

HCJDA 38
JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE
JUDICIAL DEPARTMENT

Crl. Appeal No.68455 of 2023

Naseem *alias* Seemay Shah

VS

The State, etc.

JUDGMENT

Date of hearing:	<u>18.12.2025.</u>
Appellant by:	Ch. Shahid Ihsan Warraich, Advocate.
State by:	Mr. Muhammad Naeem Tahir, Deputy District Public Prosecutor.

Farooq Haider, J.:- This appeal has been filed by **Naseem *alias* Seemay Shah** (appellant/convict) against the judgment dated: 26.09.2023 passed by learned Additional Sessions Judge/Judge Special Court CNSA, Gujrat/trial court, whereby in case arising out of F.I.R No.389/2022 dated: 13.10.2022 registered under Section: 9 (1) 3(c) of the Control of Narcotic Substances Act, 1997 at Police Station: Doulat Nagar, District: Gujrat, trial court has convicted and sentenced the appellant; in this regard, relevant portion of the impugned judgment is hereby scanned below: -

21. *Keeping in view the circumstances of the case, nature of offence and antecedents of the accused as according to record the accused has no previous criminal record of conviction, the accused **Naseem alias Seemay Shah** is sentenced as under:-*

u/s 9 (1) S No. 3 Charas (c) of CNSA 1997 to undergo RI for ten(10) years alongwith a fine of Rs.100,000/- (One Lac). In default of payment of fine he shall further undergo three(03) months SI.
22. *Benefit of section 382-B, CR.PC shall be available to convict.*

2. Briefly, as per case of prosecution narrated in the Crime Report (F.I.R./Ex.PA) got recorded by Muhammad Asif, A.S.I. (complainant/ PW-3) is that on 13.10.2022, on spy information, appellant was apprehended by the complainant and other police officials and on his personal search, a blue coloured polythene shopping bag containing *Chura* type (چورانا) charas and amount of Rs.2100/- as sale proceeds (رتم، دنگ) were recovered from his possession; on weighing the recovered charas, it was found 2010-grams; out of the recovered charas, at the ratio of 5%, charas weighing 100-grams was separated as sample for getting chemical analysis from PFSA; sample, remaining case property and amount of sale proceeds (رتم، دنگ) were secured into separate sealed parcels with the stamps of “MA” and taken into possession through recovery memo (Ex.PD); for ready reference, relevant portion of the Crime Report (F.I.R./Ex.PA) is hereby scanned below: -

(ابتدائی اطلاع شیچے درج کریں)

استثناہ زیر دفعہ 9(1)3c اشب من ASI معہ شعیب اسلم 3129/C، ظہیر احمد 3596/C، انظر اقبال 689/C بسلسلہ گرفت بسواری سرکاری گاڑی نمبری 508/GAA جسٹا ڈی ایچ۔ رضوان سرور 1695/DC ماچھیوال چوک موجود ہوئے۔ مخبر خاص نے اطلاع دی کہ مشہور زمانہ مشیات فروش نسیم عرف سیہ شاہ ولد شیر حسین قوم سید سکند شیر گڑھ اسوقت دیہہ شیر گڑھ سے ماچھیوال کی طرف پیدل آرہا ہے اگر فوری طور پر تباہ بندی کی جائے تو پکڑا جاسکتا ہے مخبر خاص کی اس اطلاع پر میں معہ ہرائیاں لٹک روڈ ماچھیوال چوک پہنچ کر تباہ بندی کی گئی جہاں پر روشنی کا مناسب بندوبست کیا گیا ہے اسے میں ایک کس دیہہ شیر گڑھ کی طرف سے پیدل آیا جو سامنے پولیس پارٹی کو دیکھ کر واپس مڑنے لگا جسکو باہر ادھر انیاں قابو کیا گیا اور نہایت دریاقت پر اپنا نام و پتہ نسیم عرف سیہ شاہ ولد شیر حسین قوم سید سکند شیر گڑھ بتلایا جسکی جامعہ تلاشی بوقت قریب 7 بجے شام از خود عمل میں لانے پر مذکورہ کے داہیں ہاتھ میں کچھ بھاری موی شاہ پر رنگ نیلا برآمد ہوا جس میں سے چرس چورہ نما اور رقم دنگ 2100 روپے برآمد ہوئی چرس کا بذریعہ الیکٹرک کنڈا وزن کیا گیا جو 2010 گرام ہوئی برآمدہ چرس میں سے نمونہ 25% چرس نمونہ برائے PFSA-100 گرام الگ نکال کر نمونہ واپس چرس در رقم دنگ کے پارسل سر بہرہ راسی MA سے تیار کر کے بطور وجہ ثبوت بذریعہ فرو قبضہ پولیس میں لیکر تحویل کر دی گئی نسیم مذکور نے چرس برائے نوش و فروخت اپنے قبضہ میں رکھ کر ارتکاب جرم 9(1)3c کا کیا ہے لہذا مذکورہ کے خلاف استثناہ ہذا بجرم مذکور مرتب کر کے بغرض قاضی مقدمہ بدست انظر اقبال 689/C رسالہ نمائندہ ہے مقدمہ درج کر کے کسی دیگر تفتیشی انسر کو تفتیش پر مامور کیا جائے میں معہ ہرائیاں موقع پر موجود ہوں دستخط بحد آف انگریزی محمد آصف ASI نمائندہ دولہہ عمر 13.10.22 بوقت 7/45 بجے شام بقدرہ ماچھیوال از قہانہ حسب آمد استثناہ رپورٹ ابتدائی اطلاعی ہذا بجرم مذکور مرتب کر کے آئندہ اصل استثناہ معہ نقل FIR نمبر استثناہ بدست آرٹندہ کنستبل عقب ظفر حسین SI صاحب پنجوا کی جاری ہے عمر تحویل ریکارڈ کرے۔

