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Judgment Sheet
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

CSR No.2-N/2018
(The State vs. Shakil-ur-Rehman)

Crl. Appeal No.182346/2018
(Shakil-ur-Rehman vs. The State & another)

Crl. Appeal No.197051/2018
(The State vs. Shakil-ur-Rehman & another)

JUDGMENT

Date of hearing:	**20.06.2023**
Appellant by:	**M/s Imran Raza Khan and Zia-ur-Rehman Chaudhary, Advocates.**
State by:	**Mr. Zafar Iqbal Chohan, Special Prosecutor ANF.**

ALI ZIA BAJWA, J.:- Through this single judgment we intend to decide *Crl. Appeal No.182346/2018* titled 'Shakil-ur-Rehman vs. The State & another' filed by Shakil-ur-Rehman appellant under Section 48 of the Control of Narcotic Substances Act, 1997 (hereinafter *'CNSA, 1997'*) against his conviction and sentence, *Capital Sentence Reference No.2-N/2018* titled 'The State vs. Shakil-ur-Rehman' forwarded by the trial court under Section 374 Cr.P.C. for confirmation or otherwise of death sentence awarded to the convict and *Crl. Appeal No.197051/2018* titled 'The State vs. Shakil-ur-Rehman another' through which order qua handing over car bearing registration No.LV-317/Islamabad (hereinafter *'car in question'*) to its real owner has been questioned, as these are arising out of one and the same judgment dated 12.03.2018 (hereinafter *'the impugned judgment'*),

passed by learned Judge Special Court CNS, Lahore (hereinafter *'trial court'*).

2. Shakil-ur-Rehman son of Abdul Rehman, caste Hassan Khel, resident of Kotka Haji Gull Rehman, Bharrat, Tehsil and District Bannu (hereinafter *'the appellant'*), was implicated in case FIR No.57/2015, dated 14.08.2015, offence under Section 9(c) of the CNSA, 1997, registered with Police Station ANF, Lahore. He was tried by the trial court under the afore-mentioned offence. The trial court, vide impugned judgment, convicted and sentenced the appellant as infra:-

- Under Section 9(c) of the CNSA, 1997, sentenced to death with fine of Rs.5,00,000/- to be recovered as arrears of land revenue.
- All assets of the appellant were directed to be forfeited in favour of Federal Government.

3. Precisely the prosecution theory of the case, as set-up in the crime report (Exh.PD/1) lodged on the written complaint (Exh.PD) of Nazim Shehzad Virk, S.I (PW-2) is that, on 14.08.2015 on receipt of spy information, he along with Muhammad Ehsan, S.I. (PW-1) and other officials of ANF intercepted the car in question at Thokar Niaz Baig. The appellant was driving the car, who after making disclosure got recovered 17 packets from the secret cavity of the floor of driving seat while 17 more packets from the secret cavity of the floor of front seat of the car. Each packet was weighing 1200 grams, 40.800-KGs contraband *charas* in totality. The complainant extracted 10 grams from each recovered packet and sealed into separate parcels for forensic analysis. The remaining bulk quantity (P-1 and P-2) was taken into possession vide recovery memos Exh.PA and Exh.PB respectively. He drafted the complaint and dispatched it to the police station through Sabir Ali constable on the basis of which formal FIR was chalked out by Muhammad Hassan Anwar, S.I/*Moharrar* (PW-3). Thereafter Investigating Officer conducted the investigation, prepared rough site plan of the place of occurrence (Exh.PE) and recorded the statements of the prosecution witnesses under Section 161 Cr.P.C. On reaching the police

station, he handed over the case property and sample parcels to *Moharrar/*PW-3 for safe custody and onward transmission to the quarters concerned. During the course of investigation, having found the appellant connected with the crime in question, Investigating Officer got prepared report under Section 173 Cr.P.C. while placing his name in column No.3 and submitted it before the trial court.

4. After submission of the report under Section 173 Cr.P.C, the trial court formally indicted the appellant, vide order dated 13.11.2015, to which he pleaded not guilty and claimed trial. Prosecution, in order to establish its case against the appellant, produced as many as four (4) prosecution witnesses. After completion of the prosecution evidence, statement of the appellant, as provided under Section 342 Cr.P.C., was recorded by the trial court. He professed his innocence and pleaded false implication in the case. Upon completion of the trial, the trial court found the case against the appellant proved beyond shadow of reasonable doubt, thus, convicted and sentenced him as mentioned and detailed above.

