

THE HIGH COURT OF SINDH, BENCH AT SUKKUR

*Special Criminal Jail Appeal No.D-71 of 2021*

**Present:**

Ms. Justice Rashida Asad.

Mr. Justice Khadim Hussain Soomro.

**Appellant:** Hayatullah son of Said Muhammad Noorzai.  
Through Mr. Rukhsar Ahmed Junejo, Advocate.

**The State:** Through Mr. Mohsin Ali Khan, Special  
Prosecutor ANF.

Date of Hearing: 30-08-2023

Date of Judgment 24-10-2023.

**JUDGMENT**

**KHADIM HUSSAIN SOOMRO, J.** Through this judgment, we intend to dispose of the instant Special Criminal Jail Appeal filed by the appellant Hidayatullah Noorzai, whereby he has impugned judgment dated 05-10-2021 passed by learned II<sup>nd</sup> Additional Sessions Judge/Special Judge (CNS) Sukkur in Special Case No. 07 of 2021 [Re. Hayatullah Noorzai Vs. The State] emanating from Crime No.15/2020 for an offence punishable under Section 9(c) of the Control of Narcotic Substances Act, 1997, registered at Police Station Sukkur, whereby the appellant has been convicted and sentenced to undergo R.I for “Life” and to pay a fine of Rupees five Million, and in default in payment of fine to undergo S.I for two years more. However, the appellant was extended the benefit of Section 382-B Cr.P.C.

2. Brief facts of the prosecution case are that on 14-12-2020, the complainant, Inspector/SHO Muhammad Saqlain, lodged the FIR alleging therein that he arrested appellant/accused near the Masjid of Platform No.03 situated at Railway Station, Rohri and recovered one plastic bag containing 25 packets of charas weighing 1200/1200

grams of each packet, total 30 kilograms charas, and cash of Rs. 28000/- from his possession. Such a memo of arrest and recovery was prepared at the spot, and then the accused and recovered case property were brought to the police station, where the complainant lodged the FIR against the appellant/accused on behalf of the State.

3. The formal charge was framed against the accused, to which he pleaded not guilty and claimed to be tried vide his plea recorded at Exh.2/A.

4. The prosecution, in order to substantiate its case, examined complainant Inspector Muhammad Saqlain, PW/2 SIP Mudasir Ali Khan, and PW/3 HC Rehmatullah, who produced certain documents and items in support of their statements. Thereafter, learned State Counsel closed the prosecution side of evidence vide statement Ex.06.

5. The appellant, in his statement recorded under section 342 Cr.P.C, denied the allegations leveled against him by pleading his innocence. However, the accused/appellant did not examine himself on oath but led evidence of witness WHC of Railway Police Station, Rohri, namely Muhammad Ismail, at Ex. 8 in his defence.

6. The learned trial Court, on evaluation of the material brought on record and hearing counsels for the parties convicted and sentenced the present appellant/accused vide impugned judgment, as discussed above.

7. Per learned defence counsel, the appellant is innocent and has falsely been implicated in the present case; that the Chemical Examiner's report violates test protocol, losing its legal sanctity; that there are significant inconsistencies in the testimony of prosecution witnesses; that safe custody or transmission of Charas to the Chemical Examiner has also not been established; that the testimony of such interested witnesses has no legal standing; that no any private person was associated as mashirs of the arrest and recovery.

Lastly, he argued that the prosecution had not proven its case against the appellant; hence, he is entitled to acquittal.

8. On the other hand, learned Special Prosecutor ANF, while supporting the impugned judgment, has submitted that the prosecution has proved its case against the appellant, who was found with a huge quantity of Charas transported through train, which was recovered from the exclusive possession of the appellant; that the police authorities had no reason to foist such a huge quantity of narcotics on the appellant, he prayed for the dismissal of the current criminal appeal.

9. We have given anxious consideration to the arguments of both sides and perused the entire material available before the Court with their able assistance and the case law cited at bar.

