

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

**Criminal Appeal No.D-29 of 2020**

*Present:*

**Mr. Justice Shamsuddin Abbasi  
Mr. Justice Amjad Ali Sahito**

**Appellant** : Parvez Khan Son of Talazar,  
Through Mr. Irfan Ali Khaskheli,  
Advocate,

**Complainant** : The State through Mr. Nazar Muhammad  
Memon, Additional Prosecutor General,  
Sindh.

Date of hearing : **23.01.2024**

Date of decision : **31.01.2024**

**JUDGMENT**

**AMJAD ALI SAHITO, J:** This judgment shall dispose of the fate of the instant Criminal Appeal filed by the above-named appellant/accused, assailing the judgment dated 27.02.2020, passed by learned V<sup>th</sup> Additional Sessions Judge /MCTC, Shaheed Benazirabad, in Special Narcotics Case No.489 of 2018 (*Re.The State Vs. Pervez Khan*), the outcome of FIR bearing Crime No.03/2018, offence Under Section 9 (c) of Control of Narcotic Substance Act, 1997, registered with Police Station, Excise Circle Nawabshah, whereby he was 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 a fine of rupees one lac or in default thereof, to undergo Simple Imprisonment for six months more, with the benefit of Section 382-B Cr.PC.

**2.** The brief facts of the prosecution case as disclosed in the FIR are that on 17<sup>th</sup> November 2018, Complainant Inspector Abdul Haque Mari, Excise & Narcotic Circle Nawabshah along with subordinates staff Excise Constables Akhtar Ali, Shafi Muhammad, Muhammad Sail, Ghulam

Mustafa, Mashooque Ali, Suhbat Khan and Muhammad Bachal left PS Excise Circle Nawabshah and during checking the vehicles at Excise check post on National Highway Sakrand halted a Bedford Truck coming from Sakrand side having registration No.LHK-4900 so the person sitting in the driver's seat was alighted and disclosed his name as Pervez Khan resident of Achar P.O Quomki Bazar Kot, Taluka Alpuri District ShanglaKhyber Pakhtun Khuwa Province. Following the citation of Excise Constables Shafi Muhammad and Akhtar Ali as mashirs, the complainant carried out a personal search and found five notes of one thousand totalling Rs. 5000 from Pervez Khan's front pocket. He disclosed that biscuits were loaded in truck and was heading from Multan to Hyderabad. Following that, the complainant's party checked the truck and saw that biscuits and toffees were loaded. After that, a secret cavity on the truck's overhead was found and inside were big and small plastic bundles that were unloaded from the truck and counted to 43 bundles containing heroin powder, in addition to 38 bundles of 01 KGs each, 02 bundles of 01 ½ KGs each, one bundle of 2100 grams, one bundle 1150 grams, one bundle 1750 grams in all 43 bundles became 46 KGs weighed. Out of them, 200 grams of heroin powder were separated and sealed in khaki envelopes for analysis of Chemical Examiner while the remaining heroin was sealed separately in plastic bags such mashirnama of arrest and recovery was prepared. On return to the office of Excise & Narcotics, the case for an offence punishable under section 9 (c), was registered against him on behalf of the State.

**3.** After completion of the usual investigation, the investigation officer submitted a report under section 173 Cr.PC before the competent Court of law and thereafter the case papers were supplied to the accused under receipt.

**4.** The charge against present appellant/accused was framed at Exh.2, to which he pleaded not guilty and claimed trial vide his plea recorded at Ex.2-A.

5. In order to establish the accusation against the present appellant/accused, the prosecution examined PW-01 complainant/Inspector/I.O Abdul Haque Mari at Exh.03, he produced memo of arrest and recovery, FIR of the present case, departure and arrival entries, letter addressed to Chemical Examiner, receipt of Chemical Examiner and its report at Exh.03/A to 03/F respectively. PW-02 Mashir Excise Constable Shafi Muhammad at Exh.04 and PW-03 Excise Constable Ghulam Mustafa who took the sealed parcel of case property to the Laboratory at Exh.6. Thereafter, learned State Counsel closed the side of prosecution vide statement kept on record at Exh.7.

