

**IN THE SUPREME COURT OF PAKISTAN**

(Appellate Jurisdiction)

**PRESENT:** Justice Muhammad Hashim Khan Kakar  
Justice Ishtiaq Ibrahim  
Justice Ali Baqar Najafi

52/25

**Criminal Petition No. 433/2025**

(Against the judgment dated 10.12.2024  
passed by the Lahore High Court, Lahore  
in CrI. A. No. 43130-J/2023)

Zahid Nawaz

Appellant(s)

Versus

The State, etc.

Respondent(s)

For the Petitioner(s):

Mr. Sheikh Sakhawal Ali, ASC  
Syed Rifaqat Hussain Shah, AOR

For the State:

Chauhdry Irfan Zia, Addl PG

Assisted by:

Mahnoor Omer, Law Clerk

Date of Hearing:

16.06.2025

**JUDGMENT**

**Muhammad Hashim Khan Kakar, J.** Through this petition for leave to appeal under Article 185 (3) of the Constitution of the Islamic Republic of Pakistan, 1973, Zahid Nawaz has challenged the judgment dated 10.12.2024, which was rendered by the Lahore High Court in Lahore. The judgment upheld his conviction and sentence under Section 9 (c) of the CNS Act, 1997.

2. The FIR concisely states that on 14.12.2022 at about 8:30 p.m., Muhammad Naeem Zia, Inspector (PW-2), and other police officials apprehended the appellant, Zahid Nawaz, at a chowk. They seized a black polythene bag from Nawaz's right hand, which was alleged to contain charas. 1280 grams of contraband were discovered during the weighing process. On the spot, the sample and the remaining bulk were sealed, and a 64-gram sample was separated for chemical analysis. FIR No. 500/2022 was promptly registered at the Sahianwala Police Station.



3. The petitioner's counsel contended that the prosecution's case is plagued by numerous legal and factual deficiencies that necessitate acquittal. Despite the fact that the alleged search occurred in a populated area, he argued that the entire case is predicated on the testimony of police officials, with no attempt to associate any private or independent witness at the time of recovery. He underscored that the impartiality of the investigation was compromised by Muhammad Naeem Zia, Inspector (PW-2), who served as both the Investigating Officer and the complainant. The unexplained 15-day delay in transporting the sample to the FSL laboratory was emphasized by the learned counsel, which casts doubt on the chain of custody and renders the report unreliable. Moreover, he maintained that the remaining quantity was only deposited in Saddar Malkhana on 14.01.2023, which further exacerbated concerns about safe custody.

4. Conversely, the learned counsel for the State endorsed the Trial Court and the High Court's conclusions, contending that the prosecution had effectively established its case through the consistent and reassuring testimony of police witnesses. He argued that the case is not automatically vitiated by the sheer delay in sending the sample to the Forensic Science laboratory, in the absence of proof of tampering. The learned Law Officer also contended that police officials are competent witnesses and that there was no evidence of mala fide intent or animosity to unjustly implicate the petitioner.

5. On December 14, 2022, at 8:30 p.m., the prosecution apprehended the petitioner from Kanan Sian Chowk. A black polythene bag containing 1280 grams of charas was retrieved from his possession. The prosecution maintained that a 64-gram sample was separated for chemical analysis, and it was subsequently tested positive by the PFSA. However, we observed that the sample was transmitted for analysis on 29.12.2022, with a 15-day delay. In the same vein, the road certificate 876/21 indicates that the alleged remaining 1216 grams of charas were deposited with Malkhana on 26.12.2022. Consequently, the prosecution had failed to present any evidence to the trial court that would establish the safe custody of the recovered substance at the local police station or the safe transmission of the sample of the recovered substance from the police station to the office of the Chemical Examiner. This Court has consistently maintained that a conviction cannot be recorded in the



absence of any evidence regarding the safe custody or safe transmission of the recovered substance or the samples thereof. In this regard, reference can be made to the cases of "Amjad Ali v. The State" (2012 SCMR 577) and "Ikramullah and others v. The State" (2015 SCMR 1002).

6. Additionally, we have given careful consideration to the fact that the complainant, Muhammad Naeem Zia (PW-2), conducted an investigation into the case. The importance of a fair investigation is a guaranteed constitutional right under Article 10 A of the Constitution of the Islamic Republic of Pakistan 1973. This right is the foundation of a fair trial and necessitates that the complainant and the investigating officer are not the same person, particularly in criminal cases registered under the provisions of the CNS Act, 1997, which carries stringent punishments. Not only must justice be served, but it must also be appearing to be served. It was necessary to eliminate any potential bias or predetermined conclusion. This requirement is particularly critical in laws that impose severe penalties and reverse the burden of proof. We acknowledge that the complainant-police officer is not legally prohibited from conducting an investigation of a case registered under CNSA, 1997. Nevertheless, the investigation may be challenged on the basis of bias or a genuine likelihood of bias on the part of the investigating officer. In the instant case from the very inception, the issue of bias was challenged by the petitioner, he responded to Question 7 as follows in order to portray the investigation as biased and unfair:

