HCJDA 38

JUDGMENT SHEET

IN THE LAHORE HIGH COURT, LAHORE

JUDICIAL DEPARTMENT

Crl. Appeal No.71008-J/2023

Zeeshan Abbas *alias* Kaka

Vs

The State

J U D G M E N T

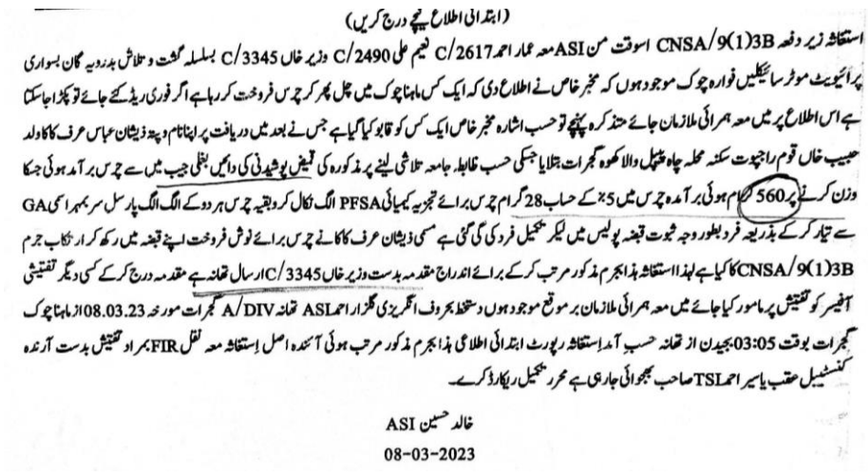
Date of hearing:	**15.12.2025.**
Appellant by:	Syed Zabeeh Haider, Advocate.
State by:	Mr. Haroon Rasheed, Deputy Prosecutor General along with Shehbaz, A.S.I.

Farooq Haider, J.:- This appeal has been filed by **Zeeshan Abbas *alias* Kaka** against the judgment dated: 14.07.2023 passed by learned Additional Sessions Judge/Judge Special Court CNSA, Gujrat, whereby in case arising out of F.I.R No.62/2023 dated: 08.03.2023 registered under Section: 9(1) 3(b) of the Control of Narcotic Substances Act, 1997 at Police Station: A-Division, District: Gujrat, trial court has convicted and sentenced the appellant as under: -

> ***under Section: 9(1) 3(b) of Control of Narcotic Substances Act, 1997*** *to Rigorous Imprisonment for 09-years along with fine of Rs.80,000/-, in default of payment of fine to further undergo S.I for 03-months. Benefit of Section 382-B Cr.P.C. was also extended to the appellant.*

2. Briefly, as per case of prosecution narrated in the Crime Report (F.I.R./Ex.PA) got recorded by Gulzar Ahmad, A.S.I. (complainant/ PW-4), on 08.03.2023, on spy information, appellant was apprehended by the complainant and other police officials and on his personal search, charas was recovered from the right lateral pocket of his wearing shirt;

on weighing, it was found 560-grams; out of the recovered charas, at the ratio of 5%, 28-grams charas was extracted for getting chemical analysis from PFSA; sample and remaining charas were secured into two separate sealed parcels with the stamps of "GA" and taken into possession through recovery memo (Ex.PC); for ready reference, relevant portion of the Crime Report (F.I.R./Ex.PA) is hereby scanned below: -



(ابتدائی اطلاع نیچے درج کریں)