5. Arguments heard, record perused.

6. The crux of the arguments advanced by the learned counsel for the appellant is that the forensic report does not carry requisite protocols of the test as envisaged under Rule 6 of Control of Narcotic Substances (Government Analysts) Rules, 2001 (hereinafter *'the Rules'*). Contrarily learned Special Prosecutor ANF contended that under Section 36 of the CNSA, 1997, the forensic report, unless rebutted, is conclusive.

7. In order to evaluate the contention of the learned counsel for the appellant we have minutely scrutinized the record available on the file. Careful scrutiny of the forensic report exhibited on the record as Exh.PG/1-5 reflects that details of protocols of tests have not been provided therein in the spirit of Rule 6 of the Rules. It is settled law by now that any report failing to describe in it, the details of the full protocols applied for the test will be

inconclusive, defective, unreliable and will not meet the evidentiary presumption attached to a report of the Government Analyst under Section 36(2) of the CNSA, 1997. In the report (Exh.PG/1-5) it is simply mentioned that 'the submitted samples are identified to contain *charas*'. Rule 6 *ibid* makes it imperative on an analyst to mention result of sample analyzed with full protocols applied thereon along with other details in the report issued for test/analysis by the Laboratory. The same has been reproduced as under for ready reference:-

> *"**6. Report of result of test or analysis.**---After test or analysis the result thereof together with full protocols of the test applied, shall be signed in quadruplicate and supplied forthwith to the sender as specified in Form-II."*

While dealing with the same question in "*The STATE through Regional Director ANF vs. IMAM BAKHSH and others – 2018 SCMR 2039"*, the Supreme Court held that provisions of Rule 6 of the Rules *ibid* are mandatory. The relevant extract out of the said judgment has been reproduced hereinafter:-

> *"16. Non-compliance of Rule 6 can frustrate the purpose and object of the Act, i.e., control of production, processing and trafficking of narcotic drugs and psychotropic substances, as conviction cannot be sustained on a Report that is inconclusive or unreliable. The evidentiary assumption attached to a Report of the Government Analyst under section 36(2) of the Act underlines the statutory significance of the Report, therefore, details of the test and analysis in the shape of the protocols applied for the test become fundamental and go to the root of the statutory scheme. Rule 6 is, therefore, in the public interest and safeguards the rights of the parties. Any report (Form-II) failing to give details of the full protocols of the test applied will be inconclusive, unreliable, suspicious and untrustworthy and will not meet the evidentiary assumption attached to a Report of the Government Analyst under section 36(2). Resultantly, it will hopelessly fail to support conviction of the accused. This Court has already emphasized the importance of protocols in Ikramullah's case (supra)."*

The above said view has been further reiterated in the judgment reported as *"KHAIR-UL-BASHAR vs. The STATE – 2019 SCMR 930"* as infra:-

> *"The general head of DETAILS OF THE RESULTS OF TESTS/ANALYSIS provides only for Physical Examination and Conclusion, and does not mention of tests or their results. This would hardly be of any significance unless the report provides the information required under Rule 6 in order to establish the culpability of the accused. Hence, for the Report to serve*

> *the purposes of the Act and the Rules, it must contain (i) the tests and analysis of the pledged drug (ii) the result of each test(s) carried out and (iii) the test protocols applied (the name(s) of protocols applied) to carry out these tests. It is important to underline that protocols are intrinsic part of the tests and analysis. A test conducted without following the protocols does not pass for a test or meet the requirement of Rule 6."*

8. Now adverting to the contention of the learned Special Prosecutor that the case in hand was lodged on 14.08.2015 prior to pronouncements in *Imam Bakhsh supra* and *Khair-ul-Bashar supra*, therefore, these judgments cannot be applied retrospectively, we are of the considered view that such contention has no substance. These judgments of the Supreme Court have a retrospective effect because they declared the correct interpretation of an already existing provision of law. Any authoritative judgment is always considered as not laying down the law for the first time but declaring it as it should have been, or it should be understood to have been from its inception. It is settled law that when the Supreme Court interprets or declares the law, that interpretation only clarifies the meaning of the words already used by the legislature or the competent authority drafting the provisions. It stands to reason, therefore, that the same interpretation must be applicable not from the time when the judgment pronouncing such interpretation was rendered but from the time when the law or provision in question was enacted.[1] A similar view was taken in *Shahid Pervaiz*[2].

