

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

**Criminal Appeal No.D-79 of 2021
Criminal Appeal No.D-86 of 2021**

Present:

**Mr. Justice Muhammad Iqbal Kalhoro
Mr. Justice Amjad Ali Sahito**

Appellants : 1). Abdul Raheem son of Haji Muhammad Alam, through Mr. Malik Khalil-ur-Rehman Kakar Advocate.
2). Lajbar son of Iqbal, through Mr. Ahmed Nawaz Chang, Advocate,

Complainant : The State through Mr. Agha Abdul Nabi, Special Prosecutor, A.N.F.

Date of hearing : **28.03.2023**

Date of decision : **05.04.2023**

J U D G M E N T

AMJAD ALI SAHITO, J; This single judgment shall dispose of listed Criminal Appeals filed separately by the present appellants/accused, assailing the judgment dated 07.07.2021, passed by learned Model Criminal Trial Court-I / Special Judge Control of Narcotics Substance Act, Hyderabad, in Special Case No.148 of 2019 (*Re.The State Vs. Abdul Raheem and others*), outcome of FIR bearing No.D040400719, offence Under Section 9 (c), of Control of Narcotic Substance Act, 1997, registered with Police Station, A.N.F, Hyderabad, whereby they have been convicted for an offence punishable U/S.9 (c) of Control of Narcotics Substance Act, 1997, and sentenced to undergo imprisonment for *life* and to pay fine of rupees one lac each or in default thereof, to undergo Simple Imprisonment for one year more, with benefit of Section 382-B Cr.PC.

2. Concisely, facts of the prosecution case are that on 05.04.2019 complainant SI Zahoor Shah was available at P.S ANF, Hyderabad, meanwhile he received spy information that

drug smugglers namely Abdul Raheem son of Haji Muhammad Alam and Lajbar Son of Iqbal resident of Pasheen Balochistan who brought heavy drugs from Pasheen to supply their specific customer between 1600 to 1700 hours so immediate proceedings can cause their arrest and seizure of narcotics. On acquiring such information, he left the police station along with staff comprising each one HC Khushhal, PC Manzoor, PC Riaz, PC Yasir Ali, PC Kashan Ahmed constable-cum-driver Muhammad Ali carrying government weapon in supervision of Inspector Aftab Ahmed vide roznamcha entry No. 13 at 1500 hours and reached near Ayoub Hotel Bus stand National Highway Hyderabad at about 1545 hours parked the vehicle and started secret surveillance. At about 1630 hours two persons came near Ayoub hotel National Highway, Hyderabad bus stop along with dark brown travelling bags in their shoulders were waiting for someone whom the informer pointed that they were to be said smugglers, as soon as both persons after waiting some time about to go complainant apprehended them with the help of staff. The passersby asked to become mashirs in the case but they refused being passengers and passersby; therefore, PC Manzoor and PC Riaz Pahi were made as mashirs then enquired the name and address from first person who disclosed his name to be Abdul Reheem son of Haji Muhammad Alam residence of Kulli Ameer Jan, P.O Pisheen Tehsil & District Pisheen while other person disclosed his name to be Lajbar son of Iqbal resident of Moosa Mandi, bypass Quetta. The black coloured travelling bag from the shoulder of appellant Abdul Raheem was taken into police custody it was checked and found therein 11 packets of Chars wrapped in white plastic shopper. On weighing each packet contained one kilogram in white plastic shopper. One packet was separately sealed for chemical examination and put the No.1 on it. Then took the brown coloured bag from shoulder of second person namely Lajbar and checked it also found 11 packets of chars wrapped in white plastic shopper. On balancing each packet contained weight of one kilogram. One packet was separately sealed for chemical examination and put the No.2 on it. On conducting further search of appellant Abdul

Raheem recovered one CNIC of his name, one mobile along with SIM and Pakistani Currency of Rs.4,700/- from his right pocket and also recovered one mobile along with SIM and Pakistani currency of Rs.3,900/- from the right pocket of appellant Lajbar. On inquiry the appellants disclosed that they had to sell the recovered drugs to Faiz Muhammad alias Faizu son of Khuda Bakhsh resident of Mirpurkhas near Ayoub Hotel National Highway Hyderabad. Thereafter, the appellants and recovered property were brought at PS ANF and a case has been registered on behalf of State.

3. After completion of usual investigation, the investigating officer submitted report under section 173 Cr.PC showing present appellants in custody while Muhammad Ramzan and Faiz Muhammad alias Faizoo co-accused as absconders before the competent Court of law and thereafter the case papers were supplied to the present accused under receipt.