10. We have examined the deposition of Complainant/ Inspector Muhammad Saqlain, who deposed that on 14-12-2020 at about 7-00 p.m. he received spy information that Narcotic Smuggler Hayatullah was coming through Jaffer express train from Quetta and would smuggle such Narcotic from Quetta to Sukkur and Rohri. On receipt of such information, he, along with his subordinate staff, reached at Sukkur Railway Station. At about 0750 p.m., Jaffer Express train reached at platform No. 1 of Sukkur Railway Station from Quetta. At about 0807 p.m., one person from train compartment No.10 of AC Business came along with one white plastic bag in his right hand and was apprehended. The private persons standing there were asked to act as mashir, but they refused hence ASI Mudassir Ali and PC Muhammad Ahmed were associated as mashirs. On enquiry, apprehended persons disclosed his name as Hayatullah son of Said Muhammad Noorzai R/O Teachers Colony near Makkah Market last stop Nawan Killi Quetta. The accused also admitted to having charas in a white colour bag held by him. The bag was opened, and 25 packets in transparent

envelopes, which were wrapped with transparent tape and 777 was written over it. The packet was opened, which contained charas in a single slab in each packet. The charas was weighed, which became 1200 grams of each packet, a total of 30 Kilograms. 10 grams from each packet were taken and sealed for chemical examination in separate Khaki envelopes, while the remaining 25 packets were sealed in the same white bag and it was also sealed. Such mashirnama of arrest and recovery was prepared at the spot in the presence of mashirs ASI Mudasar Ali Khan and PC Muhammad Ahmed, which was produced at Ex. 3/B. Then the accused and case property were brought at the police station where he lodged the FIR produced at Ex. 3/C and handed over the case property to Malkhana incharge ASI Mudasar Ali. On 15-12-2020, he sent the sealed parcel No. 1 to the Chemical examiner through HC Rehmatullah for examination and report. The chemical report is produced at Ex. 3/G. He also obtained the criminal record and CDR, which he produced at Ex. 3/H and 3/I and Railway Ticket of accused at Ex. 3/J. He recorded 161 Cr.P.C statements of PWs and, after completing the entire formalities, submitted the challan before the Court of law. He identified the accused as well as the case property in the court to be the same one that was recovered from the accused. The prosecution has also examined PW/2 SIP Mudasar Ali, who had corroborated the version of the complainant. PW/3 HC Rehmatullah, who took the sealed parcel along with the letter and Road certificate for depositing with Chemical Examiner Laboratory Rohri has deposed that on 15-12-2020, he went to Chemical Examiner Office Rohri and deposited the same.

11. The complainant submitted all important documentation connected to the matter; as a result, the appellant was found accountable for transporting a huge quantity of Charas while coming from Quetta to Sukkur on the Jaffer Express train.

12. Regarding the appellant's counsel argument that the prosecution has failed to show safe custody and safe transport of

Charas from the recovery to the office of the Chemical Examiner. It is worth mentioning that the defence did not raise the possibility of tampering with the case property at the police station office or during its transmission to the Chemical Laboratory during the PWs' cross-examination. Charas was recovered from the appellant on 14-12-2020 and was delivered to the Chemical Laboratory through HC Rehmatullah on 15-12-2020; the Chemical Examiner's report is produced by the complainant at (Exh.3/G). So, the safe chain of custody of the recovered narcotics can be safely stated. The reliance can be made in the most recent unreported Criminal Appeal No. 208/2022, Zain Ali V/S The State, and further Reliance is placed on the case of Faisal Shahzad Vs. The State [2022 SCMR 905] and Ajab Khan Vs.The State [2022 SCMR 317).

13. The requirement of Rule 4 of Control of Narcotic Substances (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 site of recovery and sent by insured post or special messenger to the office in charge of the closest Narcotic Testing Laboratory for testing. No question was put by the defence counsel that there was tempering with the case property and the Chemical Examiner also confirms that the submitted sample is identified to contain charas. Furthermore, Rule 5 of the Control of Narcotic Substances (Government Analysis) Rules, 2001 states that it must be received in the Laboratory in a sealed condition. The in-charge officer must follow full protocol by properly opening and labeling the laboratory. A separate register must be kept for this purpose. All samples must be given to the analyzer on the same day and maintained in safe custody while being examined and recorded in the test memorandum. He will match the markings on the test Memorandums to the marks on the package envelopes and make certain that the relevant sample is tested. 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 is here 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 should be received in the office of the Chemical Examiner in a sealed condition. We reviewed the Chemical Examiner's report, which is accessible as Exh.03/G, and in our humble opinion, it is in accordance with its Rules, and the whole process was followed by the Chemical Examiner's office.

