

JUDGMENT SHEET
PESHAWAR HIGH COURT, PESHAWAR
(*Judicial Department*)

Cr. A No. 20-P/2025

Alam Khan VS State

JUDGMENT

Date of hearing: **16.10.2025.**

Appellant by: Malik Nasruminallah, Advocate.

State by: Mr. Niaz Muhammad, AAG.

SAHIBZADA ASADULLAH, J. Through the instant criminal appeal, the appellant Alam Khan, has questioned the legality and validity of judgment dated 18.12.2024 rendered by learned Additional Sessions Judge-XI/Judge Special Court, Peshawar, delivered in case FIR No. 135 dated 06.12.2023 under section 9-D read with section 11-B, KP CNSA, registered at Police Station Excise, Peshawar, whereby the learned Judge has convicted and sentenced the appellant as follow:

Under section 9-D CNSA, to undergo life imprisonment and also to pay fine of Rs. 500,000/-, or in default, to further undergo two months simple imprisonment.

Under section 11-B CNSA, to undergo Ten (10) years rigorous imprisonment

***and to pay a fine of Rs. 500,000/- on
in default, to further undergo two
months simple imprisonment.***

***Benefit of Section 382-B Cr.P.C was
extended to the appellant.***

2. Concise facts, leading to the registration of the instant case, are that on 06.12.2023, the complainant Syed Sher Shah, Inspector, received credible information that one Masood-ur-Rehman was involved in smuggling narcotics concealed in a tissue paper consignment being transported to Punjab. Acting upon the information, the complainant, alongwith other officials, laid a barricade, and upon arrival, the suspected vehicle was intercepted, the driver was deboarded and, upon inquiry, disclosed his name as Alam Khan, son of Ghulam Muhammad, resident of Abakhel, Mianwali. During the search of the vehicle loaded with tissue paper cartons, one carton was found to contain ten packets of opium and one plastic box containing Ice (methamphetamine). On cursory interrogation, the driver revealed that the tissue paper cartons had been loaded at Hayatabad by Masood-ur-Rehman for transportation to Lahore. Each packet of opium was found to weigh 1,200 grams, totaling 12,000 grams, while the recovered Ice

weighed 785 grams. Test samples were drawn for chemical examination, and the remaining narcotics were sealed into separate parcels on the spot.

3. After completion of investigation, complete challan was submitted. The provisions of 265-C Cr.P.C were complied with. The accused were charge sheeted, to which they pleaded not guilty and claimed trial. In order to prove its claim, the prosecution produced and examined as many as 05 witnesses. After closure of prosecution evidence, statement of accused was recorded under section 342 Cr.P.C, wherein he professed innocence however, neither he wished to be examined on oath as required under section 340 (2) Cr.P.C, nor wanted to produce evidence in defence. The learned trial Court, after full-fledged trial convicted and sentenced the appellant vide the impugned judgment, hence, the instant appeal.

4. Arguments of learned counsel for the appellant and learned AAG representing the State were heard and available record scanned through.

5. After receiving credible information regarding the transportation of narcotics in a vehicle bound for Punjab, the complainant, accompanied by officials from the Excise

Department, laid a barricade to intercept the suspected vehicle. After some time, the vehicle appeared and was signaled to stop. The driver was apprehended and disclosed his name as Alam Khan, son of Ghulam Muhammad, resident of Abakhel, District Mianwali. Upon search of the vehicle, a plastic carton was recovered from inside the tissue boxes and taken into possession. The vehicle was seized, and a *Murasila* was prepared at the spot and thereafter, the accused was placed under arrest. The *Murasila*, the documents collected from the vehicle, the accused, and the sealed parcels were dispatched to the Police Station through Ali Munawar, SI, and Sangeen Shah, constable. The Investigating Officer visited the place of occurrence, and on the pointation of the complainant, prepared the site plan. After completing the spot proceedings, he recorded the statements of the witnesses. The accused was later sent up for trial and, on conclusion thereof, was convicted and sentenced through the impugned judgment.

6. The learned trial Court, after conducting a full-dress trial, held the appellant responsible for the commission of the offence and accordingly convicted and sentenced him. Since the law prescribes stringent punishment for such

offences, it is imperative that the prosecution discharges its heavy burden by producing trustworthy and confidence-inspiring evidence in support of its charge. At the same time, the learned trial Court is under a solemn duty to carefully evaluate the entire material brought on record, so as to ensure that no miscarriage of justice occurs. True that the appellant was driving the vehicle at the relevant time, but the crucial question remains whether his mere presence on the driving seat would suffice to hold him guilty of the offence, or whether the prosecution was further required to establish that the accused had knowledge of the presence of narcotics concealed in the vehicle. In order to properly appreciate these vital factual aspects, we deem it essential to meticulously examine the record, reassess the evidence available on file, and reappraise the statements of the prosecution witnesses.