4. The charge against present appellants/accused was framed at Exh.2, to which they pleaded not guilty and claimed trial vide their pleas recorded at Ex.2/A & Ex. 2/B respectively.

5. In order to establish the accusation against the present appellants/accused, the prosecution examined PW-01 complainant/SI Zahoor Shah at Exh.03, he produced entries, memo of arrest, recovery and body search, FIR of the present case, letter addressed to chemical examiner and its report at Exh.03/A to 03/F respectively. PW-02 Mashir PC Manzoor at Exh.04. PW-03 PC Muhammad Ameen at Exh.05 who taken the property to the Laboratory and produced entries at Exh.05/A & 05/B. P.W-04 SI Syed Salman at Exh.06 who produced entry at Exh.06/A. Thereafter, learned SPP for State closed the side of prosecution vide statement kept on record at Exh.07.

6. The appellants/accused in their statements recorded in terms of Section 342 Cr.PC, denied the allegations leveled against them by pleading their innocence. Both of them examined themselves on oath at Exh.10 & 11 and also led evidence in their defence by examining three defence witnesses

namely Muhammad Nazeer, Ameenullah and Muhammad Aman at Exh.12 to 14. Then the side of defence witness was closed at Ex.15. Appellant/accused Abdul Raheem to his last question stated as under;

“I am innocent has not committed any offence. Complainant implicated me in instant case with malafide intention and on instance / direction of SHO Choudhary Idrees. Nothing was recovered from my physical possession. I produce the documents at Ex:8/A. I seek for justice”.

While appellant/accused Lajbar to his last question stated as under;

“I am innocent. Chars was not recovered from my possession. I came to Hyderabad for restaurant business. Police managed and foisted Chars on me. I seek for justice”.

7. The learned trial Court on evaluation of the evidence and after hearing the counsels for the parties, convicted and sentenced the appellants/accused vide **Judgment dated 07.07.2021**, which they have impugned before this Court by preferring instant Criminal Appeals.

8. Per learned defence counsels, PW-2 who is mashir of alleged narcotics admitted in his cross examination that his statement has been recorded in the ANF Police Station where his signatures were obtained showing the whole process as fake; that learned Model Criminal Trial Court-I / Special Judge Control of Narcotics Substances Act, Hyderabad has failed to consider and appreciate that in Malkhana entry, the description of Charas as well as other property was mentioned clearly which is sufficient to prove that alleged recovered property sealed at police station in presence of Incharge Malkhana, as such, no incident ever taken place; 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 there are several contradictions in the evidence of prosecution witnesses which have shattered the veracity of their evidence; that 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 present case; that the complainant and his witnesses are ANF 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 and that the complainant himself has acted as investigating officer which also impaired the transparency of the investigation of the present case. He lastly contended that the prosecution has miserably failed to prove its case against the appellants and in such circumstances they are entitled to their acquittal. In support of their contentions, they relied upon the cases of Khair-ul-Bashar Vs. The State [2019 SCMR 930], Qaiser Javed Khan Vs. The State through Prosecutor General Punjab, Lahore and another [PLD 2020 SC 57], Muhammad Asghar alias Poona Vs. The State and another [2021 YLR Note 56], Ikramullah and others Vs. The State [2015 SCMR 1002], Muhammad Saddique Vs. The State [2011 YLR 2261], The State through Regional Director ANF Vs. Imam Bakhsh and others [2018 SCMR 2039], Arshad Mahmood Khan Vs. The State [2017 P Cr. L J 668], Mohsin Vs. The State [2017 MLD 674], Miandad Vs. The State [2019 YLR 954], Muhammad Sajjad Vs. The State and another [2021 P Cr. L J 517], Agha Qais Vs. The State [2009 P Cr. L J 1334], Abdul Sattar Vs. The State [2009 YLR 2435], Zahid Iqbal Vs. The State [2008 YLR 985], Nasar Ud Din Vs. The State [2021 YLR 457], The State through R.D. ANF through Special Prosecutor General ANF, Peshawar Vs. Safir Ullah [2021 P Cr. L J Note 22], Javed and 2 others Vs. The State [2020 YLR 311], Fazal Maula Vs. The State [2020 P Cr. L J 1524], Waqas Ali Vs. The State [2017 YLR 878], Umed Ali Vs. The State [2018 MLD 1311], Akhtar Meen Vs. The State [PLD 2022 Sindh 84], Basharat Hussain Shah Vs. The State [2020 P Cr. L J Note 39], Hussain Bux alias Kabacho Channa Vs. The State [2017 P Cr. L J 501], Adnan alias Adu through Senior Superintendent, Central Prison, Hyderabad Vs. The State [2021 MLD 218], Munir Hussain alias Munawar alias Muno Vs. The State [2019 YLR 51], Abdul Waqar Vs. The State [2018 YLR 2358], Suhail alias Shoaib Shar Vs. The State [2019 YLR 30], Muhammad Akbar Vs. The State [2016 YLR 1189], Muhammad

