

Judgment Sheet  
**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**  
(Judicial Department)

**Cr. Appeal No. 98-P/2021**

**“The State...Vs...Muhammad Shafiq”**

**JUDGMENT**

Date of hearing: 19.07.2022

Appellant by: Mr. Niaz Muhammad AAG, for the  
State


Respondent by: Mr. Abid Ullah, Advocate.

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**DR. KHURSHID IQBAL, J.-**This appeal is directed against the Judgment, dated, 01.10.2020 passed by the learned Additional Sessions Judge-III/ Model Criminal Court Nowshera, by which he acquitted the respondent/accused Muhammad Shafiq in case FIR No. 800, registered on 30.12.2017, under section 9-C, of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 1997, at Police Station Akora Khattak.

02. Facts germane to the instant appeal shortly are that on 30.12.2017, while a police party led by one Khan Zeb, ASI, was at patrolling duty in the locality, it got spy information that a man was standing across the G.T Road near Mian Abad Pattak Akora Khattak. The spy information was that the man was in possession of chars. Considering the information as genuine, the police party rushed to the aforesaid place and as per, the

identification of the informer, the man was overpowered. In the right hand of the man, a plastic wrap was found. When the wrapper was checked, 03 sub-wraps, containing chars, were found. After weighing, packets 1,2 and 3 were found to be 1055, 1010 and 955 grams respectively; the total of which came out to be 3020 grams. The seizing officer separated 05 grams from each packet which were sealed in three different parcels. The remaining was sealed in another parcel. On interrogation, the man (now the respondent) disclosed that he was Muhammad Shafiq son of Ziarat Gul, resident of Malak Din Khel, formerly Khyber Agency. The seizing officer drafted the murasila, issued card of arrest of the respondent, drafted an application for chemical analysis of contraband chars and prepared the memo of recovery. As the murasila was sent to the PS Akora Khattak, the case was registered against the respondent.



03. After completion of the investigation, the final report (Challan) was put before the learned trial Judge. After fulfilling of the necessary formalities per the procedure, charge was framed against the accused to which he pleaded not guilty and professed innocence.

04. In support of its case, the prosecution examined as many as 06 witnesses.

05. It seems pertinent to provide synopsis of the prosecution evidence for ready reference, in the table below:-

Synopsis of prosecution evidence

Name & # of PW	Gist	Documents
PW1: Malang Jan ASI	Incorporated contents of Murasila in to FIR.	ExPW1/1
PW2: Nabiullah HC	Sent parcels No.1,2 and 3 alongwith application to FSL through road receipt # 672/21	EXPW2/1
PW3: Khan Zeb Khan ASI	Arrested the accused; recovered 3020 grams <i>charas</i> from the shopping bag in his right hand; prepared recovery memo, drafted the <i>murasila</i> , and application for chemical analysis; issued card of arrest	ExPW3/1 to 3/4
PW4: Anwar Khan ASI	Being I.O of the case prepared the site plan, recorded statements of PWs, produce accused for custody, sent parcel No. 1 to 3 to FSL through file receipt and obtained CDR data	Ex PW 4/1 to 4/5.
PW5: Naeemullah MHC	Received 4 parcels of instant case made entries in Register No. 19 and after perusal the parcels were placed in safe custody of mall khana. Drafted receipt No. 672/21 and all the parcel were handed over to Nabiullah for sending to FSL	
PW6: Said Rasan LHC No. 1231	A marginal witness to recovery memo	

06. At the close of the prosecution evidence, the respondent was examined Under Section 342 Cr.PC. The respondent was provided an opportunity to record statement on oath and/or produce evidence in his defense. He did not prefer to avail such opportunity.

07. After hearing the arguments, the learned trial Judge acquitted the respondent by his Judgment impugned herein.

08. While the appellant has set up as many as 10 grounds of appeal, the key ground is that the respondent was arrested red-handed having the contraband chars in his possession, the report of FSL is in positive and that Section 21 of the CNSA 1997 was wrongly applied.

9. We have heard the arguments of Mr. Niaz Muhammad, learned AAG for the appellant (the State) and Mr. Abid ullah Advocate, learned counsel for the respondent.