استغاثہ زیر دفعہ CNSA/9(1)3B اسوقت من ASI معہ عمار احمد C/2617 نعیم علی C/2490 وزیر خاں C/3345 بسلسلہ گشت و تلاش بذریعہ گاڑی بسواری پرائیویٹ موٹر سائیکلیں فوارہ چوک موجود ہوں کہ مخبر خاص نے اطلاع دی کہ ایک کس اماما چوک میں چل پھر کر چرس فروخت کر رہا ہے اگر فوری ریڈ کیے جائے تو پکڑا جا سکتا ہے اس اطلاع پر میں معہ ہمراہی ملازمان جائے حذکرہ پہنچے تو حسب اشارہ مخبر خاص ایک کس کو قابو کیا گیا ہے جس نے بعد میں دریافت پر اپنا نام وپتہ ذیشان عباس عرف کاکا ولد حبیب خاں قوم راجپوت سکنہ محلہ چاہ پتھل والا کھوہ گجرات بتلایا جسکی حسب ضابطہ جامعہ تلاشی لینے پر مذکورہ کی قمیض پوشیدنی کی دائیں بغلی جیب میں سے چرس برآمد ہوئی جسکا وزن کرنے پر 560 گرام ہوئی برآمدہ چرس میں 5٪ کے حساب 28 گرام چرس برائے تجزیہ کیمیائی PFSA الگ نکال کر وقیعہ چرس ہر دو کے الگ الگ پارسل سربمہر اسی GA سے تیار کر کے بذریعہ فرد بطور وجہ ثبوت قبضہ پولیس میں لیکر تکمیل فرد کی گئی ہے مسمی ذیشان عرف کاکا نے چرس برائے نوش فروخت اپنے قبضہ میں رکھ کر ارتکاب جرم CNSA/9(1)3B کا کیا ہے لہذا استغاثہ ہذا بجرم مذکور مرتب کر کے برائے اندراج مقدمہ بدست وزیر خاں C/3345 ارسال تھانہ ہے مقدمہ درج کر کے کسی دیگر تفتیشی آفیسر کو تفتیش پر مامور کیا جائے میں معہ ہمراہی ملازمان بر موقع موجود ہوں دستخط بحروف انگریزی گزار احمد ASI تھانہ A/DIV گجرات مورخہ 08.03.23 از اماما چوک گجرات بوقت 03:05 بجیدن از تھانہ حسب آمد استغاثہ رپورٹ ابتدائی اطلاعی ہذا بجرم مذکور مرتب ہوئی آئندہ اصل استغاثہ معہ نقل FIR ہمراہ تفتیش بدست آرندہ کنسٹیبل عقب یاسر احمد TSL صاحب بھجوائی جاری ہے محرر تکمیل ریکارڈ کرے۔

خالد حسین ASI
08-03-2023

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 and while answering to Question No.7 "*Why this case against you and why the PWs have deposed against you?*", he replied as under: -

> *"The proceedings were carried out by police by joining hands with my some relatives who has an eye upon my valuable property because I am the only son of my late parents and the only owner of my inherited property. I have been falsely involved in this case. The recovery has been planted upon me. I am innocent."*

The appellant did not record his statement under Section: 340(2) Cr.P.C. to disprove the allegations levelled against him and also did not produce any evidence in his defence. Trial court after hearing learned counsel for the parties, passed the impugned judgment wherein appellant was convicted and sentenced as mentioned above.

3. Learned counsel for the appellant has submitted that conviction recorded and sentence awarded to the appellant through impugned judgment are against the law and facts; no private witness was associated during recovery proceedings; nothing has been recovered from the appellant; prosecution evidence is full of contradictions; the appellant is absolutely innocent and false case has been concocted against him by the police; also contended that the prosecution has miserably failed to prove its case against the appellant beyond shadow of doubt, therefore, he may be acquitted of the charge after setting aside the impugned judgment.

4. On the other hand, learned Deputy Prosecutor General while controverting the submissions of learned counsel for the appellant, has supported the impugned judgment of the trial court by contending that the appellant was caught red handed while carrying charas weighing 560-grams in his possession; further added that the appellant was rightly convicted and sentenced, therefore, there is no substance in the appeal.