14. The procedural detail mentioned in the Chemical Examiner's report Ex.3/G 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”.

15. The reliance is also placed on an unreported case of the 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), as under;

“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”.

16. As far as the arguments of learned counsel for the appellant about violation of Section 103 Cr.PC are concerned, it would be appropriate to refer to 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.

17. It indicates that the applicability of Section 103 Cr.P.C. in drug cases has been ruled out, and the absence of any private witness is not a severe flaw that may invalidate the conviction. Normally, people avoid giving testimony against drug dealers because of fear of being threatened.

18. In terms of ANF official evidence, they are competent, and their testimony cannot be discarded merely on account of their professional affiliation. They have provided straightforward and reassuring evidence, and there is nothing on the record to suggest that they deposed against the appellant maliciously or with malice, and it cannot be believed that police officials would plant or foist such a large quantity of narcotics substance (30 K.G) against the appellant by using their own resources. It is a well-established legal concept that the testimony of official witnesses cannot be rejected just because 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”

19. In the instant case, no proof of hostility with the complainant or the other witnesses was introduced into evidence; hence, in the lack of such evidence, the competency of the prosecution witnesses, who were police officers, was properly believed. Furthermore, a procedural formality cannot be insisted upon at the expense of the accomplishment of a crime, and if an accused is otherwise discovered related, a simple procedural omission or even an accusation of inappropriate investigative conduct will not aid the accused. The reference in this context is made to the case of the



State/ANF Vs. Muhammad Arshad (2017 SCMR283), 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.”

20. Even then, a person's official standing would not automatically impair their credibility as a witness unless it can be established that they are biased towards the accused or have a history of animosity towards the individual in question. The reliance in this context is made to the case of Farooq Vs. The State (2008 SCMR 970).

21. It is now established law that in cases involving the transportation or possession of illegal drugs, procedural intricacies or other issues should be overlooked if doing so serves the greater good of the nation. If this is the case, the court should adopt a flexible approach that considers the true facts of the case and draws justifiable inferences and conclusions when making such decisions. 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.”*

22. Despite the fact that the investigation officer and other prosecution witnesses are police officials, they have no animus or rancor against the appellant to place such a large quantity of narcotics substance against him. The defence has not shown any proof of hatred towards the prosecution witnesses. In cases involving large amounts of drugs, the absence of hostility or other justifiable basis for fake involvement would also be factors weighing

against the accused. The reliance is made in the case of Salah-ud-Din vs. The State, reported in (2010 SCMR1962), wherein the Hon'ble Supreme Court of Pakistan has held that;-

*"...No enmity whatsoever has been alleged against the prosecution witnesses and there is hardly any possibility for false implication without having any ulterior motives which was never alleged. In view of overwhelming prosecution evidence the defense version has rightly been discarded which otherwise is denial simpliciter and does not appeal to logic and reasons..."*

23. On re-appraisal of the evidence of the prosecution witnesses, we find it confidence-inspiring and trustworthy; the appellant Hayatullah was transporting (30 kilograms) a huge quantity of Charas, and he was arrested on 14-12-2020. The version of the complainant/Inspector Muhammad Saqlain has been fully corroborated by mashir of arrest and recovery, which is substantiated with the memo of arrest and recovery (Exh.03/B),. The investigating officer's Case property was handed over to Head In-charge of Malkhana. He himself recorded the statements of witnesses u/s 161 Cr.PC. On 15-12-2020 he sent the case property to Chemical examiner through HC Rehmatullah. He obtained the report from Chemical Analyzer and submitted the final report under Section 173 Cr.P.C. He produced a chemical examiner report as Exh-3/G, received positive.

24. Based upon the above discussion and relying upon the case laws of the Hon'ble Apex Court, we are of the unanimous view that the prosecution has successfully established its case against the appellant Hayatullah beyond the shadow of any reasonable doubt. Consequently, the instant criminal appeal merits no consideration, which is dismissed, and the impugned judgment passed by the learned trial Court is hereby maintained.

JUDGE

JUDGE