7. The points emerging for determination in the present case are as to whether the occurrence took place in the manner, mode, and at the time as alleged by the prosecution; whether the appellant was driving the vehicle from which the narcotics were allegedly recovered; whether the appellant had

knowledge of the presence of narcotics in the said vehicle; whether the prosecution has established the safe custody of the recovered substance from the place of recovery up to the Police Station, and its safe transmission thereafter to the office of the Chemical Examiner and whether, in view of the entire evidence available on record, the prosecution has succeeded in bringing home the charge against the appellant.

8. This case is unique in its characteristics, as it not only concerns the accused who was apprehended while driving the vehicle from which contraband substances were recovered, but also revolves around the information earlier received by the seizing officer regarding one Masood-ur-Rehman. The information specifically indicated that Masood-ur-Rehman would be trafficking narcotics concealed in tissue boxes. Upon interception of the vehicle, it was indeed found to contain tissue boxes, however, contrary to the information received, the person driving the vehicle turned out to be the present appellant. It is also noteworthy that the appellant is a resident of Mianwali and not of Peshawar, which raises a pertinent question, whether he had travelled to Peshawar for the purpose of smuggling or trafficking narcotics, or

whether his presence in the vehicle was merely incidental and unconnected with the illicit activity. This aspect of the case, therefore, requires careful scrutiny in light of the evidence available on record. This case is singular in its facts and calls for a different approach from the routine handling of narcotics matters. The focal issue before this Court is not merely the chain of custody of the recovered contraband or the transmission of the test-samples to the Chemical Examiner, but the personal involvement of the appellant, his participation in the occurrence and whether he had conscious knowledge of, and conscious possession over, the narcotics recovered from the vehicle. It is material to note that the Investigating Officer recorded the statements of several witnesses, including one Abdur-Rahman, the owner of the premises from which the tissue packets were placed into the vehicle, the said Abdur-Rahman was engaged in the wholesale trade of tissue paper. The Investigating Officer also recorded the statement of the watchman who was on duty when the vehicle was brought and loaded. These statements are of direct relevance to the question whether the appellant drove the vehicle to the premises in furtherance of smuggling, or whether

his presence in the vehicle was incidental and unconnected with the unlawful consignments. Equally important is the connection, if any, between the appellant and the said Masood-ur-Rehman and the premises from which the tissue boxes were loaded. No doubt, under the statute the prosecution must establish two essentials, the conscious possession of the accused, and knowledge about the contraband and the nexus between the accused and the vehicle from which the contraband was recovered. The narrow question for this Court, therefore, is whether the appellant can be held culpable merely because he was driving the vehicle when it was stopped and the recovery effected, particularly when he has produced no evidence to exculpate himself or whether the Court must weigh the totality of the evidence, including the information received by the complainant, and the manner and persons by whom the tissue boxes were loaded. This case demands that we go the extra mile in scrutinizing the record. The appellant faces life imprisonment, his liberty therefore calls for cautious and scrupulous appraisal of every material circumstance. Of particular concern is that two important witnesses whose statements were recorded by the Investigating Officer were

thereafter not produced by the prosecution before the learned trial Court. The omission to place their testimony before the Court may be of considerable consequence, since the said evidence, if adduced, might have contradicted the case of the prosecution and tended to exonerate the appellant. In these circumstances this Court must examine all available material with care and adduce proper weight to the mysterious silence of the Investigating Officer and the prosecution in excluding such potentially material witnesses from the trial.

9. True that the appellant did not opt to produce any witness in his defence, and this aspect appears to have weighed heavily with the learned trial Court, however, the learned trial Court failed to appreciate that the appellant hails from District Mianwali, and had no acquaintance or connection with the locality from where the tissue boxes containing the narcotics were loaded, therefore, his decision not to lead defence evidence could not justifiably be construed against him rather, it speaks of his bona fides and confidence in the truth of his case. The learned trial Court also overlooked certain essential circumstances of the matter, just as the Investigating Officer appeared oblivious to the

import of the statements he had himself recorded.