5. **After hearing learned counsel for the appellant, learned Deputy Prosecutor General and going through the record,** it has been noticed that Gulzar Ahmad, Sub-Inspector (complainant) while appearing before the Court as PW-4 has categorically deposed about recovery of charas from possession of the appellant on 08.03.2023, weighing the same, which was found 560-grams; also stated about separating charas weighing 28-grams as sample, preparing two sealed parcels of charas i.e. one sample parcel and other parcel of remaining case property with stamps bearing "GA" and taking the same into possession through recovery memo Ex.PC attested by Naeem Ali 2490/C and Amaar Ahmad 2617/C; he further deposed regarding drafting complaint (Ex.PD), sending the same for registration of F.I.R. through Wazeer Khan 3345/C and handing over the case property, police papers as well as custody of the accused to Yaseer Ahmad, Sub-Inspector (Investigating Officer).

Yaseer Ahmad, Sub-Inspector (Investigating Officer) while appearing before the Court as PW-3 deposed about steps taken by him as

Investigating Officer, receiving of two sealed parcels of charas i.e. one sample parcel and other parcel of remaining case property, police papers and custody of accused from Gulzar Ahmad, Sub-Inspector (PW-4); he too deposed about inspecting the place of recovery, drafting un-scaled site plan (Ex.PB), thereafter on his return to the police station alongwith accused and case property, handing over the case property to the Moharrar and confining the accused in the police lockup. He further deposed about receiving of one sealed sample parcel from Qaiser Farooq 221/MHC (Moharar of the police station) on 14.03.2023 for its onward transmission to the office of PFSA Collection Centre, Gujranwala, which he deposited on the same day, intact.

Qaiser Farooq 221/HC (Moharar of the police station) while appearing before the Court as PW-2 has deposed about receipt of two sealed parcels i.e. a sample parcel and other parcel of remaining recovered charas with the stamps of "GA" for safe custody in Malkhana on 08.03.2023, which he kept in safe custody of Malkhana. He also deposed about handing over of one sealed sample parcel on 14.03.2023 to Yaseer Ahmad, Sub-Inspector (Investigating Officer/PW-3) for its onward transmission to the office of PFSA, Gujranwala, who deposited on the same day, intact.

Naeem Ali 2490/C (recovery witness) while appearing before the Court as PW-5 deposed regarding recovery of charas from the appellant on 08.03.2023, weighing the same by the complainant (PW-4), which was found as 560-grams; also deposed about separating 28-grams charas as sample by the complainant (PW-4), preparing two sealed parcels of charas i.e. one sample parcel of Charas and other of remaining case property with the seals of "GA" and taking the same into possession by the complainant (PW-4) through recovery memo Ex.PC attested by him and Amaar Ahmad 2617/C.

We have observed that vital aspects of the case i.e. **recovery of charas weighing 560-grams from possession of the appellant,**

preparation of one sealed parcel of sample as well as one sealed parcel of remaining recovered charas/case property and handing over the same to the *Moharir*, thereafter safe transmission and deposit of one sealed sample parcel to the office of Punjab Forensic Science Agency, Lahore have been proved and furthermore case of the prosecution regarding recovery of charas weighing 560-grams from the appellant has also been stamped by the report of Punjab Forensic Science Agency, Lahore (Ex.PE), according to which, said recovered contraband material was "Charas". Credit of the prosecution witnesses (mentioned above) despite lengthy and searching cross-examination, could not be shaken by the defence rather their evidence has been found by us as "confidence inspiring"; therefore, same cannot be discarded merely on the basis of minor discrepancies, which usually do occur after lapse of time, even otherwise, minor discrepancies have no bearing on the merits of the case. It is not necessary in narcotics cases to prove recovery through private witnesses and Section: 25 of the Control of Narcotic Substances Act, 1997 can be safely referred in this regard. Needless to observe that police witnesses are as good witnesses, they are relevant witnesses being member of raiding party having no ill will or animosity against the appellant and in this regard, reliance is placed upon the cases of ***"*NASEER AHMAD versus The STATE*"*** (**2004 SCMR 1361**), ***"*TARIQ MEHMOOD versus The STATE through Deputy Attorney-General, Peshawar*"*** (**PLD 2009 SC 39**) and "**AJAB KHAN versus The STATE**" (**2022 SCMR 317**). Hence, case of the prosecution has been proved against the appellant beyond shadow of doubt through cogent evidence.