Qasim Vs. The State [2014 P Cr. L J 1193], *State through Advocate-General, Khyber Pakhtunkhwa, Peshawar Vs. Farooq [2014 P Cr. L J 882]*, *Zahid Iqbal Vs. The State [2008 YLR 985]*, *Zafar Iqbal Vs. The State and others [2013 YLR 598]*, and *Minhaj Khan Vs. The State [2019 SCMR 326]*.

9. On the other hand, learned Special Prosecutor A.N.F while supporting the impugned judgment has contended that the prosecution has successfully proved its case against the appellants who were arrested at spot with huge quantity of Charas; that the A.N.F officials had no hostility to foist such a huge quantity of narcotics substance against the appellants of its own, as such, he prayed for dismissal of the instant Criminal Appeals.

10. We have given due consideration to the contentions of learned counsel for the parties and have minutely gone through the material made available on record.

11. The deeper analysis of the material brought on record is entailing that the entire case of prosecution is based upon the evidence of Complainant/Investigating Officer, mashir, Incharge of Malkhana and the official who taken the property to the Chemical Laboratory. Complainant Sub-Inspector Zahoor Shah (Exh.03) in his evidence deposed that on 05.04.2019, while posted at P.S, ANF Hyderabad, informer came there and through superior officials also spy information was received that two persons namely Abdul Raheem and Lajbar came to deliver narcotics to their specific customer namely Faiz Muhammad alias Faizoo at Ayoob Hotel National Highway in between 1500 to 1600 hours then he along with staff members namely PC Manzoor, PC Riaz pai, PC Asad, PC Kashan, HC Khushaal, driver-cum-constable Muhammad Anwar, under the supervision of SHO / Inspector Aftab Ahmed left ANF PS in double cabin vide entry No.13 at about 1500 hours reached in front of Ayoob Hotel National Highway Hyderabad at 1500 hours parked vehicle there informer being available with them pointed out presence of two persons who were waiting for someone having travel bags so they were apprehended at spot. The passerby people were asked to act

as mashir but they were not ready to do so and as such from the raiding party, PC Manzoor and PC Ameen Pai were appointed as witness. Thereafter, one person was enquired about his name and address to which he disclosed his name as Abdul Raheem son of Haji Muhammad Alam resident of Tehsil Pisheen likewise second person disclosed his name as Lajbar son of Iqbal resident of bypass road, Quetta. Complainant took the possession of black coloured bag from appellant Abdul Raheem and on checking found eleven packets of chars lying therein. He weighed each packet separately on electric scale and chars packets were wrapped with transparent plastic pack, each packet contained weight one kilogram. Complainant further deposed that after weighing, he kept the eleven packets of chars in same black coloured bag of appellant Abdul Raheem then he put the said black bag in a plastic sack and sealed the same by marking it as No.1 for identification. He also took brown coloured bag's possession from appellant Lajbar checked it and found containing eleven packets of chars wrapped with transparent plastic pack each packet was weighed separately by complainant and became one kilogram each totaling 11 kilograms and by putting bag sealed the same in a plastic sack, it was marked No.2 for identification. On conducting bodily search of appellant Abdul Raheem recovered one CNIC, mobile phone with SIM as well as cash amount of Rs.4,700/- from his right side pocket of shirt while from search of appellant Lajbar secured one mobile phone having SIM and cash amounting to Rs.3,900/- from right side pocket of shirt. On inquiry about further narcotics, both accused persons stated that they had come to deliver narcotics to one Faiz Muhammad alias Faizoo resident of Mirpurkhas. Accused were formally arrested. Memo was prepared at spot which was read over to the witnesses who admitted it to be correct and then made their signatures over memo and case property. He produced memo of arrest and recovery (Exh.4/B), attested copy of departure and arrival entries (Exh.4/C). Thereafter, they left the place of recovery and reached at P.S where arrival entry was made and FIR was registered which he produced (Exh.4/D). He handed over property parcels and

