

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:

JUSTICE MUHAMMAD HASHIM KHAN KAKAR
JUSTICE ISHTIAQ IBRAHIM
JUSTICE ALI BAQAR NAJAFI

CRIMINAL PETITION NO.749-L of 2022

(Against the judgment dated 28.03.2022, passed by the Lahore High Court, Lahore, in Criminal Appeal No.65838 of 2019)

Tariq Sajjad Khan

...Petitioner (s)

Versus

The State etc

...Respondent(s)

For the Petitioner(s):

Mr. Amir Masood Ullah, Advocate High Court, appearing with special permission along with petitioner.

For the State:

Mr. Hammad Akbar Wallan, ASC/Special Prosecutor ANF

Assisted by:

Ms. Tayyaba Munir, Law Clerk

Date of hearing:

30.09.2025

JUDGMENT

ISHTIAQ IBRAHIM, J.- This Criminal Petition for Leave to Appeal is barred by 04 days. The petitioner has filed Cr.M.A No.180-L of 2022 for condonation of delay. The explanation furnished in the application for delay being plausible, the application is allowed. Accordingly, delay in filing the petition is condoned.

2. On receipt of spy information regarding the involvement of the petitioner Tariq Sajjad Khan in the trafficking of narcotics to his customers while riding a motorcycle near Niaz Marwat Rehmani Khel Hotel, M.M. Road, on 06.08.2017, Noman Jehangir S.I (PW-4) along with other officials of the Anti-Narcotics Force (ANF), proceeded to the aforesaid area and apprehended the petitioner having a plastic sack in his possession on motorcycle, search of which led to the recovery of twelve packets of *charas*, each weighing 1200 grams, making a total of 12 kilograms. From each packet, he separated 10 grams as samples for chemical analysis by the Punjab Forensic Science Agency (PFSA). He took into possession the recovered narcotics through recovery memo Exh.PB.

He then drafted a complaint (Exh.PA), on the basis of which formal FIR No.12 dated 06.08.2017 was registered at Police Station ANF, Mianwali, under Section 9(c) of the Control of Narcotic Substances Act, 1997 (**“Act of 1997”**).

3. Upon conclusion of the investigation a report under Section 173 of the Code of Criminal Procedure, 1898 (**“Code”**) was submitted against the petitioner before the learned Sessions Judge/Judge, Special Court (CNS), Mianwali (**“Trial Court”**). Upon conclusion of the trial, the petitioner was convicted by the Trial Court vide judgment dated 10.10.2019 under Section 9(c) of the Act of 1997 and sentenced to undergo rigorous imprisonment for a period of twelve years and six months along with a fine of Rs.60,000/- and in default thereof, to further undergo simple imprisonment for nine months. The benefit of Section 382-B of the Code was extended to him.

4. The petitioner assailed his conviction and sentence before the Lahore High Court, Lahore by filing Criminal Appeal No.65838 of 2019. However, on the date fixed for hearing, the learned counsel for the petitioner did not contest the conviction and straightaway requested for reduction in the sentence of the petitioner-convict. Consequently, the learned High Court, vide judgment dated 28.03.2022 (**“impugned judgment”**), while maintaining the conviction of the petitioner-convict, reduced his sentence to the period already undergone by him, which, at that time, was computed as five years, six months, and fourteen days. The instant petition was filed before this court against the said impugned judgment.

5. At the very outset, the learned Special Prosecutor for ANF raised a preliminary objection, contending that since the conviction of the petitioner was not contested before the learned High Court and the learned counsel for the petitioner-convict had straightaway requested for reduction in sentence of the petitioner-convict, pursuant to which the learned High Court was pleased to reduce the sentence of the petitioner-convict, therefore, the petitioner-convict is now estopped from challenging his conviction on merit at this stage. It was submitted that the petitioner-convict cannot be permitted to retract from the position voluntarily taken before the appellate court. On this premise, the learned Special Prosecutor prayed for dismissal of the instant petition.