As far as defence plea is concerned, although, during recording of statement under Section: 342 Cr.P.C., appellant while refuting the allegations i.e. recovery of alleged contraband/charas claimed that the local police by joining hands with his some relatives, who are having an eye upon his valuable property, has falsely involved him in this case yet

he neither moved any application before high-ups or any other authority against local police, complainant or Investigating Officer during investigation of the case nor produced any witness during trial in support of his said version. It goes without saying that when the appellant took plea that he was falsely implicated in this case, then he was himself a best witness to depose entire detail that why he was falsely implicated in this case and of course law has provided a chance to him in this regard through Section: 340(2) Cr.P.C. while appearing as his own witness in support of his version but he did not opt so. Although, non-appearance of accused under Section: 340(2) Cr.P.C. for disproving allegation levelled against him, does not create any inference against him yet when he has taken plea of false implication and regarding the same, he is the best witness, then he was in position to prove his said version by appearing so and his non-appearance amounts to withhold the best evidence. So, version of the appellant is merely based on bald denial without any cogent supporting material, it has neither been proved nor caused any dent in the case of prosecution and same is even otherwise of no avail. It is important to mention here that when prosecution has proved its case up to hilt beyond shadow of doubt through unbroken chain of safe custody against the appellant, then prosecution has discharged initial onus of proof as required by the law and now it was upon accused/appellant to repel/refute the same but he has been failed to negate the case of the prosecution. Hence, when case of the prosecution is kept in juxtaposition with the stance of the accused taken by him in reply to question No.7 in his statement recorded under Section: 342, Cr.P.C., we have found that defence version is of no avail whereas ***"chain"*** required for proving the case of prosecution is ***"complete and unbroken"***.

6. Nutshell of the above discussion is that we could not find any convincing reason to interfere with the finding of the trial court with respect to conviction recorded against the appellant under Section: 9(1)

3(b) of the Control of Narcotic Substances Act, 1997. Therefore, conviction recorded against the appellant by the trial court through impugned judgment is maintained.

However, so far as sentence awarded to the appellant through impugned judgment is concerned, it is relevant to mention here that as per Section: 47 of the Control of Narcotic Substance Act, 1997, the provision of the "Code of Criminal Procedure, 1898" shall apply to trials and appeals before a Special Court under said act and for ready reference Section: 47 of the Act (*ibid*) is hereby reproduced as under:-

> *"**47. Application of the Code of Criminal Procedure, 1898**.—Except as otherwise provided in this Act, the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), hereinafter referred to as the Code (including provisions relating to confirmation of a death sentence) shall apply, to trials and appeals before a Special Court under this Act."*

Though it has been mentioned in 2nd proviso to sub-section (1) of Section: 9 of the Act (*ibid*) that if any person has been previously convicted for any offence under Act (*ibid*) is subsequently convicted for the offence relating to narcotic substance, he shall be convicted with maximum punishment provided for that offence; 2nd proviso to sub-section (1) of Section: 9 of the Act (*ibid*) is reproduced as under:-

> *"Provided further that if any person who has previously been convicted for any offence under this Act is subsequently convicted for the offence relating to narcotic drug, he shall be convicted with maximum punishment provided for that offence."*

yet for invoking said proviso, first of all, previous conviction of the accused has to be stated in the charge and in this regard sub-section: 7 of Section 221 of Cr.P.C. can be safely referred and same is hereby reproduced below: -

> "***Section: 221. Charge to state offence.*** *(1)* ----------
> *(2)* ----------
> *(3)* ----------
> *(4)* ----------
> *(5)* ----------
> *(6)* ----------
> *(7)* ***Previous conviction when to be set out****. If the accused having been previously convicted of any offence, is liable by reason of such previous conviction, to enhanced punishment, or to punishment of a different kind, for a subsequent offence, and it is intended to prove such previous conviction for the purpose of affecting the punishment*