recovery articles to SI Salman who deposited the same in Malkhana being its Incharge. He then prepared Huliya Form of accused persons, got their finger prints and photo record and then he recorded the statements of witnesses so also interrogated the accused persons. He gave property to PC Ameen for depositing the same to chemical laboratory Karachi along-with Authority letter which he produced at Exh.4/E showing receiving of laboratory and he recorded statement of said PC Ameen. He interrogated appellant Abdul Raheem who disclosed that his brother Ramzan son of Haji Muhammad Alam gave him the narcotics for delivery to particular person. He identified both accused and case property present in Court to be same. In cross examination, he had admitted that at present identification No.1 is not visible on plastic sack of accused Abdul Raheem, mobile phone and amount are not produced in sealed condition. He admitted that he had not stated in his chief that he kept the amount and mobile in khakhi envelope and khakhi envelope does not bear the mashirs signatures. He also admitted that he did not receive accused Lajbar's criminal record. He denied that he has deposed false evidence as accused are innocent and nothing recovered from their possession.

12. Likewise, has been disclosed by Mashir PC Manzoor Hussain (Exh.04) in his evidence.

13. PW-3/PC Muhammad Ameen (Exh.05), in his evidence deposed that on 08.04.2019, at 0830 hours, complainant Zahoor Shah handed over two sealed parcels of FIR No.7/2019 to him for depositing with Chemical Examiner Laboratory Karachi. He took the same in safe custody in government vehicle and delivered at Chemical Examiner Laboratory and obtained such receipt which he then handed over to SI Zahoor Shah who recorded his statement. He recognized such letter dated 08.04.2019 addressed to Chemical Examiner as regards report and analysis. He produced entry No.6 as Ex.5/A in respect of departure for depositing sealed parcels to chemical examiner Karachi and entry No.25 of arrival to P.S as Ex.5/B. In cross examination, he replied that case property received to him

at about 0830 hours and the particulars of case were available on property parcels.

14. PW-4/SI Syed Salman (Exh.06), in his evidence deposed that at P.S ANF Hyderabad he was incharge of Malkhana on 05.04.2019 when SI Zahoor Shah handed over two sealed parcels weighing eleven kilograms each total weight 22 kilograms as well as personal search articles of accused so he kept the same in Malkhana under entry No.186. He produced such entry as Ex.6/A in respect of maintaining Malkhana record. He handed over two sealed parcels of FIR No.7/2019 on 08.04.2019 to ASI Zahoor Shah for chemical analysis and his statement was recorded by SI Zahoor Shah. He identified the case property and personal search articles to be same.

15. 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 Muhammad Ameen in his evidence (Exh.05) deposed that the complainant/I.O handed over two sealed parcels to him for depositing with the office of Chemical Examiner, as such the prosecution examined the person who had taken the case property to the Chemical Laboratory. More so the prosecution also examined Sub-Inspector Syed Salman who was incharge of the Malkhana in his evidence confirmed the factum of receiving two sealed parcels each of eleven kilograms weight in total 22 kilograms and personal belongings of appellants and vide entry No.186 he kept above case property in malkhana of PS ANF. Further, the complainant in his examination-in-chief deposed that the samples were deposited with Chemical Analyzer for its analysis through PC Ameen and such report was received in positive which he produced at **(Exh.4/F)** confirms that the parcel received through PC Ameen on 08.04.2019, therefore, it can

safely be said that the safe chain of custody of the recovered narcotics and its transmission with some delay was not compromised at all as the complainant given the reasons for delay that 6th and 7th April 2019 were holidays being Saturday and Sunday so he received the property from SI Salam on 08.04.2019 and same day it was dispatched for its analysis.

16. The requirement of Rule 4 of Control of Narcotic Substance (Government Analysis) Rules, 2001 is that the reasonable quantity of sample from the entire narcotic 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 Narcotic 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 tempering with the case property and it is also confirmed by the Chemical Examiner that two sealed white nylon bags (torras) contains 22 kilograms chars, each containing eleven greenish brown semi soft slabs with smell of chars wrapped in white transparent shopper received in his office on **08.04.2019** in a sealed condition by the hand of PC Ameen. 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 to 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.4/F, 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 report received from the office of Chemical Examiner, which reads as under:-

| | | |
|-------------------------------------|---|----------|
| “1. Weight: | Pcl.1 | Pcl.2 |
| (i) Gross weight: | 11.000Kg | 11.000Kg |
| (ii) Net weight: | 10.923Kg | 10.927Kg |
| 2. Physical App. | Greenish brown semi soft slabs. | |
| 3. Smell: | of Chars | |
| 4. Micro Scope Exam: | Horn/claw shape trichomes of cannabis plant seen. | |
| 5. Chemical Test Performed:- | Resin test for cannabis & fast blue B. Salt test:-Positive. | |
| 6. Content Consumed:- | (10)gm Consumed from each slab in analysis, remaining case property duly sealed is to be collected from this. | |

RESULT OF EXAMINATION.