6. The appellant/accused in his statement recorded in terms of Section 342 Cr.PC, denied the allegations leveled against him by pleading his innocence. However, he did not examine himself on oath nor led any evidence in his defence. Appellant/accused Pervez Khan in his last question stated as under;

*“I am innocent, falsely involved in this case by the excise Police. I had come for Ziarat at Sehwan Sharif and when I was returning from there, the excise Police had picked me from Sehwan-Kazi Ahmed By Pass and had booked me in this case. Neither I am truck Driver nor had been arrested by the Excise Police with alleged truck nor any recovery has been effected from my possession but same alleged recovery has been foisted upon me. I pray for justice”.*

7. The learned trial Court on evaluation of the evidence and after hearing the counsel for the parties, convicted and sentenced the appellant/accused vide **Judgment dated 27.02.2020**, which he has impugned before this Court by preferring instant Criminal Appeal.

8. Per learned defence counsel, the appellant being innocent had no knowledge about the availability of heroin in the Truck; that it is alleged that mashirnama of arrest and recovery was written by Munshi Sial with the help of torch light but the same has not been produced even the fact of

torch neither mentioned in FIR nor in memo; that FIR does not reflect time of leaving excise police station; that source of identifying the heroin powder at spot is questionable; that it is unbelievable such a huge quantity were checked, weighed, separated for chemical analysis and sealed at spot in such a short span of time; that samples of case property were sent with deliberate delay of three days which has not been explained plausibly; that it is admitted position that place of incident is situated on main National Highway surrounded by various business viz. petrol pump, tea shop etc but not a single person has been associated in this case to act as mashir even it has been admitted that no member from excise police was sent for searching private mashir; that no record is collected during investigation against appellant in respect of selling heroin powder; that complainant confirmed the fact that he did not number the sample with corresponding packet from which sample was separated; 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 heroin powder 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 Excise 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 an 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 appellant and in such circumstances, he is entitled to his acquittal.

**9.** On the other hand, learned Additional Prosecutor General, Sindh while supporting the impugned judgment has contended that the prosecution has successfully proved its case against the appellant who was found transporting huge

quantity of heroin powder through a Truck; that the Excise officials had no hostility to foist such a huge quantity of narcotics substance against the appellant of its own, as such, he prayed for dismissal of the instant Criminal Appeal.

**10.** We have heard learned counsel for the parties and have minutely gone through the material made available on record.

**11.** The appellant was caught red-handed by the Excise & Narcotic Circle Nawabshah and a huge quantity of 46 kilograms of Heroin Powder packed in 43 bundles was recovered from the secret cavities of the truck, which was driven by appellant Parvez Khan. 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 Inspector Abdul Haque Mari (PW-1), EC Shafi Muhammad (PW-2) and EC Ghulam Mustafa (PW-3). All these witnesses have narrated the prosecution story in a natural manner and remained consistent throughout and their testimony could not be shattered by the defence despite lengthy cross-examination. The said witnesses had no enmity with the appellant to falsely implicate him in the present case. Even otherwise a huge quantity of 46 kilograms of Heroin Powder in no circumstances can be planted/foisted by the complainant/I.O. of his own.

**12.** It is stated by PW/EC Ghulam Mustafa in his deposition available at (Exh.6), that being posted at Excise Circle Nawabshah on 19.11.2018, had received the sealed parcel of case property containing 43 packets relating to this crime from I.O/Excise Inspector Abdul Haque Mari alongside letter for depositing it with the office of Chemical Examiner Rohri, which on the same date he had gone to Rohri and deposited such sealed parcel of case property to the office of chemical examiner Rohri and obtained receipt therefrom. On the said date, he returned back at their office and handed over such receipt to Inspector Abdul Haque. He recognized letter of depositing case property and receipt as Ex.03/D & E

to be same. In cross-examination, he deposed that he received the case property in one sugar bag (Bachko) from I.O and at the time of receiving he was not in knowledge about the details of case property but denied the suggestion that neither he received case property from I.O/Excise Inspector for depositing it before the chemical examiner office nor had he gone to deposit it.

