

IN THE SUPREME COURT OF PAKISTAN

(Appellate Jurisdiction)

PRESENT:

Justice Jamal Khan Mandokhail
Justice Syed Hasan Azhar Rizvi
Justice Naeem Akhtar Afghan

Criminal Petition No. 1602 of 2023

(On appeal against the judgment dated 29.11.2023 of the Lahore High Court, Rawalpindi Bench passed in CrI.A. No. 159/2023)

Asif Ali & another

...**Petitioners**

Versus

The state through Prosecutor General Punjab

...**Respondents**

For the petitioners:

Mr. Muhammad Nawaz Khan, ASC

For the state:

Mr. Irfan Zia, APG., Punjab

Date of Hearing:

22.05.2024

J U D G M E N T

NAEEM AKHTAR AFGHAN, J.

Both the petitioners are facing conviction and sentence of ten years rigorous imprisonment and fine of Rs.50,000/- each or in default thereof to suffer simple imprisonment for eight months each with benefit of section 382-B Cr.P.C. under section 9 (c) r/w section 15 of the Control of Narcotic Substances Act, 1997 ('**CNSA 1997**') vide judgment dated 15.02.2023 passed by learned Additional Sessions Judge/Special Court of CNSA 1997 Jhelum ('**the Trial Court**') in FIR No.148/2021 registered with PS City, District Jhelum on 27.05.2021 for recovery of four packets of charas weighing 1007 grams, 1009 grams, 1012 grams and 1014 grams wrapped in a cloth around the body of petitioner Asif Ali and for recovery of three packets of charas weighing 1012 grams, 1012 grams and 1022 grams wrapped in a cloth around the body of petitioner Muhammad Irshad while travelling in Car No. OK-3131.

2. Appeal filed by both the petitioners has been dismissed by the Lahore High Court, Rawalpindi Bench ('**the Appellate Court**') vide judgment dated 29.11.2023 against which both the petitioners have filed the instant criminal petition for leave to appeal.

3. After hearing learned counsel for the petitioners and learned Additional Prosecutor General, Punjab we have perused the available record.

According to the version of prosecution, the complainant/PW-1 (Ahsan Shehzad S.I. of Cantt. Police Post Jhelum) received information that two

narcotic dealers are transporting huge quantity of narcotic in a car towards Mandi Bahauddin due to which checking of vehicles was started at *Bandi Tool Plaza*; at about 10:00 am a Datsun Car bearing registration No. OK-3131 coming from Rawalpindi side was signaled to stop but the car accelerated; the same was chased; after colliding with footpath, it stopped; the person sitting on the driving seat (petitioner Asif Ali) was overpowered and searched resulting into recovery of four packets of charas wrapped in a cloth around his body while the search of second person (petitioner Muhammad Irshad), sitting on the front seat of the car, resulted into recovery of three packets of charas wrapped in a cloth around his body.

According to prosecution, seven sample parcels, each weighing 51 grams, were separated for analysis and same were handed over to Ahsan Shehzad S.I. on 31.05.2021 for its onward transmission to the Punjab Forensic Science Agency, Lahore (**'the Lab'**) for analysis.

4. In the cases under CNSA 1997 it is the duty of the prosecution to establish each and every step from the stage of recovery, making of sample parcels, safe custody of sample parcels and safe transmission of the sample parcels to the concerned laboratory. This chain has to be established by the prosecution and if any link is missing, the benefit of the same has to be extended to the accused. Reference in this regard is made to the cases of **'Javed Iqbal v. The State'**¹, **'Mst. Sakina Ramzan v. The State'**² and **'Qaiser Khan v. The State'**³.

5. In the cases under CNSA 1997, the prosecution is under a bounded responsibility to drive home the charge against an accused by proving each limb of its case that essentially includes production of the witness tasked with the responsibility of transmitting the samples to the office of Chemical Examiner and the failure is devastatingly appalling with unredeemable consequences that cast away the entire case. Reference in this regard is made to the cases of **'Abdul Ghafoor v. The State'**⁴, **'Muhammad Shoaib v. The State'**⁵, **'Khair ul Bashir v. The State'**⁶,

¹ 2023 SCMR 139

² 2021 SCMR 451

³ 2021 SCMR 363

⁴ 2022 SCMR 819

⁵ 2022 SCMR 1006

⁶ 2019 SCMR 930

'The State v. Imran Bakhsh'⁷, **'Taimoor Khan v. The State'**⁸, **'Ikram Ullah v. The State'**⁹ and **Amjad Ali v. The State'**¹⁰.

6. Under rule 4(2) of the Control of Narcotic Substances (Government Analysts) Rules 2001 (**'Rules of 2001'**), the sample for analysis has to be dispatched to the testing laboratory at the earliest but not later than seventy two hours of the seizure.

7. Rule 22.70 of the Police Rules, 1934 (**'the Police Rules'**) mandates that Register No.XIX shall be maintained in Form 22.70 of the Police Rules in the police station wherein, with the exception of articles already included in Register No.XVI, every article placed in the store room (Malkhana) shall be entered and the removal of any such article shall also be noted in the appropriate column.

8. In the instant case, statements of PW-3 (Khurram Shehzad H.C.) and PW-4 (Tasawar Hussain S.I./Investigating Officer) reveal that the seven sample parcels of the charas allegedly recovered on 27.05.2021 were handed over to Ahsan Shehzad S.I. for transmission to office of the lab on 31.05.2021 i.e. much beyond seventy two hours of the seizure/in violation of rule 4(2) of the Rules of 2001 for which no plausible explanation has been offered by the prosecution.

9. According to statement of PW-3, he handed over the seven sample parcels to Ahsan Shehzad S.I. for onward transmission to office of the Lab on 31.05.2021. In order to prove safe transmission of the sample parcels to office of the Lab, the prosecution has not produced Ahsan Shehzad S.I. before the Trial Court for recording his statement and in this regard no explanation has been offered by the prosecution.

10. During his cross-examination, PW-3 was confronted by the learned defence counsel with Form 22.70 of Register No.XIX (Ex.DB) maintained as per rule 22.70 of the Police Rules, wherein admittedly no date, month and year has been mentioned in the relevant column No.3 pertaining to the case property/sample parcels of the instant case and in this regard as well no explanation has been offered by PW-3 or by PW-4.

11. All the above infirmities have created reasonable doubt in the case of prosecution but according to settled principles of law, benefit of same

⁷ 2018 SCMR 2039

⁸ 2016 SCMR 621

⁹ 2015 SCMR 1002

¹⁰ 2012 SCMR 577

has not been extended in favour of the petitioners by the Trial Court as well as by the Appellate court.

12. In view of all the above infirmities in the case of the prosecution, we have no hesitation to conclude that the prosecution has failed to prove the charge against the petitioners beyond reasonable doubt.

It is further concluded that the conviction and sentence awarded to the petitioners by the Trial Court and maintained by the Appellate Court is result of misreading and mis-appreciation of the evidence available on record and same is violative of the settled principles of law as well as the relevant rules.

13. The petition was converted into appeal and same was allowed by us vide short order dated 22.05.2024 which reads as follows:

“For reasons to be recorded later, this petition is converted into an appeal and is allowed. The judgments dated 15.02.2023 and 29.11.2023 of the Trial Court and the High Court respectively are set aside. The appellants are acquitted of the charge and they be set at liberty in this case if not required in any other case.”

The above are the reasons of our short order dated 22.05.2024.

Judge

Judge

Judge