"Case is false against me. I had Tandoor/hotel in front of police station and police officials took free as well credit delivery of food from said hotel. The complainant Naeem Zia Inspector borrow facility of food from said hotel and huge money is outstanding against him. When I claimed bill/money of food from Naeem Zia Inspector, he became furious and due to this grudge he was falsely involved me in this case and planted narcotics against me. All the PWs are police officers and officials who deposed falsely to strengthen the false prosecution case. I am innocent deserves for acquittal."

7. The investigation was conducted entirely by the complainant, as evidenced by the record. There is no evidence to suggest that the



investigation was transferred to an independent investigating officer. It is not the case of prosecution in which no other independent investigating officer was available to conduct an impartial investigation. Given the allegations made by the petitioner against the complainant/investigating officer during the recording of this statement under section 342 Cr.P.C., we are of the opinion that the entire investigation, which included the drafting of a written complaint (Exh. PB), the preparation of a seizure memo (Exh.PA), the creation of a site plan (Exh.PC), the recording of witness statements under section 161 CR.P.C., the preparation of a report under section 173, the deposit of the recovered substance with Malkhana, and the subsequent delivery of the substance to the Chemical Examiner has resulted in a miscarriage of justice for the petitioner in terms of a fair investigation.

8. The investigation in a criminal offense, particularly under the provisions of the CNS Act, 1997, which carries a reverse burden of proof under section 29, must be free from objectionable features or infirmities that may legitimately lead to a grievance on the part of the accused that the investigation was unfair and carried out with an ulterior motive. In this regard, guidance can also be sought from Chapter 25 of the Investigation from Police Rules, 1934. The text of Rule 25.2 (3) is as follows:

“It is the duty of an Investigating Officer to find out the truth of the matter under investigation. His object shall be to discovered the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person.”

9. Similarly, this Court in the case of Ikramuddin Rajput v. The Inspector General of Police Sindh (2024 SCMR 510), while underscoring the role and importance of an Investigating Officer observed as under:

“7. No doubt, an Investigating Officer plays a crucial role in the administration of the criminal justice system and the constituent of investigation report and its worth keeps hold of plenteous value and repercussions on the outcome of any criminal case. The criminal justice system signifies the procedure for adjudicating criminal cases in order to award a sentence to the culprits for the offence committed by them; and the foremost objective is to penalize the offenders



subject to the proof whether the offense has been committed or not, and this very important aspect is attached with the burden of proof on the prosecution which has direct nexus with the investigation report and the material and evidence collected by the Investigation Officer in discharge of his sacred duty to bring out the truth without engaging in any manipulation, favoritism, or exceeding the bounds of the law. A defective investigation gradually contaminates the judicial process and poses a hazard to human rights. In unison, it is the duty of superior officers and officers in charge of police stations to ensure that the Investigating Officer follows the provisions of law conscientiously, without any breach, conducting an impartial and honest investigation with the sole aim of bringing the truth to light."

10. Likewise, the petitioner alleged that the complainant/investigating officer harbored animosity toward him. This raises significant concerns, as it violates the fundamental principle of natural justice that no one can serve as a judge in their own cause. The accused is frequently deprived of a fundamental safeguard, which is the cross-examination of an independent investigator, when the Investigating Officer simultaneously serves as the complainant and raiding officer. This officer is frequently a primary witness for the defense. In *Ashiq alias Kaloo v. The State* (1989 P Cr. LJ 601), the Federal Shariat Court categorically observed that such investigations are inherently prejudiced. Although police officials may be competent witnesses in their own right, there is a clear risk of false implication when the complainant, investigating officer, and marginal witnesses are all members of the same police unit and are accountable to each other, without independent corroboration, and the accused is already known to them.

11. In light of the aforementioned discussion and in order to protect the accused's fundamental right to a fair trial under Article 10-A of the Constitution, we are of the considered view that a complainant should avoid acting as the Investigating Officer in a criminal case as far as it is practical, in such circumstances where he has acted as the complainant, the reasons shall be made part of the record if prejudice is pleaded by the defense.

12. For the reasons stated above, we are of the view that the prosecution has not proved its case against the petitioner beyond reasonable doubt. Accordingly, this petition is converted into an appeal and the same is allowed. The conviction and sentence of the appellant is

set aside. He is acquitted of the charge. He shall be released forthwith if not required to be detained in any other case.

ISLAMABAD

16.06.2025

(Farrukh/Mahnoor Omer)

Approved for Reporting