

# IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

*Special Criminal Appeal No. D-74 of 2023*

**Appellant:** Muneer Ahmed @ Nisar son of Fateh Ali bycaste Channa (Confined in Central Jail Khairpur) **in person.**

**The State:** Through Mr. Shafi Muhammad Mahar, Deputy Prosecutor General.

**Date of hearing.** 04-03-2025

**Date of Decision.** 04-03-2025

**Date of Reason.** 11-03-2025

## J U D G M E N T.

*Ali Haider 'Ada',J:-* Through instant appeal, the appellant named above impugned the judgment dated 09-10-2023 passed by learned Sessions Judge/Special Judge (CNS) Khairpur in Special Case No. 123 of 2023 (Re. The State Vs. Muneer Ahmed @ Nisar), Crime No. 20/2023, offence u/s 9 (c) of Control of Narcotics Substance Act of Police Station Sobhodero, whereby the appellant has been convicted and sentenced to undergo R.I for 05 years and to pay fine of Rs. 40,000/- (Forty thousand), in case of default in payment to undergo S.I for 05 months more with benefit of section 382-B Cr.P.C.

2. Brief facts of the prosecution case are that on 19-01-2023 at about 0800 hours, on the link road leading from Sobhodero to Hingorja, near the bridge at Lower Setharja, the appellant was apprehended by a police party from Police Station Sobhodero, headed by ASI Muhammad Chhuttal Bhelar. A recovery was effected from the appellant, consisting of 600 grams of charas in the form of one piece concealed in the left fold of his shalwar. From this recovered substance, 10 grams were separated and sealed for chemical analysis. A mashirnama of arrest and recovery was prepared on the spot. Subsequently, the appellant, along with the recovered contraband, was brought to the police station, where the complainant lodged an FIR against the appellant on behalf of the State. After completion of the investigation, the appellant was challan and sent up for trial.

3. After supplying the case papers to the appellant, the charge was framed by learned trial Court on 27-05-2023, wherein he pleaded not guilty and claimed for trial.

4. In order to prove the charge against the appellant, the prosecution examined PW/1 complainant Muhammad Chhuttal at Ex. 03, who produced departure entry, memo of arrest, FIR and arrival entry, PW/2 Ali Muhammad at Ex. 4, who is mashir of arrest and recovery, he produced mashirnama of wardhat, PW/3 SIP Muhammad Yaseen, who is Investigating Officer at Ex. 05 and produced entry of register No. 19, departure entry for visiting the place of wardhat as well as arrival entry, RC, letter to Chemical Examiner and report of Chemical Examiner, during his examination he also seen the mashirnama of place of wardhat and recognized its contents. PW/WHC Qurban Ali examined at Ex. 6, and kept case property in Malkhana; thereafter the prosecution closed its side vide statement 23-10-2023 as Ex. 7.

5. The learned trial Court recorded the statement u/s 342 Cr.P.C of the appellant, in which he denied the allegation leveled against him by the prosecution and claimed to be innocent. After hearing the learned counsel for the parties, learned trial Court passed the judgment which is impugned by the appellant by preferring the instant appeal.

6. Heard learned DPG for the State and perused the material available on record.

7. The prosecution's case is that on 19-01-2023, during a routine patrol conducted by a police party from Police Station Sobhoderi, led by ASI Muhammad Chhuttal Bhellar, the appellant was apprehended on a link road connecting Sobhoderi to Hingorja, near the Lower Setharja Bridge. Upon search, 600 grams of charas, in a single piece, was allegedly recovered from the left fold of his shalwar. To establish its case, the prosecution examined the complainant, ASI Muhammad Chhuttal Bhellar, whose testimony largely reiterated the contents of the FIR. During his examination-in-chief, the complainant produced a departure entry dated 18-01-2023 at approximately 0600 hours. However, during cross-examination, he stated that the patrol commenced at 0600 hours on the day of the incident, i.e., 19-01-2023. At the outset of his cross-examination, he further deposed that the police duty lasted for 24 hours. If a 24-hour duty period commenced on 18-01-2023 at 0600 hours, it would have concluded on 19-01-2023 at approximately 0600 hours. However, the alleged incident occurred at 0800 hours on 19-01-2023, raising serious

doubts regarding the actions of the complainant party and the veracity of the prosecution's case.

8. The complainant, during his examination-in-chief, deposed that he handed over the FIR, the memo of arrest and recovery, the custody of the accused, and the case property to the Investigating Officer (IO) for investigative purposes. However, the record does not reflect any such transaction, as no documentary entry has been produced to establish that the IO received the case property from the complainant. The complainant presented a single entry regarding the lodgment of the FIR, but even that entry does not indicate the handover of the case property to the IO. This omission renders the chain of safe custody unproven, thereby causing a break in the chain of evidence. Furthermore, the IO deposed that the case property was deposited in the malkhana; however, the record does not clarify under what chain of custody the property was received. This critical aspect remains unaccounted for in the present case. The entry in Register No. 19, maintained by the IO, mentions that 6 grams of charas was retained, with 10 grams separately sealed as a sample, but the procedural integrity of this process remains questionable in the absence of a documented chain of custody.