It seems that, in ignorance of their eventual bearing on the prosecution case, he recorded the statements of one Abdur Rahman, the owner of the premises wherefrom the tissue boxes were loaded and who was dealing in the wholesale business of tissue papers, and of the watchman, namely Bakht Munir, who was present at the spot at the relevant time, and after realizing the implications of these statements, the Investigating Officer deliberately omitted their names from the list of prosecution witnesses and maintained silence regarding them when he appeared before the learned trial Court to depose. It has, however, been the good fortune of the appellant that the said statements still form part of the prosecution record, and this Court has had the benefit of examining them with the valuable assistance of the learned Additional Advocate General. Had the learned trial Court properly considered these statements, alongwith the other material available on record, it could have arrived at a more just and correct conclusion regarding the liability of the appellant. Instead, the learned trial Court took the matter for granted, relying primarily on the depositions of official witnesses and overlooking vital evidence which, if duly

appreciated, might have altered the entire complexion of the case.

10. The foremost point for determination before this Court is whether, in the circumstances where the names of two material witnesses were not included in the calendar of witnesses, and the appellant himself did not summon them in his defence, this Court is nonetheless competent to take their statements into consideration. True that neither did the appellant choose to adduce defence evidence, nor did the Investigating Officer include the names of these two witnesses in the calendar of prosecution witnesses, yet, this Court finds itself constrained to consider their statements, for the reason that these witnesses were not discovered or examined at the behest of the appellant rather, they were recorded by the Investigating Officer himself in the ordinary course of investigation. Their statements were deemed essential because the truck in question was loaded from the premises where these very witnesses were present and employed. Once the Investigating Officer recorded their statements under section 161, Cr.P.C., they automatically became witnesses of the prosecution, therefore, the subsequent reluctance of the prosecution to produce them before the learned trial Court

cannot prejudice the defence, as it is the prosecution alone that must suffer the consequences of such omission. It is further significant to note that the appellant had no acquaintance either with the owner of the premises or with the watchman stationed there. When he was arrested, the recovery effected, and his statement recorded under section 161, Cr.P.C., he made no mention of these witnesses, a fact which itself reinforces his bona fides. Had he possessed any intimacy or prior connection with the premises or its occupants, he would naturally have referred to them in his statement, and his failure to do so shows that his presence there was merely casual and that his interaction with the watchman was incidental. In order to appreciate the evidentiary worth of these witnesses, it is necessary to advert to the substance of their statements. The watchman, namely Bakht Munir, deposed that on the day of occurrence he was on duty at the godown from which the truck was loaded. He stated that he was standing at the entrance when the appellant arrived driving the vehicle. The appellant alighted, and thereafter the co-accused Masood-ur-Rehman took the vehicle inside the godown for loading. He further explained that, as the driver appeared to be a

stranger to the premises, he accompanied him out of courtesy, and the two remained conversing outside while the truck was being loaded inside. After the loading was complete, the driver was called back to take the driving seat, and he then drove the vehicle away. The owner of the premises, Abdur Rahman, also confirmed in his statement that he was engaged in the wholesale business of tissue papers and that Bakht Munir was indeed employed as the watchman of his godown. However, he clarified that he was not personally present at the godown at the relevant time and therefore could not speak to the details of the occurrence. When the statement of the watchman is juxtaposed with the report and other evidence on record, certain important inferences emerge, which this Court shall now proceed to examine.

11. No ambiguity remains that the statements of both witnesses lend support to each other on all material aspects of the case. When the complainant first reported the matter, he disclosed that information had been received by him to the effect that one Masood-ur-Rehman would be smuggling narcotics concealed in tissue papers and he never mentioned the name of the present appellant as being the driver of the

vehicle, however, at the time of interception, instead of the said Masood-ur-Rehman, the unfortunate appellant was found seated on the driving seat. During the course of investigation, when the statement of the appellant was recorded under section 161, Cr.P.C., he explained the circumstances under which his vehicle had been loaded. He stated that one Muhammad Shafiq, a resident of Lahore, had requested him to drive the vehicle to Lahore, where he would receive the loaded goods. The appellant further explained that Muhammad Shafiq himself supervised the loading of tissue boxes and that one cotton carton was also placed therein, of which he remained completely unaware that it contained contraband. Had the appellant been in the knowledge of the narcotics or had he been in any manner connected with the premises, he would naturally have mentioned the names of the watchman or the owner of the premises in his statement or requested their examination as defence witnesses. His failure to do so rather strengthens the inference that he neither knew them nor had any complicity in the transaction. The learned Additional Advocate General attempted to persuade this Court that since the names of these witnesses were not included in the calendar of