**13.** As such, appellant Pervez Khan being its driver having prior knowledge has been found responsible for the transportation of huge quantity of Heroin powder in a truck. It is well-settled principle of law as held by the Hon'ble Apex Court that a person on a driving seat shall be held responsible for transportation of such huge quantity of narcotics substance. The reliance in this context is placed upon case of **Kashif Ameer Vs. The State (PLD 2010 SC-1052)**, wherein the Hon'ble Supreme Court of Pakistan has held that:

***“It is well-settled principle that a person who is on driving seat of the vehicle, shall be held responsible for transportation of the narcotics having knowledge of the same as no condition or qualification has been made in section 9(b) of CNSA that the possession should be an exclusive one and can be joint one with two or more persons. Further, when a person is driving the vehicle, he is incharge of the same and it would be under his control and possession, hence, whatever articles lying in it would be under his control and possession. Reference in this behalf may be made to the case of Muhammad Noor Vs. The State(2010 SCMR-927).Similarly, in the case of Nadir Khan Vs.The State (1988 SCMR-1899). This Court has observed that knowledge and awareness would be attributed to the incharge of the vehicle. Another aspect of the case is that once the prosecution has prima facie established its case then under section 29 of the CNSA burden shifted upon the accused to prove contrary to the plea of the prosecution. Reliance in this behalf may be made to the case of Ismaeel Vs. The State (2010 SCMR-27). Wherein, this Court while relying upon the cases of Muhammad Arshad Vs. The State (2007 SCMR-1378) and Mst.Taj Bibi Vs. The State (2007 SCMR-1591) has held that chemical examiner’s report regarding Charas and Opium were sufficient to prove that the substance recovered from the***

***accused was Charas which can be used to cause intoxication; the prosecution had discharged its initial onus while proving that substance was recovered from him whereas the petitioner had failed to discharge its burden in terms, of Section 29 (d) of CNSA.”***

14. Furthermore, the Hon’ble Supreme Court of Pakistan while dismissing the appeal of appellant Hussain Shah by way of the judgment dated 20-09-2019 passed in ***Criminal Appeal No.7-P of 2017***, has held that;-

***“Hussain Shah appellant was driving the relevant vehicle when it was intercepted and from a secret cavity of that vehicle a huge quantity of narcotic substance had been recovered and subsequently a report received from the Chemical Examiner had declared that recovered substance was charas. The prosecution witnesses deposing about the alleged recovery were public servants who had no ostensible reason to falsely implicate the said appellant in a case of this nature. The said witness had made consistent statements fully incriminating the appellant in the alleged offence. Nothing has been brought to our notice which possibility could be used to doubt the veracity of the said witnesses.***

15. As regards the contention of learned defence counsel that the prosecution has failed to prove safe custody/transmission of Heroin powder 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, EC Ghulam Mustafa in his evidence (Exh.6) deposed that a sealed parcel of case property containing 43 packets was received by him on 19.11.2018 from I.O/Excise Inspector Abdul Haque Mari with a letter for depositing it with Chemical Examiner office Rohri which he deposited, as such, the prosecution examined the person who had taken the case property to the Chemical Laboratory and also the complainant/I.O being investigating officer of the case. Further, the complainant in his examination-in-chief has deposed that the samples were deposited on the same date

with Chemical Analyzer for its analysis and such report was received in positive which he produced at **(Exh.3/F)** and the report confirms that the parcel received through EC Ghulam Mustafa on 19.11.2018, therefore, it can safely be said that the safe chain of custody of the recovered narcotics and its transmission without any delay was not compromised at all. The reliance is placed to the case of ***Faisal Shahzad Vs. The State [2022 SCMR-905]*** and ***Ajab Khan Vs. The State [2022 SCMR-317]***.