10. The learned AAG argued for the appellant that a huge quantity of contraband chars were recovered from the personal possession of the respondent. He further argued that the FSL report corroborates the prosecution version inasmuch as the narcotics substances were positively found to be chars. He stated that section 21 of CNSA could not be applied in the light of the case law developed by the higher courts.

11. On the other hand, the learned counsel for the respondent argued that the prosecution has badly failed to bring home the charge against the respondent. He pinpointed the number of dents and defects in the prosecution evidence. To mention, but a few here, firstly, the seizing officer sent to the PS the murasila only; the respondent was at such a good distance from the police party that he could run away from the spot but he did not do so. The PW furnished contradictory evidence regarding the shape of contraband chars and that they did not

place on record, copy of the Daily Diary (DD) of departure from and arrival in the PS.

12. The sole point for determination is that whether learned trial judge has properly evaluated the evidence on the record by acquitting the respondent or not.

13. We would like to start with the recovery proceedings conducted by the police officials. In the recovery memo while the contraband chars were shown as "Pukhta", its shape such as slabs or otherwise was not mentioned. One Said Rasan LHC No. 1231 (PW-6) a marginal witness of the recovery memo while, under cross examination, deposed that the packets were in the shape of slabs and not in the shape of pieces. He could not recollect the total number of slabs inside each packet. The arresting officer (PW-3) in response to a question during cross examination, replied that he is unable to remember the number of slabs in each packet. He even failed to state whether wrapper (Shopping Bag) was sealed in parcel No. 4 or not. This is quite astonishing for the reason that the same PW has mentioned in murasila and the recovery memo that he has sealed the packets. Thus, he being the star witness of the prosecution, materially contradicts both the murasila and the recovery memo. This doubt sinks further deeper when the case property was opened before the trial Judge who made the following observation:

*On de-sealing the parcel No. 4, seal monogram was found inside the parcel. 3 packets were found inside the parcel in a shopping bag and each wrapped in yellow solution tape. Corner of all the three packets were cut. One packet contained 4 sub slabs while 2 packets contained 2 sub slabs. Each packet had small piece of contraband wrapped in solution tape. One small piece of contraband also contained inside the parcel besides the 3 packets.*

Thus, there is a serious doubt about the shape of contraband chars.

14. The seizing officer mentioned in the murasila and in his statement recorded under cross examination that he handed over only the murasila to one constable Yaseen. PW-6 contradicted this version saying that the respondent along with the case property and the murasila were sent to the PS through constable Yaseen". If only the murasila was sent to the PS, then the case property and the respondent should have been available on the spot the time the I.O (PW-4) arrived there, but the I.O stated that when he reached the spot, the case property was already sent to the PS. It follows that the I.O did not took into his possession the case property on the spot. Rather, as he has testified, he handed over the case property to the Muharrir on 01.02.2018. the FSL report reflects that it was received in the laboratory on 03.01.2018. Even if the aforementioned date 01.02.2018 is considered as a clerical mistake, still it is not clear as to when exactly the I.O received and then handed over the

case property to the Muharrir of the PS. Another material doubt in this context is that the Muharir (PW-5) stated that he received all the four parcels from Khan Zeb seizing officer.

15. It is evident from the testimony of Nabiullah HC (PW-2), who took the samples to the FSL, that he received the parcels containing the samples, from Naeem Ullah MHC (PW-5) on 02.01.2018, the third day of the occurrence. The aforesaid Naeem Ullah (PW-5) has also stated the same facts, admitting that the occurrence took place on 30.12.2017. The prosecution offered no explanation at all as to why the case property was not immediately sent to the FSL.

16. The PWs have admitted that the place of occurrence is visible from a long distance which means that the respondent could manage to run away from the spot, but the latter did not do so. The seizing officer (PW-3) clearly admitted this fact that the contraband chars was seized by the complainant who also sealed it in parcels. There is nothing on the record that the I.O (PW-4) himself examined the case property. In other words, the I.O appears to have taken it for granted that whatever was sealed, was nothing but chars, as the seizing officer mentioned in the papers. It follows that the IO did not discharge his duty of independently sorting out that the case property was in fact the chars and that it was exactly of the same kind and weight as the seizing officer mentioned it in the murasila and the recovery memo. Indeed, as the record very