> *which the Court may think fit to award for the subsequent offence, the fact, date and place of the previous conviction shall be stated in the charge. If such statement has been omitted, the Court may add it any time before sentence is passed."*

Furthermore, in this regard, Section 265-I Cr.P.C. can also be safely referred which is also hereby reproduced infra:-

> *"265-I.* ***Procedure in case of previous conviction****. (1) in case where, by reason of a previous conviction the accused has been charged under Section 221, sub-section (7) the Court, after finding the accused guilty of the offence charged and recording a conviction shall record the plea of the accused in relation to such part of the charge."*
>
> *(2) If the accused admits that he has been previously convicted as alleged in the charge, the Court may pass a sentence upon him according to law, and if the accused does not admit that he has been previously convicted as alleged in the charge the Court may take evidence in respect of the alleged previous conviction, and shall record a finding thereon and then pass sentence upon him according to law."*

Perusal of Section: 265-I of the Code (*ibid*) clearly reveals that in a case where accused has been charged by reason of previous conviction under Section: 221(7) of the Code (*ibid*) by the Court, after finding him guilty of the offence charged and recording conviction, plea of the accused in relation to said part of the charge shall be recorded, if he admits that he has been previously convicted as alleged in the charge, Court may pass sentence upon him according to law, however, if he does not admit that he has been previously convicted as alleged in the charge, then Court may take evidence in respect of said alleged previous conviction and record finding thereof and only then pass sentence upon him according to law.

Perusal of the record of case in hand clearly reflects that appellant was charged on 11.05.2023 and same is hereby reproduced for ready reference as under:-

> *"That on 08.03.2023, at about 03:05 p.m, in the area of Mahna Chowk, within the territorial jurisdiction of P.S. A-Division, you were found in possession of Charas weighing 560 grams, thus you committed an offence punishable u/s 9(1) S.No.3 Charas (b) of the CNSA 1997 which is within the cognizance of this Court.*
>
> *And I hereby direct that you be tried by this Court on the said charge."*

Upon aforesaid charge, appellant got recorded his following plea which is reproduced as follows:-

"Q.No.1.	*Have you heard and understood the charge framed against you in your presence?*
Ans.	*Yes.*
Q.No.2.	*Do you plead guilty to the charge?*
Ans.	*No.*
Q.No.3	*Have you any defence to make?*
Ans.	*Yes, if needed."*

Perusal of aforementioned charge clearly evinces that he was not charged with respect to any previous conviction and even examination of the entire record reflects that said omission was not rectified/corrected during whole trial of the case, therefore, after finding him guilty in the case, he could not have been awarded maximum punishment for the offence due to any previous conviction under 2nd proviso to sub-section (1) of Section: 9 of the Act (*ibid*) and it goes without saying that without mentioning previous conviction in the charge or adding previous conviction in the charge while amending the same even at subsequent stage during trial of the case, merely on the basis of referring conviction of accused in some previous cases, he cannot be awarded maximum punishment in the light of 2nd proviso to sub-section (1) of Section: 9 of the Act (*ibid*).

At the cost of repetition, it is mentioned that though any previous conviction was not part of charge framed against accused but as per paragraph No.22 of the impugned judgment, he was awarded maximum punishment under 2nd proviso to sub-section (1) of Section: 9 of the Act (*ibid*) due to previous conviction in some cases and same is hereby reproduced: -

