

## IN THE HIGH COURT OF SINDH AT KARACHI

### PRESENT:

*Mr. Justice Mohammad Karim Khan Agha*

*Mr. Justice Khadim Hussain Tunio*

### CRIMINAL APPEAL NO.572 OF 2020

Appellant : Jahanzaib son of Abdul Ghani  
through Mr. Waqar Ali Malah, Advocate

Respondent : The State through Mr. Abrar Ali Khichi,  
Addl. Prosecutor General, Sindh.

Date of Judgment : 18.03.2022

### J U D G M E N T

**Mohammad Karim Khan Agha, J.-** The Appellant Jahanzaib was convicted by the Model Criminal Trial Court/1<sup>st</sup> Additional District & Sessions Judge, Malir Karachi in Session Case No.909/2020 in connection with FIR No.194 of 2020 under Section 6/9-C CNS, Act 1997 registered at PS Bin Qasim, Karachi and was sentenced vide impugned judgment dated 26.11.2020 to suffer R.I. for 10 years and fine of Rs.200,000/- (Rupees Two Lac) and in case of failure to pay the fine the accused would undergo 02 months S.I. in addition to his main sentence. The appellant was also extended benefit of Section 382-B Cr.P.C.

2. The brief facts of the case as narrated in the FIR are that on 03.07.2020 at about 04:30 P.M at Naseerabad Pipri Road Graveyard, Bin Qasim, Karachi, the police party headed by S.I Noor Ahmed of P.S Bin Qasim, Karachi apprehended the accused namely Jahanzaib son of Abdul Ghani and from his possession, the police recovered Cannabis (Chars) which weighed 1220 grams in the presence of mashirs. The appellant/accused was arrested and taken to the police station along with recovered Cannabis; hence, the FIR was registered against him for the said offence under Section 6/9-C of CNS Act, 1997.

3. After usual investigation the case was challaned before the concerned trial Court where the appellant pleaded not guilty to the charge and claimed trial.



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4. In order to prove its case, the prosecution recorded evidence of 03 PWs who exhibited various documents and other items in support of its case. The appellant recorded his statement under Section 342 Cr.P.C. and denied all the allegations against him and stated that he had been picked up from his house by the Rangers and falsely implicated in this case. He did not examine himself on oath and did not produce any witness in support of his defence.

5. After appreciating the evidence on record, the learned trial Court convicted and sentenced the appellant as set out earlier in this judgment; hence the appellant has filed this appeal against his conviction.

6. The facts and evidence of the case have been elaborately reproduced in the impugned judgment and as such there is no need to set them out here so as to avoid unnecessary repetition and duplication.

7. Learned counsel for the appellant contended that the appellant was innocent of any wrongdoing and had been implicated falsely in this case by the Pakistan Rangers, that it was daylight incident; however, the police had not associated any independent person as mashir, that the prosecution had not been able to prove safe custody of the narcotics from the time it was recovered from appellant until the time it was sent for chemical analysis and as such for all the above reasons appellant should be acquitted of the charge by extending him benefit of the doubt.

8. On the other hand, learned Addl. P.G, Sindh has fully supported the impugned judgment and prayed for dismissal of the appeal.

9. At the very outset, we find that one of the most important aspects of this case has not been proven by the prosecution which has failed to prove safe custody of the narcotic from the time it was recovered from appellant until the time it was sent for chemical analysis and as such even a positive chemical report is of no assistance to the prosecution as the narcotics might have been tempered with during its custody with the police. In this case, the recovery of the narcotic was made on 03.07.2020 from the appellant and it was not sent for chemical analysis for further three days. There is no evidence on record that the narcotic was deposited in the Malkhana of the police station during this three days' period as the prosecution did not exhibit any Malkhana entry that the narcotic was in safe custody and did not examine the incharge of Malkhana to prove safe custody especially as the I.O has admitted



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in his evidence that the narcotics were with the Head Muharar of the Malkhana during this period. It is well settled law in a narcotics case that if the prosecution fails to prove safe custody of the narcotics from the time of its recovery to the time when it was sent to chemical analysis, it warrants acquittal of the accused as during this period, the narcotics might have been tempered with and as such the chemical report cannot be relied upon.

10. For the reasons mentioned above, the appellant is acquitted from all the charges by extending him benefit of the doubt. The appeal is allowed and the impugned Judgment is set-aside. The appellant shall be released from custody unless he is wanted in any other custody case.

Zulfiqar/P.A