6. Learned counsel for the petitioner-convict, while controverting the preliminary objection raised by the learned Special Prosecutor for the

ANF, submitted that there exists no legal embargo upon the petitioner-convict in assailing his conviction before this Court, notwithstanding the fact that the same was not specifically challenged before the learned Appellate Court. He contended that the Code of Criminal Procedure, 1898 provides a comprehensive procedural framework whereby the appellate court is obligated to adjudicate upon an appeal strictly in accordance with the record and the evidence available on the file, irrespective of whether or not the conviction was expressly contested. It was argued that the mere act of seeking reduction in sentence before the High Court does not amount to an express or implied waiver of the petitioner's right to question the legality of his conviction before this Court.

7. We have also heard the arguments of learned counsel for the parties on merit and perused the record, evidence and the impugned judgment.

8. Before proceeding to examine the merits of the case, we find it appropriate to address the preliminary objection raised by the learned Special Prosecutor ANF.

The relevant provisions governing appeals are encapsulated in Chapter XXI of the Code which deals with Appeal, Reference and Revision. Section 419 of the Code pertains to the filing of an appeal and provides that every appeal shall be made in the form of a petition in writing, presented either by the appellant himself or through his pleader. Such petition shall, unless the Court to which it is presented directs otherwise, be accompanied by a copy of the judgment or order impugned therein. Section 420 of the Code outlines the procedure to be followed when the appellant is confined in jail. It stipulates that in such eventuality, the appellant may present his petition of appeal, along with the requisite copies, to the officer in charge of the jail, who shall then transmit the same to the appropriate appellate forum. Section 421 of the Code provides the mechanism for the summary dismissal of an appeal. It mandates that upon receipt of the petition and accompanying documents under Section 419 or 420, the Appellate Court is to examine the same, and if it is of the opinion that there exists no sufficient ground for interference, it may dismiss the appeal summarily. Section 422 of the Code speaks about notice of appeal according to which if the Appellate Court does not dismiss the appeal summarily, it shall cause notice to be given to the appellant or his pleader, and to such officer as the Provincial

Government may appoint in this behalf, of the time and place at which such appeal will be heard and shall on the application of such officer, furnish him with a copy of the grounds of appeal. It further provides that in cases of appeals under section 411-A sub-section (2) or section 417 the Appellate Court shall cause a like notice to be given to the accused. The more relevant section which enunciate about the power of the Appellate Court and to deal with the controversy in this case is section 423 of the Code, which is reproduced below:-

“423. Powers of Appellate Court in disposing of appeal:-

(1) The Appellate Court shall then send for the record of the case, if such record is not already in Court. ***After perusing such record and hearing the appellant or his pleader, if he appears,*** and the Public Prosecutor, if he appears, and, in case of an appeal under section 411-A sub-section (2) or section 417, the accused, if he appears, the Court may if it consider that there is no sufficient ground for interfering, dismiss the appeal or may:-

(a) In an appeal from an order of acquittal, reverse such order and direct that further inquiry be made, or that the accused be retried or sent for trial to the Court of Session or the High Court, as the case may be or find him guilty and pass sentence on him according to law;

(b) In an appeal from a conviction, (1) reverse the finding and sentence, and acquit or discharge the accused, or order him to be retried by a Court of competent jurisdiction subordinate to such Appellate Court or sent for trial, or (2) alter the finding, maintaining the sentence, or, with or without altering the finding reduce the sentence, or, (3) with or without such reduction and with or without altering the finding, alter the nature of the sentence, but subject to the provisions of the section 106, sub-section (3) not so as to enhance the same.

(c) In an appeal from any other order, alter or reverse such order;

(d) Make any amendment or any consequential or incidental order that may be just or proper.”

9. A careful reading of Section 423 (1) of the Code, which deals with the powers of the appellate court in disposing of criminal appeals, reveals that the phrase “*after perusing such record*” employed therein is of pivotal importance. This phrase, impose a clear and unequivocal obligation upon the appellate court to decide the appeal after independent application of judicial mind to the record of the case. The words “*After perusing such record*” reflects the legislative intent that an appellate court, while hearing a criminal appeal, is not to act merely as a passive arbiter responding to the stance or concession of a party, but is duty-bound to

scrutinize the entire record and render a decision on the basis of evidence and the applicable law.

