

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

PRESENT:
MS. JUSTICE MUSARRAT HILALI
MR. JUSTICE SALAHUDDIN PANHWAR
MR. JUSTICE ISHTIAQ IBRAHIM

CRIMINAL PETITION NO.828 OF 2024
(Against judgment dated 04.06.2024 passed
by the High Court of Sindh, Circuit Court,
Mirpurkhas in Cr. Appeal No.D-45 of 2024)

Muhammad Iqbal ...Petitioner(s)
Versus
The State through P.G. Sindh ...Respondent(s)
...

For the Petitioner(s): Mr. Muhammad Jamil, ASC
Mr. Muhammad Shabbir Rajput, ASC
Syed Rifaqat Hussain Shah, AOR

For the State: Mr. Siraj Ali Khan, APG

Date of Hearing: 17.02.2025

JUDGMENT

Salahuddin Panhwar, J.- Muhammad Iqbal, the petitioner, was tried by the learned Sessions Judge/Special Judge, CNSA, Mirpurkhas, pursuant to a case registered vide FIR No. 40/2023, dated 15.08.2023, under Section 9(c) of the Control of Narcotic Substances Act, 1997 (CNSA 1997) at Police Station Phulladiyoon. The trial court, vide its judgment dated 25.10.2023, convicted the petitioner under Section 9(c) of the CNSA 1997 and sentenced him to ten years rigorous imprisonment, with a fine of Rs.100,000/-, or in default of payment of fine, to further undergo simple imprisonment for six months. The benefit of Section 382-B Cr.P.C. was extended in favour of the petitioner. Upon appeal, the learned High Court upheld the conviction and sentence awarded by the trial court. Hence, this petition.

2. According to the brief allegations mentioned in the FIR, on August 15, 2023, complainant Muhammad Yaqoob, ASI, along with Aijaz Ali, PC, Ghulam Hussain, PC, and Kanji, DSP, was on patrolling duty. At approximately 5:10 p.m., during their routine duty near

Aatna Morr on Phulladiyoon-Girhore Shareef Road, the petitioner was allegedly apprehended while holding a black-coloured shopping bag. Upon noticing the police, he attempted to flee but was swiftly arrested. On searching the plastic shopping bag, the police discovered 1400 grams of charas, which was subsequently sealed, and a recovery memo was prepared on the spot. The report from the Chemical Examiner later confirmed the presence of the contraband. During the trial, the prosecution produced five witnesses in support of its case. However, in his statement recorded under Section 342 Cr.P.C., the petitioner denied all allegations against him, claiming that he had been falsely implicated in the case.

3. Arguments heard. Record perused.

4. In a criminal trial, the prosecution is duty-bound to establish its case beyond reasonable doubt, and any doubt, no matter how slight, must be resolved in favour of the accused. In cases under the Control of Narcotic Substances Act, 1997, where conviction primarily rests upon the recovery of contraband and its subsequent chemical analysis, it is a settled principle that the prosecution must establish an unbroken and unimpeachable chain of custody to ensure the credibility and evidentiary value of the recovered substance. This Court has consistently held that failure to prove the safe custody and secure transmission of the contraband from the place of recovery to the forensic laboratory renders the chemical examiner's report unreliable and incapable of sustaining conviction. In **Zahir Shah v. The State (2019 SCMR 2004)** this Court held: -

"Safe custody and safe transmission of the drug from the spot of recovery till its receipt by the Narcotics Testing Laboratory must be satisfactorily established. This chain of custody is fundamental as the report of the Government Analyst is the main evidence for the purpose of conviction. The prosecution must establish that chain of custody was unbroken, unsuspicious, safe and secure. Any break in the chain of custody i.e., safe custody or safe transmission impairs and vitiates the conclusiveness and reliability of the Report of the Government Analysis, thus, rendering it incapable of sustaining conviction."

The prosecution is thus required to demonstrate that the custody of the recovered substance remained uninterrupted, free from suspicion, and protected from the possibility of tampering, failing which the accused is entitled to the benefit of doubt (**Sarfraz Ahmed v. The**

State, 2024 SCMR 1571). With these principles in mind, we now proceed to examine whether the prosecution has successfully discharged its burden by establishing the integrity of the chain of custody at every stage of the proceedings.

5. Muhammad Yaqoob, ASI (PW-1), the complainant, testified that on 15.08.2023 at 5:10 PM, he, along with other police officials, apprehended the petitioner, Muhammad Iqbal, in possession of 1,400 grams of charas. However, while testifying before the trial court, he remained silent on a critical aspect, namely, to whom he handed over the recovered contraband and sample parcels after seizure. The prosecution failed to clarify this point, which is central to proving safe custody and uninterrupted chain of possession. Further discrepancies arise from the deposit of case property: HC Muhammad Zafar (PW-3) stated that he handed over the case property to PC Muhammad Bux (PW-4) for deposition at the laboratory, whereas PC Muhammad Bux claimed that he received the case property directly from the Investigating Officer (I.O.). This inconsistency in the prosecution evidence creates serious doubt as to whether the recovered substance remained in secure custody before being sent for forensic analysis. It is well-settled that in cases of narcotics possession, the prosecution must establish that the seized substance was kept in a tamper-proof condition from the time of recovery until it was analyzed by the forensic laboratory, failing which the reliability of the entire case is compromised (**Sarfraz Ahmed v. The State, 2024 SCMR 1571**).

6. Another key aspect of the case is the discrepancy between the chemical report and the testimony of PW-2, PC Aijaz Ali. The chemical report describes the recovered contraband as one large and four small dark brown pieces of charas, whereas PW-2 testified that the recovered bag contained **four large pieces and one small piece of charas**. This inconsistency regarding the physical characteristics of the seized substance raises serious doubt as to whether the contraband remained in its original condition throughout the process. In cases where material discrepancies arise between the prosecution's oral testimony and documentary evidence, the benefit of such doubt must be extended to the accused. The prosecution, being under a bounded responsibility to prove its case beyond reasonable doubt, must ensure that all relevant evidence aligns without contradictions, particularly where forensic evidence is relied upon to support the

charge (*Muhammad Hazir v. The State, 2023 SCMR 986; Javed Iqbal v. The State, 2023 SCMR 139*).

7. Considering the aforementioned deficiencies, it is evident that the prosecution has failed to prove its case against the petitioner beyond reasonable doubt. The chain of custody remains unverified, and the prosecution has not conclusively established the safe transmission of the recovered contraband. The contradictions in the handling of case property and failure to produce key witnesses responsible for its movement further weaken the prosecution's case. It is a settled principle that where any link in the chain of evidence remains doubtful, the benefit thereof must accrue to the accused, as held in (*Javed Iqbal v. The State 2023 SCMR 139*). The prosecution was under a bounded duty to establish each stage of the recovery, storage, and transmission of case property with unimpeachable certainty, and its failure to do so renders the conviction unsustainable (*Muhammad Hazir v. The State, 2023 SCMR 986*).

8. Consequently, we convert this petition into an appeal, allow it, and hereby set aside the convictions and sentences imposed by the lower courts. The petitioner, Muhammad Iqbal, is acquitted of all charges. He shall be released from custody immediately unless required to be detained in connection with any other pending case.

Judge

Judge

Judge

Islamabad, the
17.02.2025
"Not approved for reporting"
Sarfraz Ahmad/-