*Ullah*

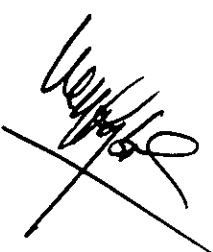
much clearly demonstrates, most of the investigation was already conducted by the seizing officer, having prepared the recover memo, drafted the application for the purpose of chemical analysis at the FSL. Key proceedings conducted by the IO were recording of statements of the PWs Under Section 161 Cr.PC, preparing the site plan and obtaining report of the FSL. The main activities ranging from the registration of the case to key elements of investigation, such as, the drafting of the recovery memo, the separation of the sample, its sealing as well as the sealing of the remaining in parcels and arresting of the accused, all were done by PW3— an official of the preventive branch of the police. This has become rather a routine in the narcotics cases and have grabbed the attention of the higher courts in many a cases. For example, in the case reported as PLD 2018 826 [Peshawar], the hon'ble Court observed that such cases warrant "close and cautious scrutiny of the evidence adduced by the prosecution." Reference may also made to 2016 YLR 1189 Peshawar and PLD 2005 Karachi 128. in which it was held as under:

The complainant is highly interested in the case as he had detected the offence and would like to see that the accused should be convicted therefore, he should not be made the Judge of his own cause. As such his version should be investigated by another officer, which will ensure the fair investigation of the complaint of the complainant.

17. As discussed above the prosecution has failed to prove the custody of the contrabands chars and its transmission



to the FSL. The question of delay in sending the narcotics to the FSL linked with the issue of safe custody has also been considered by hon'ble the Supreme Court in many judgments. In a 2018 case, the hon'ble Court ruled that the chain of custody of the narcotic substance shall be ensured as it plays pivotal role (2018 SCMR 2039). The relevant para is reproduced below:



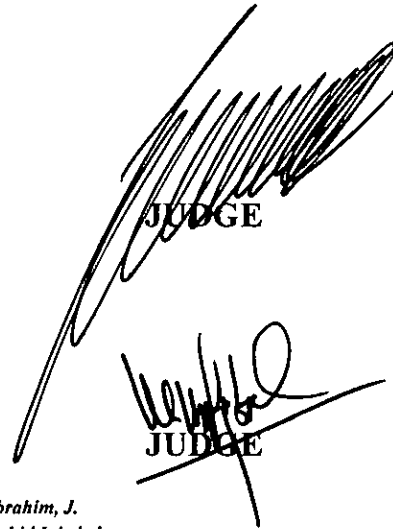
The chain of custody begins with the recovery of the seized drug by the Police and includes the separation of the representative sample(s) of the seized drug and their dispatch to the Narcotics Testing Laboratory. This chain of custody, is pivotal, as the entire construct of the Act and the Rules rests on the Report of the Government Analyst, which in turn rests on the process of sampling and its safe and secure custody and transmission to the laboratory. The prosecution must establish that the chain of custody was unbroken, unsuspecting, indubitable, safe and secure. Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction. This Court has already held in *Amjad Ali v. State* (2012 SCMR 577) and *Ikramullah v. State* (2015 SCMR 1002) that where safe custody or safe transmission of the alleged drug is not established, the Report of the Government Analyst becomes doubtful and unreliable.

18. The FSL report shows that the Control of Narcotic Substances (Government Analysis) Rules, 2001, were not followed meaningfully. The Test Report that contains fulfillment of several protocols for chemical test. Except for one protocol called Duquenois Test, which was marked as "+ive", the rest were just scored off. Similarly, the details about

instrumental analysis shows that just one protocol called Thinlayer Chromatography (TLC), which was marked as +ive, the remaining were left blank. On physical examination, the narcotic substance was observed as brown solid. In a 2015 case that was approvingly followed in the above cited case of 2018, the hon'ble Court made detailed observations on the 2001 Rules referred to above.

19. In the light of above discussion, we have reached to the conclusion that the prosecution has badly failed to prove the charge against the respondent. We are of the considered view that the learned trial Judge has properly appreciated the evidence on record and scored out the material anomalies in the prosecution case. Being devoid of merits, this appeal is dismissed.

**Announced.**  
**19.07.2022**



JUDGE

JUDGE

(Sanaullah)

(D.B)

Hon'ble Mr. Justice Ishtaq Ibrahim, J.  
Hon'ble Mr. Justice Dr. Khurshid Iqbal, J.