The appellate jurisdiction under the Code is not a mere formality or procedural ritual. Rather, it carries with it a substantive obligation to reappraise the evidence and determine whether the conviction and sentence recorded by the trial court are sustainable in law. Section 423 makes it abundantly clear that the appellate court must decide the appeal on its merits. The Appellate Court cannot evade its obligation merely because the accused or his counsel opted not to challenge the conviction. To hold otherwise would amount to reducing the appellate function to a mechanical exercise dictated by the tactical choices of the parties, which would be contrary to the spirit and scheme of criminal justice enshrined in the Code.

The administration of criminal justice must not be allowed to hinge upon the whims, strategy, or inadvertence of counsel, particularly where the liberty of a citizen is at stake. Thus, in view of the express language of Section 423 of the Code, and the settled principles of criminal law, it is the inescapable duty of the appellate court to adjudicate the appeal on the basis of record and in accordance with law, irrespective of any concession or limitation placed by the parties in their submissions. Any failure to do so renders the appellate proceedings legally vulnerable and undermines the integrity of judicial adjudication. This Court while dealing with identical situation in case titled, “**Murad Baloch alias Michel Vs State (2011 SCMR 1417)**, observed as under:-

“Notwithstanding the fact that the learned counsel for the appellant has not pressed the appeal on *merits* by throwing challenge to the conviction and prayed for commutation of sentence on account of the role attributed to the appellant, **but still appellate court was bound to satisfy itself by examining the entire evidence available on record qua guilt of the appellant**”.

Same is the view of this Court in case of Shahab Khan vs State (1997 SCMR 871) and Farrukh Sayyar vs Chairman NAB and others (2004 SCMR 01).

10. We have observed that in the cases of *Shahab Khan* and *Farrukh Sayyar* (supra), the matters were remanded to the respective Appellate Courts with directions to decide the appeals afresh on merits. However, the factual matrix of the case before us is distinguishable. We have noticed that the learned High Court did not proceed to reduce the

sentence of the petitioner-convict in a mechanical or summary manner; rather, the appeal was adjudicated upon and disposed of on merits, as is evident from the contents of the impugned judgment. The relevant portion of the impugned judgment, is reproduced hereunder for ready reference:

“As the learned counsel for the appellant has not opted to assail conviction recorded by the learned trial court against the appellant, therefore, we do not feel it necessary to discuss in detail the prosecution evidence on the record. However, we find that in view of the recovery of narcotics, the prosecution had undoubtedly established the recovery of narcotics **substance** fully substantiated by Noman Jehangir SI (PW.4), the complainant, Muhammad Ameer Khan-Constable (PW.3) and the positive report of National Institute of Health Drugs Control and Traditional Medicines Division, Islamabad (Exh.PG) with regard to samples sent for narcotic analysis. The witnesses appeared in the trial court against the appellant had neither any enmity nor malice against him (the appellant). It is proved from the evidence on record that the witness, Muhammad Ameer Khan Constable (PW.3) and Noman Jehangir, SI (PW.4) the complainant, who had witnessed the recovery of narcotics substance from the possession of the appellant have remained consistent, despite lengthy cross-examination. We are persuaded to hold that the appellant was rightly convicted and sentenced by the learned trial Court. We thus see no infirmity in the impugned judgment and as such, we find no ground or jurisdiction to warrant interference in the same”.

11. In view of the findings recorded by the learned High Court, as referred to hereinabove, it is manifest that the appeal was not disposed of solely on the request for reduction in sentence but was, in fact, adjudicated upon merits. Consequently, the preliminary objection raised by the learned Special Prosecutor for the ANF is found to be misconceived and is accordingly repelled.