> *"22. Coming to the question of sentence admittedly the accused has previous five criminal cases of similar nature i.e. narcotics in his credit (as per list available on the record), out of which he has been convicted and sentenced in four cases bearing FIR No. 115/17 offence u/s 9-B PS B-Division, FIR No. 116/17 offence u/s 9-B PS B-Division, FIR No. 193/18 offence 9-B PS B-Division and FIR 130/21 for offence of CNSA PS Shaheen Chowk, therefore, keeping in view the previous conviction of accused, circumstances of the case, nature of offence and desire of law that the maximum punishment should be awarded to the previous convict as provided*

u/s 9 (1)(2nd proviso) of CNSA (Amendment) Act 2022, the accused Zeeshan Abbas alias Kaka is sentenced as under:-

u/s 9 (1) S No. 3 Charas (b) of CNSA 1997 to undergo RI for Nine (09) years alongwith a fine of Rs.80,000/- (Eighty Thousand rupees). In default of payment of fine he shall further undergo three (03) months SI."

It is trite law that when a thing has been prescribed to be done in a particular manner then it should have been done in that manner otherwise same would be deemed as illegal and in this regard, famous latin maxim i.e. *A communi observantia non est recedendum* can be advantageously referred.

Nutshell of the above discussion is that since any previous conviction of the accused was not part of the charge sheet, therefore, invoking 2nd proviso to sub-section (1) of Section: 9 of the Act (*ibid*) for awarding maximum punishment to the accused/appellant due to previous conviction as mentioned in paragraphs No.22 of the impugned judgment, is against the law on the subject and thus not sustainable.

Offences under Sections: 9(1) 3(a), (b), (c), (d) and (e) of the Act (*ibid*) are punishable with different quantum of sentences and relevant portions of detail of the same are hereby reproduced as under: -

"[1][9. **Punishment for contravention of sections 6, 7 and 8**.-- (1) Whoever contravenes the provisions of sections 6, 7 and 8 regarding narcotic drugs shall be punished with punishment as given in column (3) of the TABLE below with regard to offence committed as mentioned in column (2) thereof, namely:-"

S. No.	Offence		Punishment
	Type of Narcotics	Quantity	
3	Charas	(a) Up to 499 grams.	imprisonment which may extend to five years but shall not be less than ten months along-with fine which may be up to forty thousand rupees.
		(b) 500 grams to 999 grams.	imprisonment which may extend to nine years but shall not be less than five years along-with fine which may be up to eighty thousand rupees but not less than forty thousand rupees.
		(c) 1000 grams to 4999 grams.	imprisonment which may extend to fourteen years but shall not be less than nine years along-with fine which may be up to four hundred thousand rupees but not less than eighty thousand rupees.
		(d) 5000 grams to 9999 grams.	imprisonment which may extend to twenty years but shall not be less than fourteen years along-with fine which may be up to eight hundred thousand rupees but not less than four hundred thousand rupees.
		(e) 10000 grams or more.	imprisonment which may extend to life imprisonment but shall not be less than twenty years along-with fine which shall not be less than eight hundred thousand rupees.

Perusal of above-mentioned detail reveals that range of quantum of sentence of period of imprisonment and amount of fine i.e. with maximum and minimum threshold has been provided for each aforementioned offence, and in such circumstances, principle of proportionality *qua* sentencing that "**the punishment should fit the crime**" holds the field and thus quantum of sentence for the offence to be awarded from the range prescribed by the Control of Narcotic Substances Act, 1997 has to commensurate with the quantity of narcotic substance recovered amongst other relevant factors. Section: 9(1) 3(b) of the Control of Narcotic Substances Act, 1997 prescribes range of sentence of imprisonment from five years to nine years and fine up to Rs.80,000/- but not less than Rs.40,000/- and since in this case, quantity of proved recovered charas from the appellant is 560-grams, therefore, while applying fundamental aspect of principle of proportionality regarding sentencing, the appellant is **sentenced to imprisonment for 5½ years along with fine of Rs.45,000/-**, benefit under Section: 382-B Cr.P.C. shall also be extended to him. Resultantly, while maintaining conviction under Section: 9(1) 3(b) of the Control of Narcotic Substances Act, 1997 and modifying quantum of sentence (as mentioned above), instant appeal is **dismissed**.

(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 15.12.2025.

Javed/Kashif