محمد اکرم شاد ASI
13-10-2022

After investigation, challan report was sent to the Court against the appellant; charge was framed against him, to which he pleaded not guilty; prosecution produced its evidence. Trial court recorded statement of the appellant under Section: 342 Cr.P.C. wherein he refuted allegations leveled against him; he did not appear as his own witness under Section 340(2) Cr.P.C. to disprove the allegations levelled against him however during cross-examination over Hasnat Ahmad, 290/MHC (Moharrar/PW-5), brought road certificate No.785 on record as Ex.DA. Trial court after hearing learned

counsel for the parties, passed the impugned judgment, whereby appellant was convicted and sentenced as mentioned above.

3. Learned counsel for the appellant has contended that safe custody of the case property has not been proved; therefore, conviction recorded and sentence awarded through impugned judgment are liable to be set-aside; finally requested for acceptance of instant appeal.

4. On the other hand, learned Deputy District Public Prosecutor has supported the impugned judgment and requested for dismissal of instant appeal.

5. **After hearing learned counsel for the appellant, learned Deputy District Public Prosecutor and going through the record,** it has been noticed that Zafar Hussain, Sub-Inspector (Investigating Officer of the case) while appearing before the Court as PW-2 during trial of the case stated that he received parcel of sample from the Moharrar on **18.10.2022** and deposited the same in the office of Punjab Forensic Science Agency, Lahore on the same day, intact; in this regard, relevant portion of his statement is hereby reproduced as under: -

*“On **18.10.2022**, Hasnat Ahmad 290/HC Moharrar handed over the sealed sample parcel to me for its onwards transmission to PFSA collection centre Gujranwala, **which I deposited the same on the same day intact.**”*

(emphasis added)

WHEREAS, Hasnat Ahmad, 290/MHC (Moharrar of the police station) while appearing before the Court as PW-5 admitted during his cross-examination that the relevant road certificate through which the sample was sent to Punjab Forensic Science Agency, Lahore is bearing Sr. No.785 and the same is available with the police file as Ex.DA; he further stated that the road certificate was chalked out on **17.10.2022** and sample was delivered on **18.10.2022**; in this regard, relevant portion of his statement is hereby reproduced as under: -

*“It is correct that the relevant road certificate through which the sample was sent to PFSA is bearing serial No.785 and the same is available with police file/ExhDA. **Road certificate was chalked on 17.10.2022 and sample was delivered on 18.10.2022.**”*

(emphasis added)

for ready reference, road certificate (Ex.DA) is hereby scanned as under: -

[illegible]

Perusal of aforementioned road certificate (Ex.DA) clearly reveals that Hasnat Ahmad 290/MHC (Moharrar/PW-5) sent parcel of sample in the case to PFSA through Zafar Hussain, Sub-Inspector (PW-2) and as per its Column No.2, “date & time of departure” of said police official from the police station is **17.10.2022 at 09:08 a.m.** and said road certificate was **chalked out on 17.10.2022.** Though Hasnat Ahmad 290/MHC (Moharrar/PW-5) has stated during his cross-examination that road certificate (Ex.DA) was chalked out on 17.10.2022 and **sample was delivered on 18.10.2022** (as mentioned above) yet it is relevant to mention here that said portion of his statement i.e. regarding delivery of sample on 18.10.2022 is against the contents of road certificate bearing No.785 (Ex.DA) because it has been clearly mentioned therein that date & time of departure from the police station was **17.10.2022 at 09:08 a.m.** It is trite law that oral evidence cannot be given preference over documentary evidence and in this regard, case of **“SHER MUHAMMAD and others versus MUHAMMAD KHALID and others”** (2004 SCMR 826) can be advantageously referred and relevant portion from its paragraph No.5 is hereby reproduced as under: -