9. Learned Special Prosecutor ANF, while placing reliance on *Shafa Ullah Khan*[3] contended that in view of provisions of Section 36 of the CNSA, 1997 unless rebutted, the report of Government Analyst is conclusive, therefore, vires of the forensic report exhibited on the record as Exh.PG/1-5 cannot be questioned at appellate stage. While evaluating the contention of learned Special Prosecutor we have respectfully gone through

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[1] Mir MUHAMMAD KHAN and 2 others vs. HAIDER and others – PLD 2020 Supreme Court 233
[2] SHAHID PERVAIZ vs. EJAZ AHMAD and others – 2017 SCMR 206
[3] SHAFA ULLAH KHAN vs. The STATE and another – 2021 SCMR 2005

the judgment handed down in *Shafa Ullah Khan supra*; wherein it was ruled as infra:-

> *"In the present case in the report of Agency, the test applied, protocol and result of the test has been mentioned however detail of the protocol is not mentioned. This matter was further clarified that if there is any ambiguity in the report the same may be resolved by the trial court by exercising its powers under proviso to section 510 of the Criminal Procedure Code. So we have not found any ambiguity in the Agency's report and there is no infirmity in the impugned judgment and the conclusion drawn by the courts below regarding the guilt of the appellant is not open to any exception."*

In the supra judgment though details of protocols were not given, however, test applied as well as protocol and result of the test were clearly mentioned whereas in the instant case, in the forensic report, neither details of test have been cited nor any protocols have been provided rather it is only mentioned that "the submitted samples are identified to contain charas". Thus, *ratio* in *Shafa Ullah Khan supra* is not applicable in the present case.

10. It is cardinal principle of criminal justice system that the case carrying stringent sentence must be proved through cogent evidence in order to rule out the possibility of false implication. Respectful reliance in this regard can be placed on the *ratio decidendi* of Supreme Court of Pakistan in the case of *AMEER ZEB vs. THE STATE - PLD 2012 Supreme Court 380* wherein it was ruled as under:-

> *"Punishments provided in the Control of Narcotic Substances Act, 1997 were quite stringent and long, if not harsh, and, thus, a special care had to be taken that a court trying such an offence had to be convinced that the entire quantity allegedly recovered from the accused person's possession was indeed narcotic substance. We, reverently and respectfully, tend to agree with the latter view and would like to add that the rule of thumb for safe administration of criminal justice is:* ***the harsher the sentence the stricter the standard of proof.****"*

11. Moreover, it is golden principle of criminal law that a single circumstance creating reasonable doubt would be sufficient to smash the veracity of prosecution case and sufficient to extend the benefit of doubt in favour of the accused not as a matter of grace or concession but as of right. Reference can be made to *QAISARULLAH and others vs. THE STATE – 2009 SCMR 579.*

12. In sequel to what has been discussed above, this Court is fully convinced that the prosecution has failed to prove its case against the appellant beyond shadow of reasonable doubt, therefore, *Crl. Appeal No.182346/2018* titled 'Shakil-ur-Rehman vs. The State & another' is **allowed**, as a consequence whereof the conviction and sentence recorded by the trial court, vide the impugned judgment, are **set-aside** and while extending the benefit of doubt, the appellant is **acquitted** of the charge. He is directed to be released forthwith if not required to be detained in any other criminal case.

13. Capital Sentence Reference No.2-N/2018 forwarded by the trial court fails, which is answered in the **negative**. Death sentence awarded to the convict is **not confirmed.**

14. As far as Crl. Appeal No.197051/2018, whereby the order qua handing over the car in question (P-3) to its real owner has been questioned, is concerned, for the reasons recorded in the preceding paragraphs when the prosecution couldn't prove its case against the respondent No.1/convict namely Shakil-ur-Rehman, the instant appeal is squarely devoid of any merits, which is accordingly **dismissed**.

(Sardar Muhammad Sarfraz Dogar)
Judge

(Ali Zia Bajwa)
Judge

The judgment was pronounced & written on 20.06.2023 and after completion it was signed on **04.07.2023**.

JUDGE **JUDGE**

Approved for Reporting

JUDGE **JUDGE**

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