

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

**BEFORE:
MR. JUSTICE MAHMOOD AHMAD KHAN
MR. JUSTICE MUHAMMAD HASAN (AKBER)**

Criminal Jail Appeal No.D-47 of 2024

Appellant: Farooque Ahmad son of Muhammad Umar Makrani,
through Mr. Shamsuddin Khushk Advocate.

Respondents: The State, through Mr. Nazar Muhammad Memon,
Assistant Prosecutor General.

Date of hearing: 12.03.2025
Date of decision: 12.03.2025

J U D G M E N T

MUHAMMAD HASAN (AKBER), J.- Through the instant criminal Jail appeal filed under Section 48 of Control of Narcotic Substances Act, 1997 read with Section 410 of Cr.P.C, the appellant has assailed the Judgment dated 14.06.2024, passed by the learned Model Criminal Trial Court-II/ Special Judge Control of Narcotics Substances (CNS) Hyderabad in Special case No.32 of 2024, whereby the appellant has been convicted and sentenced to 09 years Rigorous Imprisonment along with fine of Rs. 40,000/- in case of default in payment of fine and the appellant shall further undergo 03 months simple imprisonment. Benefit of Section 382-B, Cr.P.C. has also been extended to the appellant.

2. Brief facts are that on 29.01.2024 at about 2200 hours in the area of Eid Center Ground, Makrani Mohalla Hyderabad, within the jurisdiction of Police Station Hali Road, Hyderabad, during patrolling and on the tip of spy information, the appellant was caught red handed by the police officials of Police Station Hali Road Hyderabad, while possessing charas weighing 1712 grams under the memo of arrest and recovery (Exhibit 3/B). hence F.I.R. No.11/2024 was registered against him under section 9(1) 3-(c) CNS, Act 1997. Investigation was entrusted to Inspector Muhammad Raees Khanzada who deposited the case property in the malkhana of the PS and visited the place of incident; sent the case property for analysis; recorded statements of PWs and the accused; collected previous criminal record of the accused and discovered his previous involvement in FIRs No. 119/2016, 181/2023 under section 3-4 PEHO of PS Hali Road and 76/2022 under section 3-4 PEHO is PS Sakhi Pir, Hyderabad. The Analysis Certificate Report dated 19.02.2024 confirmed the sample as chars (narcotics). After

completing investigation, I.O submitted report under section 173, Cr.P.C. for commencement of trial.

3. After supply of copies (Exhibit 01), a formal Charge was framed against the appellant on 08.04.2024 (Exhibit 02) to which he did not plead guilty and claimed trial vide his plea (Exhibit 02/A). At the trial, the prosecution examined the following witnesses:

- i. PW-1 SIP Mubarak Ali Lashari the complainant (Exhibit 03);
- ii. PW-2 ASI Noor Muhamad Khoso (Mashir) (Exhibit 4);
- iii. PW-3 WHC Wazir Ali Malkhanna Incharge (Exhibit 5);
- iv. PW-4 Inspector Muhammad Raees Khanzada (Investigation Officer) (Exhibit 6).

4. Statement of the appellant under Section 342 of Cr.P.C was recorded on 12.06.2024, wherein all the incriminating material against him at the trial was put to him. The accused pleaded innocence and claimed that the whole prosecution story was concocted as he was dragged into this false case with mala fide intention and that all the prosecution witnesses are police officers and are interested. He further pleaded that on 29.01.2024, police party conducted raid at the residence of his sister, which was resisted by him, and therefore police became angry and foisted this case on him. The accused neither opted to enter into the witness box as required under Section 340(2), Cr.P.C nor produced defense evidence.

5. Learned Judge Special Court (CNS), Hyderabad after hearing the arguments of counsel for both the parties and examining the evidence available on record, convicted and sentenced the appellant / accused, as stated above vide impugned judgment, hence this appeal.

6. Learned counsel for the appellant *inter alia* contends that the alleged recovery of charas was doubtful for the reason that recovery was not made in the presence of public witnesses since association of public witnesses was necessary when the proceedings were conducted on prior information; that statements of prosecution witnesses were contradictory which creates serious doubts regarding the alleged recovery; site map without scale does not show the exact point / location where the police party was present on duty at the time of alleged recovery; the samples of charas were not taken properly according to law while sending for chemical examination; the impugned judgment of learned Court below is based on surmises and conjectures; learned trial Court has failed to appreciate

the evidence of prosecution in its true prospective and has prayed that instant appeal be accepted and impugned judgment be set-aside.