“Both the Courts were one in holding, and rightly so, that **oral evidence which was contrary to the documentary evidence could not be given preference over the said documentary evidence.**”

(emphasis added)

Even otherwise, it is also well settled that documentary evidence is always considered as best evidence and “Best Evidence Rule” excludes the oral assertions/depositions; in this regard, case of “**MAQBOOL AHMED versus STATE, etc.**” (PLJ 2023 Cr.C.581) can also be safely referred. Similarly, case of “**MUHAMMAD KHAN deceased through L.Rs. versus MUHAMMAD AKRAM**” (2025 CLC 228) can also be referred on the subject and relevant portion from its paragraph No.6 is hereby reproduced as under: -

“It is trite that once a document has been proved in accordance with law, the genuineness of its contents can be presumed and the rule that the “document speaks for itself” (acta probant sese ipsa) can be deployed. The rationale behind the presumptions attached to written documents stem out of both principle as well as policy. The presumptions are a matter of principle because written documents are, by their very nature, to be accorded a higher degree of credibility as opposed to oral evidence; otherwise, it would bring uncertainty and chaos if written documents (and valuable rights, if any, attached to them) were allowed to be set aside on the basis of oral evidence.”

(emphasis added)

It is further relevant to mention here that a document can be rebutted by a document having better legal sanctity only; it goes without saying that documentary evidence always takes preference over the oral deposition/assertion because man can tell a lie but document cannot; in this regard, case of “**AL BARAKA BANK (PAKISTAN) LIMITED through Authorized Attorneys Versus SUI NORTHERN GAS PIPELINES LIMITED through General Manager**” (2023 C L D 1436) can be safely quoted and relevant portion from its paragraph No.7 is hereby reproduced as under: -

“.....it is settled law that the documentary evidence always takes preference over the oral deposition as the man can tell a lie but a document cannot. A document can be rebutted by the document having better legal sanctity only. In this regard reliance is placed on the cases of Abdul Ghani and others v. Mst. Yasmeen Khan and others (2011 SCMR 837) and Saleem Akhtar v. Nisar Ahmad (PLD 2000 Lahore 385).”

(emphasis added)

On the subject, case of “**MUNIR AHMAD and 3 others Versus ZAFAR IQBAL and 13 others**” (2021 M L D 95) can also be advantageously

quoted and relevant portion from its paragraph No.7 is hereby reproduced as under: -

“It is settled principle of law that mere oral assertion is not sufficient to rebut the documentary evidence whereas documentary evidence legally take preference over the oral assertion as the document does not tell lie. A document can only be rebutted by the document having superior legal value. In this regard, reliance is placed on the cases of Abdul Ghani and others v. Mst. Yasmeen Khan and others (2011 SCMR 837) and Saleem Lahore 385).”

(emphasis added)

It is also relevant to mention here that entries in Columns No.2 and 4 of the road certificate (Ex.DA) regarding date & time of departure of the police official i.e. 17.10.2022 at 09:08 a.m. from the police station with aforementioned parcel of sample and mentioning of “PFSA” in Column No.7 as well as in the caption of Ex.DA, could not be negated through any other document having better legal sanctity/superior legal value by the prosecution.

Upshot of the above-discussion is that as per contents of road certificate (Ex.DA), parcel of sample was collected by Zafar Hussain, Sub-Inspector (PW-2) on 17.10.2022 from Moharrar of the police station (PW-5) for taking the same to P.F.S.A and he made departure from the police station on 17.10.2022 at 09:08 a.m., however, as per report of PFSA (Ex.PE), he deposited said parcel of sample in the office of PFSA on 18.10.2022; meaning thereby that after receiving parcel of sample in the case and making departure from the police station on 17.10.2022 at 09:08 a.m., parcel of the sample was retained by Zafar Hussain, Sub-Inspector (PW-2), he did not deposit it on the same day in the office of PFSA rather deposited the same over there with the delay of one day i.e. on 18.10.2022 and any explanation whatsoever in this regard that why he did not deposit parcel of sample on 17.10.2022 in the office of PFSA, has not been furnished by the prosecution. It is very much important to mention here that if for any reason whatsoever, said parcel of sample could not be deposited in the office of PFSA by Zafar Hussain, Sub-Inspector (PW-2) on 17.10.2022, then he was duty bound to return the same to the Moharrar of the police station on the same day and then to recollect it for submitting the same on other day when he was going to deposit the same in said office.