The above parcel No.1 and 2 contains Chars slabs.

17. The procedural detail is mentioned in the Chemical Examiner's report Ex.4/F 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, 6th 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”.

- 18.** 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.”

- 19.** 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.

20. It means that applicability of Section 103 Cr.P.C in the narcotics cases has been excluded and non-inclusion of any private witness is not a serious defect to vitiate the conviction. The complainant in his evidence deposed that the passerby people were asked to act as mashirs of the case but they were ready to do so.

21. So-far the evidence of A.N.F officials is concerned, they are much competent like others and their evidence cannot be discarded merely for the reason that they are A.N.F officials. They have furnished straightforward 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 and it cannot be believed that the A.N.F officials would plant or foist such a huge quantity of narcotics substance (22 K.Gs) against the accused at their own resources. It is a settled principle of law that the statement of 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”

22. In the instant case, no proof of enmity with the complainant or the other witnesses has been brought on the record, thus, in 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”.

23. Even otherwise, mere status of one as an **official** would not alone prejudice the competence of such witnesses 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. The reliance in this context is made to the case of **Farooq Vs. The State (2008 SCMR-970)**.

24. It is now settled proposition of law that by flex 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.”

25. Turning to the next contention of learned defense counsels that the complainant himself has acted as investigating officer in this case and all the witnesses are A.N.F officials, is of no helpful to them, as there is no bar in the law for a complainant not to act as investigation officer of the case. The reliance in this context is placed upon the case of **The State V. Zaffar (2008 SCMR-1254)**, wherein the Hon’ble Supreme Court of Pakistan has held that;-

“Police officials are not prohibited under the law to be complainant if he is a witness to the commission of an offence and also to be an investigating officer, so long as it does not in any way prejudice the accused person”.

26. On re-assessment of evidence of the prosecution witnesses, we find it confidence-inspiring and trustworthy; as such appellants were arrested with 22 K.Gs of Charas on 05.04.2019 at about 1630 hours from Ayooob Hotel bus stand National Highway Hyderabad. The version of the complainant/I.O/Sub-Inspector Zahoor Shah has been fully corroborated by mashir of arrest and recovery, which is substantiated with the memo of arrest and recovery (Exh.4/B), and FIR (Exh.4/D). He produced Chemical Examiner's report in **positive** (Exh.4/F).

27. No previous enmity, ill-will or grudge has been alleged or proved against prosecution witnesses to implicate appellants falsely in this case. The prosecution successfully discharged its lawful duty thereby shifting the burden upon the appellants 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.PC, appellant Abdul Raheem has taken plea that he has been implicated by the complainant in this case on the instance of SHO Choudhry Idrees. In cross-examination, PW-01 Complainant Zahoor Shah denied the suggestion ***"It is incorrect to suggest that I have acted on the instance of SHO Idrees"***.

28. There is no denial to the fact that appellants were carrying bags containing huge quantity of Charas. No convincing material has been produced by them denying the fact that how it is possible that they were not having any knowledge about the Charas secured from them. The deeper analysis of the whole prosecution evidence i.e, the recovery of a huge quantity of narcotics, the happening of occurrence in broad day light, 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 appellants are real perpetrators.

29. No illegality or irregularity and mis-appreciation of evidence were found, so far as appellants' 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 is 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 the very purpose of the law on the subject. Reliance is placed in the case of **FAISAL SHAHZAD v. THE STATE (2022 SCMR 905)**

30. 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.

31. For what has been discussed above and while relying upon the case laws of the Hon'ble Supreme Court, we are of the unanimous view that the prosecution has successfully established the charge of possession of huge quantity of narcotics substance against appellants, beyond a shadow of any reasonable doubt. Resultantly, the Criminal Appeals being devoid of merits are **dismissed** accordingly. The conviction and sentence awarded to appellants by learned trial Court are hereby **maintained.**

JUDGE

JUDGE