7. The learned State counsel vehemently supported the impugned judgment and in contended that physical recovery of contraband has been effected from the appellant; that it was kept in safe custody following its recovery until the time it was sent and received in the office of Chemical Analyzer for examination; that the report of Chemical Analyzer is positive; that the applicability of Section 103, Cr.P.C has been expressly excluded under Section 25 of CNSA, 1997; that there is no enmity of any of the prosecution witnesses to depose against the appellant; that prosecution has fully proved its case beyond any shadow of doubt; and that the learned trial Court passed the impugned judgment after appreciating the evidence available on record in its true perspective. Under these circumstances, he prays that the instant appeal be dismissed. He also relied upon section 51 of the CNS Act 1997 and pleaded that cases of narcotics have larger implications being a crime against society.

8. We have heard the arguments advanced by learned counsel for the appellant, learned State counsel and perused the record with their able assistance. Learned trial Court in the impugned judgment has already discussed facts of the case as well as the evidence in detail. The prosecution case hinges upon the statements of PW-1 SIP Mubarak Ali Lashari the complainant, PW-2 ASI Noor Muhamad Khoso (Mashir), PW-3 WHC Wazir Ali Malkhanna Incharge and PW-4 Inspector Muhammad Raees Khanzada (Investigation Officer). The prosecution produced PW-1 SIP Mubarak Ali Lashari the complainant (Exhibit 03) who produced DD. Entries, memo of arrest and recovery and FIR 11/2024 (Exhibit 3/A to exhibit 3/C respectively). PW-2 ASI Noor Muhamad Khoso (Mashir) (Exhibit 4), produced Memo of site inspection and DD entries (Exhibit 4/A and 4/B respectively). PW-3 WHC Wazir Ali Malkhanna Incharge (exhibit 5) produced Malkhana entry No.9 of Register No.19, (exhibit 5/A). Finally, PW-4 Inspector Muhammad Raees Khanzada (Investigation Officer) at Exhibit-06 produced letter to SDPO, letter to Incharge CRO, CRO of the accused, letter to chemical examiner, Roznamcha entry no.5, sample receipt, arrival entry No.22 and Chemical Report (Exhibits 6/E to 6/H respectively). After the closure of prosecution evidence, the statement of accused was recorded under section 342 Cr.P.C. (Exhibit 08). Prosecution has produced 02 witnesses of the occurrence as well as witnesses regarding the safe custody of carrying samples to the office of Chemical Analyzer. Prosecution has also produced letter to the Chemical Examiner, Government of Sindh dated 30.01.2024 and the analysis reports dated 19.02.2024 from Director Laboratories & Chemical Examiner, Government of

Sindh, wherein it is concluded that submitted samples contain charas (Narcotics) as defined in Section 2 of CNS Act, 1997 on the basis of test(s) performed and protocol of the same is also mentioned on the report of Chemical Analyst in detail. The appellant / accused was apprehended on 29.01.2024 while carrying charas weighing 1712 grams. Police officials separated the samples from each packet in a prescribed manner and sent the same to the Director Laboratories & Chemical Examiner, Government of Sindh. The report whereof show that the samples were subjected to chemical and instrumental analysis and the same were found to be charas (narcotics). These witnesses have narrated the prosecution story in a natural manner and remained consistent throughout and their testimony which could not be shattered by the defence despite lengthy cross-examination.

9. The appellant / accused has not taken any specific defense plea in his statement recorded under section 342, Cr.P.C and in reply to a question that why PWs have deposed against him, he claimed stated that the whole prosecution story was concocted as he was dragged into this false case with mala fide intention and that all the prosecution witnesses are police officers and are interested. He further pleaded that on 29.01.2024, police party conducted raid at the residence of his sister, which was resisted by him, and therefore police became angry and foisted this case on him. However, no evidence or material to substantiate such allegations was produced. The said witnesses had no enmity with the appellant to falsely implicate him in the present case as a huge quantity of 1712 grams of charas cannot be foisted upon the appellant to fabricate a fake case.