In view of what has been discussed above, chain of **safe custody** of the “**parcel of sample**” has been compromised in this case i.e. the same has not been established/proved in this case. Now law is well settled on the point that chain of safe custody of “parcel of sample as well as of allegedly recovered case property” is to be proved otherwise, conviction is not possible and it straightaway leads to the acquittal of the accused because recovery of narcotics is not a mere corroboratory piece of evidence rather it constitutes the offence itself and entails punishment. Guidance in this regard has been sought from the cases of “**The STATE through Regional Director ANF versus IMAM BAKHSH and others**” (2018 SCMR 2039), “**ABDUL GHANI and others versus The STATE and others**” (2019 SCMR 608), “**MUHAMMAD HAZIR versus The STATE**” (2023 SCMR 986), “**ASIF ALI and another versus The STATE through Prosecutor General Punjab**” (2024 SCMR 1408), “**SARFRAZ AHMED versus The STATE**” (2024 SCMR 1571) and “**MUHAMMAD IQBAL versus The STATE through P.G. Sindh**” (2025 SCMR 704). Since safe custody of the parcel of sample taken out of the recovered substance has not been proved in this case; therefore, conclusiveness of the report of Punjab Forensic Science Agency, Lahore (Ex.PE) has been impaired, its sanctity has been eroded and it has become unreliable; in this regard, guidance has been sought from the case of “**AMJAD ALI versus THE STATE**” (2012 SCMR 577) and relevant portion of the same from Paragraph No.5 is hereby reproduced as under:-

“Although the prosecution sought to corroborate the testimony of P.W.2 and P.W.3 with the report of the Forensic Science Laboratory to the effect that the contraband item recovered from the secret cavities was charas yet the sanctity of the said report (Exh.PK) was eroded when P.W.3 Manir Khan in cross-examination could not correctly reply as to where the samples remained between the dates those were allegedly taken into possession from the car and the date those were received by the Forensic Science Laboratory i.e. 26-5-2006 to 3-6-2006. He even could not tell the date as to when the samples were sent for examination and which official had taken the samples to the Laboratory.”

Furthermore, cases of “**The STATE through Regional Director ANF versus IMAM BAKHSH and others**” (mentioned *supra*) and “**MST. SHAHIDA**

BIBI versus The STATE and another) (2025 YLR 867) can also be advantageously referred on the subject. By now it is also well settled that if safe custody of allegedly recovered substance or parcel of sample/case property has not been proved then, there is no need to discuss other merits of the case and it straightaway leads to the acquittal of the accused; in this regard, guidance has been sought from the *supra* cases of “**ABDUL GHANI and others versus The STATE and others**” and “**The STATE through Regional Director ANF versus IMAM BAKHSH**”.

6. It is trite law that single dent in case of prosecution is sufficient for acquittal, in this regard, reliance can be placed upon the cases of “**MUHAMMAD MANS HA versus The STATE**” (2018 SCMR 772), “**ABDUL JABBAR and another versus The STATE**” (2019 SCMR 129), “**Mst. ASIA BIBI versus The STATE and others**” (PLD 2019 SC 64) and “**AMIR MUHAMMAD KHAN versus The STATE**” (2023 SCMR 566), “**MUHAMMAD NAWAZ and another versus The STATE and others**” (2024 SCMR 1731) and “**MUHAMMAD BILAL versus The STATE**” (2025 SCMR 1580).

7. Nutshell of the above discussion is that prosecution has been failed to prove its case against the appellant beyond shadow of doubt hence there is no need to discuss defence version.

8. In view of all above, instant appeal is **allowed/accepted**, conviction recorded and sentence awarded to the appellant through impugned judgment dated: 26.09.2023 passed in aforementioned subject case, are hereby set aside. Appellant is acquitted of the charge and will be released from jail forthwith if not required in any other case.

9. Office is directed to immediately send copy of this judgment to the Inspector General of Police, Punjab, Lahore for his perusal and with the proposal to consider the suitability of preparing “Road Certificate” in appropriate “Form” while mentioning required details in the same in express manner/words for sending the case property from police station to the Court, Laboratory or at any other relevant office.

(MUHAMMAD TARIQ NADEEM)
JUDGE

(FAROOQ HAIDER)
JUDGE

APPROVED FOR REPORTING

(MUHAMMAD TARIQ NADEEM)
JUDGE

(FAROOQ HAIDER)
JUDGE

This judgment has been dictated, pronounced
prepared and signed on 18.12.2025.

Kashif