witnesses and the appellant did not opt to lead defence evidence, this Court cannot, at this stage, take their statements into consideration. It was argued that doing so would amount to creating evidence in favour of the appellant. We are unable to agree with this contention, as under all settled principles of criminal jurisprudence, it is the bounden duty of the prosecution to prove its case through trustworthy and confidence-inspiring evidence. Once the Investigating Officer had himself recorded the statements of these witnesses under section 161, Cr.P.C., they became prosecution witnesses, and it was incumbent upon him to include their names in the calendar of witnesses and to produce them before the learned trial Court. The learned trial Court, too, ought to have ensured their attendance so as to avoid any miscarriage of justice. The record reflects that the Investigating Officer, fearing that these witnesses would not support the prosecution version, deliberately omitted to include their names in the list of witnesses. In such circumstances, this Court is justified in drawing an adverse inference against the prosecution for withholding the most material and relevant witnesses. The deliberate non-examination of these witnesses has, in our

considered view, irreparably damaged the prosecution case and casts serious doubt upon its bona fides. When such are the circumstances, the benefit of this omission must necessarily go to the appellant, as the prosecution has failed to discharge its burden of proving the charge beyond reasonable doubt. Reliance is placed on the case of **“Muhammad Ramzan v. The State” (2025 SCMR 762)**, wherein the Hon’ble Supreme Court of Pakistan held that when the prosecution fails to produce a material witness, particularly one in whose presence or within whose premises the alleged recovery or incident took place, an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984 can be drawn against the prosecution. The Court observed that had such a witness been produced, his testimony might not have supported the prosecution’s version. The principle was reaffirmed in “*Mst. Saima Noreen v. The State*” (2024 SCMR 1310), emphasizing that withholding an essential witness raises doubt regarding the veracity of the prosecution case.

12. Now adverting to the most essential aspect of the case that whether the appellant was in conscious knowledge and conscious possession of the recovered contraband. True that the

appellant was driving the vehicle at the time it was intercepted, however, it is equally true, as admitted by both the complainant and the marginal witnesses, that neither was any recovery made from his person, nor had he, prior to the recovery, confirmed or even been aware of the presence of narcotics in the vehicle. In such circumstances, this Court is inclined to hold that the appellant had no conscious knowledge of the narcotics allegedly present in the vehicle. If contraband was indeed found therein, then, in the absence of such knowledge, mere physical control over the vehicle cannot connect the appellant with the commission of the offence. The appellant never denied his association with the vehicle, nor did he dispute that the loading had been carried out by one Masood-ur-Rehman. This fact, coupled with his straightforward stance, itself indicates his bona fides. Undoubtedly, a driver in control of a vehicle is ordinarily presumed to have dominion over it, and consequently, any illicit article discovered therein may prima facie be attributed to him, but in the present case, the recovery was not effected from any concealed or secret cavity of the vehicle rather, it was made from a box lying openly in the body of the truck, a box which, as admitted by

the prosecution own witness, had been placed there by Masood-ur-Rehman. The watchman of the premises corroborated this fact in clear terms, thus this Court finds sufficient material to conclude that the appellant was unaware of the presence of narcotics in the said box, and hence, conscious possession cannot be imputed to him. Another important circumstance warranting consideration is that the appellant was a resident of Mianwali and had no apparent connection with Peshawar, so it is quite plausible that he had travelled there in connection with routine carriage work, and his services were hired incidentally for transportation purposes. Upon interception, he was found driving the vehicle without any evidence that he had prior knowledge of the narcotics concealed within.

13. In view of the foregoing discussion, this Court finds that the prosecution has failed to establish the conscious knowledge and conscious possession of the appellant. While this Court does not dispute the factum of recovery or the safe custody and transmission of the contraband to the office of the Chemical Examiner, but the crucial element of knowledge and intent of the appellant remains unproved. The material on record rather points towards the involvement of

the absconding co-accused, Masood-ur-Rehman, who arranged and supervised the loading of the tissue boxes, as also confirmed by the statement of the watchman. This Court is persuaded to hold that the prosecution has miserably failed to bring home the charge against the appellant, and the learned trial Court, by overlooking these vital aspects, fell into serious error, and its judgment thus suffers from inherent legal and factual infirmities which calls for interference. The instant criminal appeal is allowed, the impugned judgment is set aside and the appellant is acquitted of the charge leveled against him. He shall be released forthwith, if not required to be detained in connection with any other criminal case.

Announced
16.10.2025

Naqqash Haider

J U D G E

J U D G E

Division Bench:

Hon'ble Mr. Justice Sahibzada Asadullah, J.
Hon'ble Mr. Justice Dr. Khurshid Iqbal, J.