**16.** The requirement of Rule 4 of Control of Narcotic Substance (Government Analysis) Rules, 2001 is that the reasonable quantity of samples 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 Plastic Katta contains forty-three (43) khaki paper envelopes, each containing light brown coloured powder kept in plastic thielli received in his office on **19.11.2018** in a sealed condition by the hand of EC Ghulam Mustafa. Further, Rule 5 of Control of Narcotic Substance (Government Analysis) Rules, 2001 provides a condition that it should be received in a 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 and examined and recorded, weighed 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 Rules 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 the Chemical Examiner in a sealed condition. We have perused the Chemical Examiner's report available as Exh.3/F, and in our humble view, it is according to its Rules and the full protocol was observed by the office of the Chemical Examiner. It is appropriate to reproduce the report received from the office of Chemical Examiner, which reads as under;-

1. Total weight of the above each khaki paper envelope No:1 to 43 along with content.....212.00 Grams.  
Net weight of powder of each khaki paper envelope No:1 to 43....200.00 Grams.
2. Physical App:- Light brown coloured powder with bitter taste.
3. Solubility test:- Solube in Alcohol, Ether and Chloroform.
4. Color tests:-1. Nitric acid test.....Positive.  
2. Marquis's test.....Positive.

05 Grams of powder from the above each khaki paper envelope No:1 to 43 consumed in analysis, remaining powder is returned to envelope No:1 to 43 in a sealed plastic katta.

#### **RESULT OF EXAMINATION.**

The above each Khaki paper envelope No:1 to 43 contains the powder of Heroin.

**17.** The procedural detail is mentioned in the Chemical Examiner's report Ex.3/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, 6<sup>th</sup> 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 appellant 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 the applicability of Section 103 Cr.P.C in the narcotics cases has been excluded and the non-inclusion of any private witness is not a serious defect to vitiate the conviction. The complainant in his evidence admitted that there was only one accused person was available in the Truck.

**21.** So far the evidence of Excise officials is concerned, they are more competent than others and their evidence cannot be discarded merely for the reason that they are Excise 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 Excise officials would plant or foist such a huge quantity of narcotics substance (46 K.Gs) against the accused at their own resources. It is a settled principle of law that the statement of the official witness cannot be discarded only on the pretext that they are excise 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 the absence thereof, the competence of prosecution witnesses being excise 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 counsel that the complainant himself has acted as investigating officer in this case and all the witnesses are Excise officials, is of no helpful to him, 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 appellant Pervez Khan was transporting 46 K.Gs of Heroin powder in a Truck and was arrested on 17.11.2018 at about 0400 hours from Excise Check post, National Highway Sakrand. The version of the complainant/I.O/ Inspector Abdul Haque Mari has been fully corroborated by mashir of arrest and recovery, which is substantiated with the memo of arrest and recovery (Exh.3/A), and FIR (Exh.3/B). He produced Chemical Examiner's report in **positive** (Exh.3/F).

**27.** No previous enmity, ill-will or grudge has been alleged or proved against prosecution witnesses to implicate appellant Pervez Khan falsely in this case. The prosecution successfully discharged its lawful duty thereby shifting the burden upon the appellant 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 Heroin powder but the defense has failed to do so. While recording his statement in terms of Section 342 Cr.PC, appellant Pervez Khan has taken the plea that he had come for Ziarat at Sehwan Sharif and when he was returning from there, the excise Police had picked him up from Sehwan-Kazi Ahmed By-Pass and had booked him in this case. Neither was he a truck Driver nor had been arrested by the Excise Police with the alleged truck nor any recovery effected from his possession but the same alleged recovery had been foisted upon him hence falsely implicating him otherwise he is innocent. Strangely, the

appellant/accused had failed to produce any evidence or person in support of his plea that he had come for the purpose of Ziarat of Sehwan Sharif and as soon as he was returning he was captured by Excise Police from Sehwan-Ahmed By-Pass and booked him in this case and he simply declined to take ownership of truck without cogent evidence during the course of his statement. In cross-examination, PW-01 Complainant Inspector Abdul Haque Mari denied the suggestion ***“It is incorrect to suggest that I have foisted the truck as well as Heroin powder on the accused person in order to save the actual culprits, who ran away.”***

