

## IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

**Cr. Appeal No.D-43 of 2024      (Old number)**  
**Cr. Revision No.D-16 of 2024      (New number)**

**BEFORE:**

Mr. Justice Omer Sial,  
 Mr. Justice Khalid Hussain Shahani

Appellant:	Waqar Ahmed s/o Liaquat Ali Kalhoro, Through Mr. Farhat Ali Bugti, Advocate.
State:	Through Mr. Ali Anwar Kandhro, Additional Prosecutor General.
Date of hearing:	04-03-2025
Date of order:	13-03-2025

### J U D G M E N T

**Khalid Hussain Shahani, J.-** The appellant, Waqar Ahmed, was convicted for offence under Section 9(c) of the Control of Narcotic Substances Act, 1997, in Crime No.93/2022 registered at Police Station New Foujdari by the court of learned 1<sup>st</sup> Additional Sessions Judge (MCTC)/Special Judge for CNSA, Shikarpur, and sentenced to a period equivalent to the time already undergone in custody and imposed a fine of Rs.1,000,000/- (ten lacs), with the stipulation that failure to pay the fine would result in an additional imprisonment of ten years.

**02.** The genesis of the prosecution's case originates from an incident dated July 06, 2022, at about 03:00 p.m, wherein a police party headed by ASI Manzoor Ali Khokhar of Police Station Foujdari, Shikarpur, allegedly apprehended the appellant, Waqar Ahmed, from a link road near City Gate and effected recovery of 5000 grams Chars from him. Consequently, an FIR was lodged against the appellant.

**03.** The appellant, Waqar Ahmed, pleaded not guilty. To substantiate its case, the prosecution examined ASI Manzoor Ali (complainant), HC Aijaz Ali (the mashir of arrest and seizure), and SIP Mehar Ali Shah (investigating officer). However, an essential aspect of the prosecution's case relates to the purported admission of guilt made by the appellant through an application and statement recorded under Section 342 Cr.P.C.

**04.** At the very outset, the learned counsel for the appellant argued that the prosecution failed to establish the safe custody of the recovered contraband from the moment of its seizure until its deposit at the chemical laboratory. While this fact was acknowledged in the impugned judgment, the learned trial court, without exercising due judicial diligence, summarily accepted an application purportedly containing an admission of guilt by the appellant, marked as Exhibit No.08. The trial court, in doing so, failed to issue any notice or inform the appellant of the legal consequences of such an admission, thereby infringing upon the fundamental right to a fair trial guaranteed under Article 10-A of the Constitution of Pakistan.

**05.** The learned Additional Prosecutor General, albeit with some reluctance, conceded that the prosecution failed to establish the crucial legal requirement of proving the safe custody and transmission of the seized contraband from the time of its alleged recovery until its deposit in the chemical laboratory.

**06.** The record demonstrates that after the framing of the charge on November 11, 2022, the prosecution presented its evidence, beginning with the examination of SIP Manzoor Ali and mashir HC Aijaz Ali on April 15, 2024. Although the opportunity for cross-examination was available, the learned defense counsel did not avail the same and responded in nil. On the same date, the investigating officer, SIP Mehar Ali Shah, was examined. During his testimony, he

categorically admitted that he did not produce the original record pertaining to the safe custody and safe dispatch of the case property, a critical procedural lapse in the prosecution's case. In paragraph No.06 of the impugned judgment, the learned presiding officer made a crucial observation, acknowledging that the prosecution had failed to produce original documentation concerning the secure transmission and storage of the recovered contraband. This deficiency alone, as per the settled principles laid down by the Honorable Supreme Court of Pakistan, is sufficient to vitiate the conviction, as proving an unbroken chain of custody is an indispensable requirement in narcotics cases. Reliance is placed on *Zahir Shah V. State* (2019 SCMR 2004), *Javed Iqbal V. State* (2023 SCMR 139), *Asif Ali & another V. State* (2024 SCMR 1408), and *Qaiser Khan V. State* (2021 SCMR 363). However, rather than addressing this evidentiary defect in accordance with the dictates of law, the trial court based its conviction primarily on an alleged written admission of guilt by the accused. It is settled law that an admission or confession must be voluntary, unequivocal, and recorded with due compliance to procedural safeguards, including informing the accused of its legal consequences. In the present case, the record does not reflect that the accused was provided such an opportunity, thereby violating his fundamental right to a fair trial under Article 10-A of the Constitution of Pakistan. Furthermore, reliance on an admission of guilt, especially in the absence of a properly documented and secured chain of custody of the case property, is contrary to the settled law. The Supreme Court has repeatedly emphasized that when crucial legal requirements such as the safe custody and transmission of contraband remain unproven, the benefit of the doubt must necessarily extend to the accused. The trial court's approach in ignoring this well-established principle and hastily recording a conviction without substantive evidentiary

support is legally unsustainable and amounts to a grave miscarriage of justice.

**07.** From the testimony of the witnesses and the observations recorded by the learned presiding officer, it is evident that the prosecution failed to establish the safe custody and unbroken chain of transmission of the seized contraband from the time of its alleged recovery until its deposit in the chemical laboratory. The record demonstrates that neither the Malkhana Incharge nor the designated carrier of the case property was produced as a witness, nor was any original record, such as roznamcha entries or Form 22.70 from Register No. XIX of the Police Rules, 1934, submitted in evidence. As for the alleged admission of guilt relied upon by the trial court, its circumstances raise serious legal concerns for the reasons:

- The learned defense counsel did not cross-examine two key prosecution witnesses (the complainant and the mashir), which deprived the accused of a fair opportunity to contest the evidence.
- The plea of guilt in the form of a written application received from the accused after the examination of witnesses is contrary to the principles of fair trial.
- No notice was issued by the trial court to the accused, informing him of the consequences of a guilty plea, which is a fundamental safeguard under criminal jurisprudence.

**08.** These procedural anomalies indicate that the purported admission of guilt was not obtained in accordance with the law and raises the possibility of deception or coercion practiced upon the accused. The trial court's approach in convicting the accused in a hasty manner, without ensuring procedural fairness and adherence to established legal standards, constitutes a grave violation of Article 10-A of the Constitution of Pakistan, which guarantees the right to a fair trial as an inviolable fundamental right. This constitutional protection requires that the prosecution produce and examine all

material witnesses, particularly those responsible for the chain of custody of the case property. The failure to examine these crucial witnesses constitutes a serious legal defect that directly impacts the credibility of the prosecution's case. It is a settled principle of law that the burden of proof always rests upon the prosecution, and the accused is not required to establish his innocence. In the present case, the prosecution's failure to fulfill essential legal requirements regarding the safe custody and transmission of the recovered contraband renders the conviction unsustainable in the eyes of the law.

**09.** Consequently, the Cr. Revision is allowed, and the appellant acquitted of the charge. The appellant shall be released forthwith unless required in connection with any other case.

**JUDGE**

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