

IN THE HIGH COURT OF SINDH, BENCH AT SUKKUR

Crl. Jail Appeal No.D- 19 of 2020

Present:

Omar Sial and

Jawad Akbar Sarwana, JJ

Appellant : **Karam Bux Brohi** through Mr. Muhammad Ayaz Shaikh, Advocate.

The State : Through Mr. Mohsin Ali Khan, SPP, ANF.

Date of Hearing : **20th June, 2023**

Date of Decision : **27th June, 2023**

J U D G M E N T

Omar Sial, J.: Acting on spy information, an ANF police party led by Inspector Ghulam Abbas, on 08.12.2012, stopped a truck being driven by the appellant Karam Bux. 1020 kilograms was found by the ANF hidden beneath bags containing turnips. Karam Bux was arrested and F.I.R. No. 20 of 2012 was registered at the ANF Sukkur police station for offences under sections 6, 14 and 15, punishable under section 9(c) of the CNS Act, 1997.

2. Karam Bux pleaded not guilty and claimed trial. At trial the prosecution examined P.W.1 S.I. Syed Salman who had witnessed the arrest and recovery. PW-2 Inspector Ghulam Abbas was the complainant, the Maalkhana In Charge as well as the investigating officer of the case. In his section 342 Cr.P.C. statement, Karam Bux denied that he was even present during the entire stop and seizure.

3. The learned 3rd Additional Sessions Judge, Sukkur on 06.09.2019 found Karam Bux guilty of having committed an offence punishable under section 9(c) CNS Act, 1997 and sentenced him to a life in prison

as well as directed him to pay a fine of Rs. 100,000 or in default, spend another 1 year in prison. It is this judgment of the learned trial court that has been called into question before us.

4. We have heard the learned counsel for the appellant has stressed that safe custody of the narcotics was compromised. The learned Special Prosecutor, ANF, while resisting that the safe custody was compromised, reluctantly agreed that perhaps safe custody was not proved at trial. Our observations and findings are as follows.

5. The truck was stopped and the seizure made at 10:30 a.m. on 08.12.2012. The narcotics were kept in the ANF Maalkhana and ostensibly sent for chemical analysis the same day. Quite intriguingly, the chemical analyst's report reflects that the narcotics in 2 sacks was deposited in the chemical analyst's office on 08.12.2012 but the letter under cover of which it was sent was dated 10.12.2012. The anomaly is evident. The narcotics were taken to the chemical analyst's office by W.H.C. Shamraiz Khan, however, Shamraiz was not examined at trial. The anomaly was clarified at trial by pw-2 Inspector Ghulam Abbas who testified that it was indeed 10.12.2012 i.e. 2 days after the seizure that the charas was sent by him to the chemical analyst. He confirmed that it was W.H.C. Shamraiz Khan who had taken the samples of the narcotics recovered to the chemical analyst's office. Unfortunately, Inspector Ghulam Abbas expired before he could be complete his examination-in-chief. No witness was brought forward subsequently to confirm the signatures of and investigation made by the Inspector. In essence, the impact of this was that the chain of safe custody of the seized narcotics was broken. The Maalkhana In Charge, where the narcotics ostensibly remained was not examined nor was the W.H.C. Shamraiz Khan who had taken the narcotics to the analyst was examined. It appears that the aspect of safe custody was not brought to the attention of the learned trial court and perhaps therefore no mention to it is made in the judgment impugned.

6. The Supreme Court of Pakistan has repeatedly held that the chain of safe custody is vital and one of the fundamental ingredients to establish a conviction of the accused under the CNS Act, 1997. In **Qaiser and another v. The State (2022 SCMR 1641)**, it was observed by the Court that:

“The chain of custody of sample parcels begins from the recovery of the narcotics by the police including the separation of representative samples of the recovered narcotics, their dispatch to the Malkhana and further dispatch to the testing laboratory. The said chain of custody and transmission was pivotal as the entire construct of the Act 1997 and the Control of Narcotic Substances (Government Analysts) Rules 2001 (Rules 2001), rests upon the report of the analyst. It is prosecutions bounded duty that such chain of custody must be safe and secure because the report of chemical examiner enjoined critical importance under the Act 1997, and the chain of custody ensure the reaching of correct representative samples to the office of chemical examiner. Any break in the chain of custody i.e. the safe custody or safe transmission of the representative samples, makes the report of chemical examiner worthless and un-reliable for justifying conviction of the accused. Such lapse on the part of the prosecution would cast doubt and would vitiate the conclusiveness and reliability of the report of chemical examiner. Reliance can be made upon the judgments rendered by three members benches of this court i.e. Ikramulah 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 AG 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), Gulzar v. The State (2021 SCMR 380).”

7. The Supreme Court of Pakistan in a recent case titled **Javed Iqbal vs The State (2023 SCMR 139)** has reiterated the importance of

establishing safe custody and has observed that: *“In cases under section 9(c) of the Control of Narcotic Substances Act, 1997, it is duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and safe transmission of the sample parcels to the concerned laboratory. Such chain has to be established by the prosecution and if any link is missing in such like offences the benefit must be extended to the accused. In a case containing the said defect on the part of the prosecution it cannot be held with any degree of certainty that the prosecution had succeeded in establishing its case against an accused person beyond any reasonable doubt.”*

8. As regards the current case, we are of the view, keeping in mind the principles enunciated by the Supreme Court in a series of cases, 2 of which are referred to above, that the prosecution was not able to establish that after alleged recovery of substance so recovered was either kept in safe custody or that samples were taken from recovered substance had safely been transmitted to office of Chemical Examiner without the same being tampered with or replaced while in transit. We accordingly **allow** the appeal. The appellant is acquitted of the charge. He may be released forthwith if not required in any other custody case.

JUDGE

JUDGE