**28.** There is no denial to the fact that appellant Pervez Khan was driving the vehicle containing a huge quantity of Heroin powder. No convincing material has been produced by him denying the fact that how it is possible that he was not having any knowledge about the Heroin powder present in his Truck which he was driving all the way from Multan to Sakrand. It is hard to believe that the driver had no idea or knowledge about the contents and articles being transported by him or present in the Truck on which he was driving. The deeper analysis of the whole prosecution evidence i.e, the recovery of a huge quantity of narcotics, the happening of occurrence in the main highway, 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 appellant Pervez Khan is a real perpetrator.

**29.** No illegality or irregularity and mis-appreciation of evidence were found, so far as his 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 has been 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.** It is a trite proposition of law that items recovered from the vehicle in possession of the driver are presumed to be assenting to be in his control and in his knowledge. 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. We in this regard would like to refer to a judgment given by the Hon'ble Supreme Court in the case of **Muhammad Noor Vs. The State reported in 2010 SCMR 927**, wherein the Hon'ble Court observed as under:

*8. As regards Driver of the vehicle, it is important to note that when he is driving the vehicle, he is Incharge of the same, therefore, it would be under his control and possession. Hence, whatever articles lying in it would be under his control and possession. The liability of the driver, in view of provisions of section 27 of P.P.C., has been considered by this Court in the case of Sherzada v. State 1993 SCMR 149, wherein it was observed as under:--*

*The next point raised by the learned Counsel was that it is provided in section 27, P.P.C. that when property is in the possession of wife, clerk or servant on account of that person, it is in that person's possession within the meaning of this Code. The learned Counsel argued that the appellant was a driver, hence an employee of the owner of the car and even if he is admitted to be in possession of the contraband article on behalf of the owner, he cannot be said to be liable for that possession. But this argument of the learned Counsel is without force on the face of it because section 27, P.P.C. is confined to the Pakistan Penal Code only, as the words "within the mean of this Code" appearing in that section clearly indicate. This section has not been made applicable to the Prohibition (Enforcement of Hadd) Order, 1979 as is evident from Article 26 of that Order where certain other provisions of the P.P.C. have been made applicable.*

*This Court in the case of Adil Ahmed v. Deputy Collector, C & CE 1991 SCMR 1951 has observed that in view of provisions of Customs Act, the drivers and owners were both responsible.*

*In the case of Rab Nawaz v. The State PLD 1984 SC 858, the liability of drivers was again considered and lenient view was taken, as they expressed their ignorance about the contents and claimed to be simple carriers. In the present case the appellant did not claim to be carrier.*

*This Court in the case of Nadir Khan v. State 1988 SCMR 1899 has observed that knowledge and awareness would be attributed to the Incharge of the Vehicle. The relevant portion reads as under:--*

*“We have gone through the evidence on record and find that the petitioners had the charge of vehicle for a long journey starting from Peshawar and terminating at Karachi. They had the driving license also. As being person Incharge of the vehicle for such a long journey, they must be saddled with the necessary knowledge with regard to the vehicle and its contents”.*

**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 transportation of a huge quantity of narcotics substance through a Truck against the appellant Pervez Khan being its driver, beyond a shadow of any reasonable doubt. Resultantly, the Criminal Appeal in his respect being devoid of merits is **dismissed** accordingly. The conviction and sentence awarded to him by the learned trial Court are hereby **maintained**.

**JUDGE**

**JUDGE**