10. As regards the ground of non-association of private witnesses in the recovery process, section 25 of CNS Act 1997 specifically excludes applicability of section 103, Cr.P.C. Such conscious exclusion of section 103 Cr.P.C. by the legislature in the cases of narcotics, actually highlights lack of willingness and cooperation from private witnesses to be associated in the process of recovery which, as a conduct which is symptomatic of social apathy towards their civic responsibility. Such concerns were also expressed by the Supreme Court in '*Salah-ud-Din v. State*'¹ in the following words:

"Reluctance of general public to become witness in such like cases has become judicially recognized fact and there was no way out to consider statement of official witness, as no legal bar or restriction has been imposed in such regard. Police officials are as good witnesses and could be relied upon, if their testimony remained un-shattered during cross-examination."

11. In the case of *'Muhammad Noman Munir'*² it was reiterated by the Supreme Court that members of the State functionaries are second to none in their status, and their acts statutorily presumed, *prima facie*, were *intro vires*. Likewise, in *'Zafar v. The State'*³, police employees were considered as competent witnesses like any other independent witness and it was held that their testimony cannot be discarded merely on the ground that they are police employees. Moreover, on the count of false implication, neither any reason nor any specific allegation of animosity against the raiding party has been provided which could even remotely suggest enmity or ill-will of the force for falsely involving the applicant, as alleged. This satisfactorily responds to the appellant's objection to non-association of private witnesses in the process of arrest and recovery in the present case.

12. With regards to minor contradictions, suffice it to say that the occurrence took place on 29.01.2024, whereas the statements of PWs-1 to 3 in the Court were recorded on 13.05.2024 whereas PW-4 was examined on 12.06.2024 i.e. after around 5 to 6 months of the occurrence, so it cannot be expected that witnesses will give the timing etc. of acts done by them in a very perfect/ accurate manner. Moreover, minor contradictions or improvements in the statement of witnesses, sans any material contradictions are to be over-looked, as observed by the Supreme Court of Pakistan in *'Anwar Shamim and another v. The State'*⁴. Such concerns were reiterated by the Supreme Court in *'Muhammad Shabbir and others v. The State'*⁵ in the following words:

"It is established law that if the discrepancies are shattering the prosecution story on salient feature then it has substance to intervene on the subject otherwise it has no impact on the veracity of the prosecution story."

13. It is also important to note that special care and caution is required while dealing with the cases of narcotics, which is not only a menace and a serious crime against the society, but such crime money becomes the back bone and financial source for multiple other crimes in the society including terrorism and anti-state activities which has engulfed the entire country since past decades, in addition to bringing bad reputation to the country in the comity of countries on the global canvass. The Supreme Court of Pakistan has been consistently observing and declaring the menace of drugs as a great threat to the peaceful society and affecting many lives especially those of youngsters, *'Faisal Shahzad v. The State'*⁶ being one of such efforts.

1. 2010 SCMR 1962
2. 2020 SCMR 1257
3. 2008 SCMR 1254
4. 2010 SCMR 1791
5. 2020 SCMR 1206

14. When the prosecution is able to prove its case on its salient features, then unnecessary technicalities should not be allowed to hamper the very purpose of law on the subject. Close analysis of the whole prosecution evidence i.e. recovery of huge quantity of narcotics, separating the samples from each packet in a prescribed manner and sending them to the Chemical Examiner, report of the Chemical Examiner and statements of the prosecution witnesses, when evaluated conjointly, leave no room to come to a different conclusion than what has been arrived at by the learned trial Court. The Supreme Court of Pakistan has consistently upheld convictions and sentences awarded in identical cases, including the cases of '*Ajab Khan v. The State*'⁷, '*Matti Ullah v. The State*'⁸, '*Aijaz Ali Rajpar v. The State*'⁹, '*Mian Khalid Perviz v. The State through Special Prosecutor ANF and another*'¹⁰ and '*Shazia Bibi v. The State*'¹¹.

15. Based upon the above analysis, we are of the considered view that the prosecution has successfully proved its case against the appellant beyond any shadow of reasonable doubt. The defence has miserably failed to extract any material discrepancies or contradictions from statements of the prosecution witnesses. Accordingly, the instant appeal is dismissed and the Judgment passed by the learned Model Criminal Trial Court-I/ Special Judge Control of Narcotics Substances (CNS) Hyderabad in Special case No.32 of 2024, is upheld. The case property shall be dealt with as directed by the learned trial Court. The record of the learned trial Court be sent down immediately.

16. The above are the reasons for our short order dated 12.03.2025, which was as follows:

"For reasons to follow, the instant appeal is dismissed."

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6. 2022 SCMR 905
7. 2022 SCMR 317
8. 2020 SCMR 1222
9. 2021 SCMR 1773
10. 2021 SCMR 522
11. 2020 SCMR 460