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IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Jail Appeal No D-45 of 2019

PRESENT:

Mr. Justice Omar Sial,  
Mr. Justice Abdul Mubeen Lakho,

Appellants

Muzamil Shah Pathan & another, through  
Mr. Abdul Baqi Jan Kakar, Advocate.

Respondent

The State through Mr. Ali Anwar Kandhro,  
Additional Prosecutor General.

Date of hearing:

07.09.2021.

Date of Decision:

15.10.2021.

J U D G M E N T

Omar Sial, J.: Muzamil Shah and Ahmed Sher were arrested by the Excise Police for being in possession of 20 kgs charas. They were both tried by the learned 1<sup>st</sup> Additional Sessions/MCTC/Special Judge for Control of Narcotic Substances, Kandhkot, who on 6-7-2019 convicted both men for violating section 6 CNS Act 1997 and sentenced them under section 9(c) CNS Act, 1997 to imprisonment for life and to pay a fine of Rs.100,000/- each; if they did not pay the fine, they would have to remain in prison for another 1 year. This judgment has been impugned through these proceedings.

2. A background to the case is that a party of the Excise Police Station Kandhkot Circle was on normal checking duty on 5-9-2018 when they signaled a truck to stop. The appellants were the only 2 persons on the truck. The truck was checked and 20 kgs of charas were found from a secret cavity in the roof of the cabin of the truck. Samples were taken from the recovered charas, sealed and sent for chemical analysis. The chemical analysis confirmed that the substance seized was charas. The 2

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men were arrested and F.I.R. No.3 of 2018 under sections 6, 8 and 9(c) CNS 1997 was registered against them.

3. The 2 men pleaded 'not guilty' to the charge against them. The prosecution examined 2 witnesses in support of its case. The first witness was Inspector Shamsuddin Chachar who was the officer who arrested the appellants and effected recovery, the complainant as well as the investigating officer. The second witness was PC Waheed Ali Soomro. He was a member of the Excise police party who witnessed the arrest and recovery. Both appellants in their section 342, Cr.P.C. statement pleaded innocence. Muzamil Shah further stated that he was not even in the truck but that he was travelling in a bus and due to an altercation with the Excise police this case was falsely registered against him. Ahmed Sher stated that the Excise police had snatched Rs.54,000/- which he had and then falsely registered the case against him to save themselves from the law.

4. We have heard the learned counsel for the appellants as well as the learned Additional Prosecutor General. With their able assistance we have also re-appraised the evidence. Our findings and observations are as follows.

5. The learned counsel has stressed on only one aspect of the case i.e. safe custody of the allegedly seized narcotics from the appellants. The record reveals that the arrest and alleged recovery was made by the Excise police at 2:30 p.m. on 5-9-2018. PW-1 testified that after the recovery, the 2 appellants and the seized narcotics were brought to the police station, where at 4:00 p.m. the F.I.R. in the case was registered by him on behalf of the State. The seized samples were sent to the chemical laboratory the next day i.e. 6-9-2018. He first stated in his examination-in-chief that the samples were sent for analysis through EC Abdul Hameed but then corrected himself to state that it was EC Tara Chand who had taken the narcotics to the laboratory. In his cross-examination this witness admitted that *"we kept the property in the maalkhana without keeping any entry"*. The record further reflects that the narcotics were received by the chemical examiner on 6-9-2018 through the hand of EC Tara Chand.



6. In the case of **Mst. Sakina Ramzan vs The State (2021 SCMR 451)** it was held by the Honorable Supreme Court that:

*In the absence of the statement of the warehouse in-charge and the statement on behalf of Muhammed Younas Sabir (PW-1) regarding the delivery of the samples of the narcotic drugs to the office of the chemical examiner, it cannot be ascertained whether the narcotic drugs and the representative samples were deposited in the warehouse by PW-1; when and who collected the representative samples from the warehouse; and who delivered them by hand to the office of the Chemical Examiner. The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples makes the Report of the Chemical Examiner unsafe and unreliable for justifying conviction of the accused. The prosecution, therefore, has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner."*

Reference can also be made to Imam Baksh's case (2018 SCMR 2039) and Ikramullah's case (2015 SCMR 1002).



7. In the present case it is an admitted position and a matter of record that the *maalkhana* in-charge nor EC Tara Chand was examined at trial nor were their statements even previously recorded. By Inspector Shamsuddin Chachar's own admission, no record was maintained for keeping the property in the *maalkhana*. In these circumstances, it cannot be said with certainty that the property seized was the same as the property that reached the chemical analyst. The chain of custody was, therefore, not proved satisfactorily. As held by the apex court in the case

cited above any break in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples makes the report of the Chemical Examiner unsafe and unreliable for justifying conviction of the accused.

8. In view of the above, the appeal stands allowed. The appellants may be released forthwith if not required in any other custody case.

  
15/10/21  
JUDGE

  
JUDGE

Amended by us.  
  
JUDGE  
  
15/10/21  
CHIEF JUSTICE