9. It is pertinent to note that the deposit of 6 grams of charas has been explicitly recorded. The case property was allegedly dispatched by the SHO, Police Station Sobhadero, under Road Certificate No. 16184. However, this RC number differs from the entry in Register No. 19, where it is recorded that the case property was sent for chemical analysis under RC No. 16104. This discrepancy raises serious doubts regarding the integrity of the record-keeping process. Furthermore, the letter in question states that the case property was forwarded to the Chemical Examiner through the IO. However, the IO has failed to produce any departure entry substantiating that he personally dispatched the case property for forensic analysis. This omission further disrupts the chain of custody, thereby compromising the evidentiary value of the prosecution's case. The entry produced by the IO does not appear to conform to the prescribed form, as it contains only four columns: serial number, FIR number, date of deposit, and details of the property. However, the remaining columns, as required under Form No. 22.70, were not included in the exhibit. Specifically, Serial Nos. 5 to 8—which pertain to (i) the reference to the

report seeking orders for disposal of the property, (ii) the mode and date of disposal, (iii) the signature of the recipient (including the person dispatching the property), and (iv) any remarks—are missing. Since the Malkhana entry does not comply with the prescribed format under Rule 22.70, Chapter XXII of the Police Rules, 1934, this raises serious doubts regarding the accuracy and authenticity of the record-keeping process. The Investigation Officer did not provide any evidence indicating the basis on which he received the complete material from the Complainant; and the complainant also failed to demonstrate such transmission.

10. The prosecution is thus required to establish its case beyond any reasonable doubt. In instant case the deficiency is proved, concerning the chain of custody and safe transmission. Any break in the chain of custody is failure to comply the legal requirements. Reliance is placed in the case of **Asif Ali Vs The State through Prosecutor General Punjab (2024 SCMR 1408)**, wherein the Hon'ble Apex Court held as under:-

“10. During his cross-examination, PW-3 was confronted by the learned defence counsel with Form 22.70 of Register No.XIX (Ex.DB) maintained as per rule 22.70 of the Police Rules, wherein admittedly no date, month and year has been mentioned in the relevant column No.3 pertaining to the case property/sample parcels of the instant case and in this regard as well no explanation has been offered by PW-3 or by PW-4.

11. All the above infirmities have created reasonable doubt in the case of prosecution but according to settled principles of law, benefit of same has not been extended in favour of the petitioners by the Trial Court as well as by the Appellate court.”

11. In criminal trial, the prosecution is duty bound to establish its case and in Narcotics cases, the conviction rests upon recovery of contraband. The prosecution must establish an unbroken and unimpeachable chain of custody and secure its transmission. In instant case, the prosecution was unable to substantiate their case and produce reliable entries for switch in custodies and other relevant events. Reliance is also placed on the case of **Khuda Bux Vs. The State and 3 others (1999 P.Cr.L.J 1209) [Karachi]** wherein it is held as under:-

“Perusal of above rules indicates that the duty officer or any other officer responsible to maintain police station diary/Roznamcha cannot leave any entry blank in the same and has to record "all events" which have taken place at the police station. This also includes visits of the outsiders whether they are officials or non-officials, they cannot ignore the fact of making arrest of a person in the Roznamcha. Such entry should be in addition to the memo of arrest, in order to safeguard the fundamental right of the citizens.”

12. Not only this, prosecution has also failed to establish the chain of safe custody. In the case of **Javed Iqbal Vs. The State (2023 SCMR 139)**, the Supreme Court held as under:-

“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”.

13. In the case of **Zahir Shah alias Shat Vs. The State through Advocate General (2019 SCMR 2004)** the Hon’ble Apex Court also held as under:-

“The prosecution must establish that chain of custody was unbroken, unsuspicious, safe and secured. Any break in the chain of custody i.e., safe custody or safe transmission impairs and vitiates the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable or sustaining conviction. Reliance is placed on State v. Imam Bakhsh (2018 SCMR 2039).”

14. In view of above, the conviction and sentence awarded to the appellant by way of impugned judgment was set-aside, consequently, the appellant named above was acquitted of the offence for which he was charged, tried, convicted and sentenced by learned trial Court and he shall be released forthwith, if not required to be detained in any other custody case.

15. Above of the reasons of short order dated 04-03-2025, whereby the instant Special Crl. Appeal was allowed.

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