

IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Acquittal Appeal No. 288 of 2021

Present Before:

Justice Zafar Ahmed Rajput

Justice Tasneem Sultana

Appellant : The State, through Mr. Mumtaz Ali Shah,
Asstt. Prosecutor General, Sindh.

Respondent : Essa Khan s/o Nazar Muhammad (Nemo).

Date of hearing : 08.05.2025

Date of Judgment : 08.05.2025.

ORDER

ZAFAR AHMED RAJPUT, J. This CrI. Acquittal Appeal is directed against the judgment, dated 15.02.2021, passed in Spl. Narcotics Case No. 824 of 2020, arisen out of F.I.R. No. 480 of 2020, registered at P.S Mochko, Karachi-West, under sections 6/9-(c) of the Control of Narcotic Substances Act, 1997, whereby the learned 1st Addl. Sessions Judge, Karachi-West, ("**Trial Court**") acquitted the respondent Essa Khan of the charge by extending him benefit of doubt.

2. On 12.11.2020, the respondent Essa Khan was arrested by HC Gul Fraz Khan during course of patrolling along with sub-ordinate staff on being found in possession of 22550 Kgs. chars while travelling in a Yellow Black Taxi bearing registration No. JN-5330, as passenger, at main Hub River Road, near Lucky Chowrangi, Mochko, Karachi. After completion of investigation, police submitted the charge-sheet. The Trial Court framed the charge against the respondent, to which he pleaded not guilty. Trial Court examined PW-1 Gul Faraz, complainant, at Exh. 3, who produced departure entry No.40, memo of arrest and recovery, FIR No. 480 of 2020, Qaimie entry No. 62, and site inspection memo at Exh. 3/A to 3/E respectively; PW-2, Ghulam Rasool, mashir taxi driver at Ex. 4 and PW-3, SI Dildar Khan, at Exh. 5, who produced entries No. 15 and 18, letter addressed to Chemical Examiner along with his

report and another entry at Exh. 5/A to 5/D respectively. The Trial Court also recorded the statement of the respondent under section 342, Cr. P.C, who denying the allegations against him claimed innocence. After hearing the learned counsel for the respondent as well as learned DDPP for the State, the Trial Court recorded acquittal of the respondent, vide impugned judgment.

4. Heard learned A.P.G and perused the material available on record.

5. It appears that while recording acquittal of the respondent, the Trial Court has noted some discrepancies with regard to alleged departure of police party from police station for patrolling. According to prosecution, police party left police station on 12.11.2020 at 2000 hours, however, it reflects from FIR that the alleged recovery was effected from the respondent by the police on the same day i.e. 12.11.2020 but at 0630 hours, which is not possible as if the police party had left police station for patrolling on 12.11.2020 at 2000 hours, the date for recovery of the alleged narcotics drug should have been 13.11.2020. The prosecution has not produced the original *Roznamcha* Register in evidence to ascertain the real and actual date and time of departure of police party from police station. Besides it is admitted fact that the prosecution has not produced the Incharge *Malkhana* in evidence to prove safe custody of the alleged recovered substance at police station and its safe transmission to the Chemical Examiner. As such, no evidence is available on record to prove the safe custody of the recovered substance at the police station and its safe transmission from said place to the office of Chemical Examiner. It has been held by the Apex Court in the cases of Abdul Ghani and others v. The State and others (2019 SCMR 608), Faizan Ali v. The State (2019 SCMR 1649), The State through Regional Director ANF v. Imam Bukhsh and others (2018 SCMR 2039), Ikramullah and others v. The State (2015 SCMR 1002) and Amjad Ali v. The State (2012 SCMR 577) that in a

case where safe custody of the recovered substance or safe transmission of sample of the recovered substance is not proved by the prosecution through any independent evidence, it cannot be said with any degree of confidence that the prosecution had succeeded in proving its case against an accused beyond reasonable doubt.

6. For the foregoing fact and reasons, we do not find any illegality or irregularity in the impugned judgment passed by the Trial Court requiring interference of this Court in its appellate jurisdiction, therefore, this CrI. Acquittal Appeal is dismissed, accordingly, in limine.

J U D G E

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Faheem/PA