

# IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Appeal No. 443 of 2024

Appellant : Kashif Ahmed son of Bashir Ahmed,  
through Mr. Shujaat Abbas, advocate

Respondent : The State  
through Mr. Muhammad Mohsin, D.P.G.

Date of short order : 24.04.2025

Date of reasons : 26.04.2025

## **REASONS**

**KHALID HUSSAIN SHAHANI, J.** - The appellant, Kashif Ahmed, assails judgment dated 31.05.2024, passed by learned IVth Additional Sessions Judge, Karachi East, in Sessions Case No. 3671/2023 arising from FIR No. 266/2023 registered under Section 23(i)(A) of the Sindh Arms Act, 2013 at P.S. KIA, whereby the appellant was convicted and sentenced to suffer rigorous imprisonment for seven years with a fine of Rs. 20,000/-, and in default, to further undergo simple imprisonment for two months, with benefit of Section 382-B Cr.P.C.

2. The prosecution case, in brief, is that on 19.02.2023 at about 0850 hours, the appellant was allegedly apprehended by ASI Mazhar Hayat, and from his possession, an unlicensed .32 bore pistol with three live bullets, and one I-phone, were recovered. He was subsequently booked under Section 23(i)(A) of the Sindh Arms Act, 2013. The case was investigated and challaned; the appellant denied the charge and claimed trial.

3. After recording evidence of three police witnesses, namely the complainant ASI Mazhar Hayat (PW-1), mashir PC Hamza Khan (PW-2), and Investigating Officer SIP Muhammad Moosa (PW-3), the prosecution closed its side. The appellant recorded his statement under Section 342 Cr.P.C, denied the allegations, and claimed false implication by police officials being "interested witnesses." Consequently, the appellant was convicted and sentenced as mentioned hereinabove.

4. Learned counsel for the appellant argued that the conviction is based on a defective investigation, material contradictions in the testimonies of prosecution witnesses, and a complete failure to establish

safe custody and transmission of the alleged narcotics. He submitted that the departure times stated by the complainant, mashir, and departure entry (Ex.04) are inconsistent, casting doubt on the timing and authenticity of the arrest and recovery. He further pointed out that the mashirnama lacks reference to the relevant police diary entry and no independent witness was associated, despite the recovery allegedly taking place in a public area. It was contended that there is no evidence of malkhana entry, custody details, or secure forwarding to FSL, and the forwarding letter to the FSL bears the incorrect year (2022 instead of 2023). Learned counsel relied on *Abdul Ghani v. The State* (2016 SCMR 608) and argued that in the absence of proof of safe custody and secure transmission, the recovery loses its evidentiary value. He concluded that the trial Court failed to appreciate these critical deficiencies and rendered a non-speaking judgment.

5. Conversely, the learned Assistant Prosecutor General submitted that the prosecution had successfully discharged its burden by proving the arrest and recovery through official witnesses, whose testimony remained unshaken. The narcotic substance was duly examined and confirmed by the chemical analyst. He contended that minor discrepancies in timing are natural and do not affect the core of the case.

6. This Court finds merit in the arguments advanced by learned counsel for the appellant, who has assailed the prosecution case on multiple fronts, pointing to serious procedural lapses, material contradictions, and a fundamental failure to establish the chain of custody of the alleged case property. The defense has convincingly demonstrated that the testimonies of the prosecution witnesses are not only mutually contradictory but also internally inconsistent with documentary evidence.

7. A glaring discrepancy emerges with respect to the departure time of the police party from the station. While the complainant deposed that the police left at 0210 hours, the mashir claimed they departed at 2000 hours. The departure entry produced on record (Ex.04), however, reflects yet another time as 0130 hours. These inconsistencies are not minor or clerical; they directly impact the credibility of the occurrence and the alleged timeline of arrest and recovery. If the police left at 2000 hours, it would be temporally impossible for the arrest and recovery to have occurred earlier, thereby suggesting manipulation or post-event fabrication.

8. More troubling is the prosecution's failure to produce the roznamcha extract or even mention the departure entry number in the mashinama. This omission raises serious doubts about the transparency and authenticity of the arrest and recovery proceedings. The evidentiary record is also silent on critical aspects of safe custody and transmission of the recovered contraband. There is no documentary proof that the alleged substance was deposited in the malkhana, nor has any entry in the relevant register been brought on record. The identity of the person who retained custody during transit remains unknown.

9. The Investigating Officer's own testimony is self-contradictory. While he claimed to be on duty from 0800 to 2000 hours, the documents reflect events occurring outside that window. Even more perplexing is the forwarding letter to the Forensic Science Laboratory, which bears the date 20.02.2022, a year prior to the alleged recovery on 19.02.2023. Although the FSL report records the receipt date as 20.02.2023, the mismatch in dates further corrodes the reliability of the record. Whether this is an error or deliberate manipulation, the benefit of doubt must go to the accused. These irregularities attract the authoritative principles enunciated in *Abdul Ghani v. The State* (2016 SCMR 608), where the Hon'ble Supreme Court held that failure to establish unbroken chain of custody renders the recovery legally infirm. The prosecution failed to examine any official from the Muharrir's office who took custody of the recovered weapon and stored it in malkhana, nor was any malkhana register or entry exhibited. This is a serious omission since the prosecution must prove custody and storage of a sensitive item like a firearm. Coupled with the fact that the non-association of any independent witness, despite the recovery being allegedly affected in a public area, further weakens the prosecution case and casts doubt on the veracity of official witnesses.

10. It is further observed that the learned trial Court failed to examine these glaring contradictions or procedural defects and instead rendered a perfunctory judgment that simply reproduced the prosecution's version without judicial scrutiny or reasoned evaluation. Such a non-speaking judgment, devoid of analytical reasoning, cannot be sustained in the eyes of law.

11. In the cumulative assessment, the case of the prosecution suffers from serious defects: contradiction in time of occurrence, lack of independent witnesses, failure to prove safe custody and chain of custody of the weapon, non-production of critical documentary and oral evidence,

and mechanical reliance on police testimony without corroboration. The learned trial court, with respect, misdirected itself in recording conviction solely on the basis of police evidence without addressing these vital deficiencies, thereby causing serious miscarriage of justice. Consequently, the impugned judgment dated 31.05.2024 is set aside. The conviction and sentence recorded against the appellant Kashif Ahmed is hereby reversed. He is acquitted of the charge under Section 23(i)(A) Sindh Arms Act, 2013. He shall be released forthwith if not required in any other case. Order of the case property shall remain same.

12. These are the reasons for short order dated 24.04.2025, whereby appeal referred above was allowed.

**J U D G E**