancelled and surety is discharged.
9. The instant appeal is disposed of accordingly.

**J U D G E**

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