12. Having examined the record with judicial scrutiny and objectivity, we are constrained to express our concern and surprise as to how the learned Courts below were persuaded to sustain the conviction of the petitioner-convict on the basis of the evidence led by the prosecution, which, upon our careful analysis, suffers from glaring contradictions, material discrepancies, and procedural lapses that go to the root of the case. The most material witness of the prosecution, Noman Jehangir SI (PW.4), who acted as the *Seizing Officer*, during his cross-examination, was confronted with a critical inconsistency. On the request of the defence counsel, the sealed parcel of the recovered *charas* (Exh.P1) was de-sealed in open court. Upon weighing the alleged ten packets of *charas* collectively, the total weight came to 09.930 kilograms which is significantly less than the alleged 12 kilograms, as claimed by the Seizing

Officer in the FIR and recovery memo. Similarly, the individual weights of the ten packets were recorded as follows:

1. 926 grams
2. 990 grams
3. 962 grams
4. 1000 grams
5. 1096 grams
6. 984 grams
7. 976 grams
8. 912 grams
9. 974 grams
10. 980 grams

These figures categorically belie the version of the prosecution that each packet weighed 1200 grams, and raise serious doubts in the prosecution's case. Qasim Ali, ASI (PW.2), who was serving as *Moharrir* at the ANF Police Station, Mianwali, stated that the Seizing Officer handed over ten sealed parcels of samples to him for safe custody and onward transmission to the chemical examiner at NIH, Islamabad. However, during cross-examination, he admitted that no entry was made in the *roznamcha* regarding the receipt of case property on the relevant date. He further admitted that Entry No.8 of the *Roznamcha* dated 06.08.2017, does not mention any detail of the recovered *charas* except the motorcycle. The Seizing Officer failed to describe the nature and appearance of the recovered *charas* in both the FIR and the recovery memo. Muhammad Ameer Khan (PW.3), who witnessed the recovery, stated that the colour of the recovered substance was brown, however, at the time when the parcel was de-sealed the same was found black.

13. The petitioner-convict consistently maintained throughout the proceedings that he was falsely implicated in the present case for the reason that he had given spy information against constable Nusrat Ali, in a narcotics case. The petitioner claimed to be a working journalist affiliated with Daily Pakistan and Daily Anti-Crime, as well as a practicing lawyer. According to him, he had served as an informer in FIR No. 286/2017 dated 08.06.2017, registered under Section 9(c) of the Act of 1997 at PS Saddar Mianwali against the said Constable Nusrat Ali. The registration of the aforesaid FIR against constable Nusrat Ali has been admitted by the seizing Officer (PW.4). The posting of Nusrat Ali Constable in Police Station ANF Mianwali was admitted by PW.3 thereby lending considerable weight to the petitioner's plea. The petitioner had specifically applied for the CCTV footage to substantiate his claim of false implication and to show that he was unlawfully detained and the alleged

recovery was planted against him. The Seizing Officer also admitted during cross-examination that CCTV cameras were installed at the building of Police Station ANF, Mianwali. However, the Investigating Officer failed to take the CCTV footage into possession, nor was it produced before the learned Trial Court. The CCTV footage, if secured and produced, could have conclusively established either the guilt or innocence of the petitioner.

14. Upon reappraisal of the evidence available on record, we are persuaded to hold that the prosecution has utterly failed to establish the guilt of the petitioner through cogent, convincing, and confidence-inspiring evidence. It is an admitted legal position that the Control of Narcotic Substances Act, 1997 is a special statute which prescribes stringent penalties for offences falling within its ambit. Consequently, the standard of proof required to bring home the guilt of an accused under the said statute must be of the highest degree, leaving no room for doubt or speculation. Unfortunately, the learned Courts below failed to appreciate the evidence in its proper legal perspective and completely overlooked the material contradictions, discrepancies, and inconsistencies that create serious doubts in the prosecution's case. The findings recorded by the Courts below are, therefore, not sustainable in the eyes of law.

15. In view of the foregoing discussion, this petition is converted into an appeal and allowed. Consequently, the conviction and sentence of the appellant-convict, recorded and maintained through the impugned judgment, are set aside. The petitioner is hereby acquitted of the charge levelled against him. The appellant is already released as he was sentenced for the period already undergone by him.

Judge

Judge

Judge

Announced in open Court at Islamabad on _____

Judge

APPROVED FOR REPORTING.
M.Siraj Afridi PS