

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

Special Criminal Appeal No. D-109 of 2024

Before;

Mr. Khadim Hussain Tunio, J.

Mr. Ali Haider 'Ada', J.

Appellant: Faisal Raza son of Allah Dino by caste Rajper,
Through Mr. Rasool Bux Lara Advocate.

The State: **Through** Mr. Muhammad Raza Katohar,
Deputy Prosecutor General.

Date of hearing: 13-05-2025

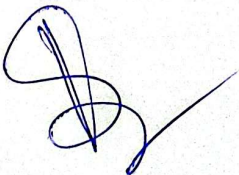
Date of decision: 25.06.2025

J U D G M E N T.

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Ali Haider 'Ada', J.:- Through the instant Special Criminal Appeal, the appellant assailed the judgment dated 07-11-2024, passed by the learned Sessions Judge/Special Judge (Narcotics), Naushahro Feroze, in Special Case No. 53/2024 (Re: The State vs. Faisal Raza), arising out of Crime No. 166/2024, registered at Police Station Moro under Section 9(c) of the Control of Narcotic Substances (Amendment) Act, 2022. By the said judgment, the appellant has been convicted and sentenced to undergo rigorous imprisonment for a term of Nine years and to pay a fine of Rs. 50,000/-. In case of default in payment of the fine, he shall further undergo simple imprisonment for six months. The benefit of Section 382-B Cr.P.C. has also been extended to him.

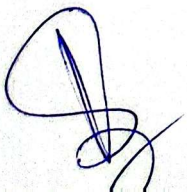
2. Brief facts of the prosecution case are that complainant SIP Ali Mardan Lashari lodged FIR No.166/2024 on 04-04-2024, stating that on the same day, he along with his subordinate staff departed from the police station at 0930 hours for patrolling, as per entry No. 05. During patrolling at various locations, when they reached near Jamali



House at the railway crossing, they observed a person standing with a plastic shopper in his hand. Upon seeing the police party, the said person attempted to flee but was apprehended at the spot. Upon search, the shopper was found to contain two kilograms of charas. From each piece, 100 grams were separated for chemical analysis. Upon inquiry, the apprehended person disclosed his name as Faisal Raza, son of Allah Dino Rajper. A mashirnama of arrest and recovery was prepared at the spot in the presence of mashirs. Thereafter, the accused along with the recovered case property was brought to the police station, where the FIR was formally registered against him on behalf of the State. After completion of the investigation, the investigating officer submitted the challan before the competent Court of law.

3. The case papers were duly supplied to the accused under receipt, and thereafter, a charge was framed against him for the offence punishable under Section 9(c) of the Control of Narcotic Substances (Amendment) Act, 2022. The accused pleaded not guilty to the charge and claimed to be tried.

4. In order to prove the charge against the accused, the prosecution examined the witnesses, PW-1 Mashir Ajaf Burdi at Ex. 3, who produced the memo of arrest and recovery as well as the memo of site inspection; PW-2 Investigating Officer SIP Hakim Din Sahito at Ex. 4, who produced the carbon copy of the road certificate (RC), chemical report, and the relevant departure and arrival entries; PW-3 Complainant SIP Ali Mardan Lashari at Ex. 5, who produced the FIR along with the departure and arrival entries; PW-4 Fida Hussain Mangi at Ex. 6, who also produced relevant departure and arrival entries; and PW-5 WPC Tarique Aziz Mangi at Ex. 7, who produced Entry No. 57 of



Register 19. Thereafter, the learned Deputy Prosecutor General (DPP) for the State closed the prosecution side by filing a statement at Ex. 8.

5. The statement of the accused under Section 342 Cr.P.C was recorded at Ex. 9, wherein he denied the allegations leveled against him and claimed that the charas had been foisted upon him. However, the accused neither examined himself on oath nor opted to produce any witness in his defence.

6. After hearing the arguments from both sides, the learned trial Court pronounced the impugned judgment.

7. Learned counsel for the appellant contended that the appellant is innocent and has been falsely implicated in this case by the police. He argued that the alleged place of arrest and recovery is a thickly populated area; however, the complainant failed to associate any private person as a mashir. He further submitted that there are material contradictions between the testimonies of the complainant, mashir, and Investigating Officer. It was also contended that the prosecution failed to establish the safe custody of the case property and its transmission to the chemical examiner. Significantly, prior to the registration of the FIR, the appellant's mother, Mst. Razia Khanam, filed Criminal Miscellaneous Application No. 92/2024 on 01-04-2024 before the Court of Sessions Judge, Shaheed Benazirabad, alleging illegal detention of her son. It is argued that after the filing of such application, the appellant was falsely implicated in the present case. In view of these submissions, learned counsel prayed for the acquittal of the appellant by setting aside the impugned judgment.

8. On the other hand, the learned Deputy Prosecutor General for the State supported the impugned judgment and submitted that the



recovery was promptly effected from the appellant and there was no enmity or motive to falsely implicate him. He contended that minor discrepancies in the prosecution may be overlooked and the learned trial court has rightly passed the judgment.

9. Heard learned counsels for the parties and perused the material available on record.

10. Upon perusal of the arrival entry, it transpires that the complainant party allegedly received prior spy information; however, this aspect finds no mention whatsoever in the prosecution's testimonies, rendering the version doubtful and indicative of material concealment.

11. Moreover, the record revealed contradictions between the statements of PW-1 Mashir Ajaf Burdi and the complainant, SIP Ali Mardan Lashari, regarding the route of patrolling. PW-1 testified that the police party first patrolled Eid Road before arriving at the place of incident, whereas the complainant deposed that they first approached Moro town and thereafter proceeded to the location of arrest and recovery. In this regard reliance is place on the case of **Asmatullah Vs. The State (2023 P.Cr.L.J 481)**

12. From the perusal of the record, it appears that the FIR in the instant case was registered on 04.04.2024, which is also the alleged date of incident. However, prior to this, the mother of the appellant had filed an application under Section 491, Cr.P.C on 01.04.2024, wherein she specifically alleged that her son (the present appellant) had been unlawfully taken away by police officials of Police Station Balu Ja Quba. The learned Additional Sessions Judge-IV, Shaheed Benazirabad, while disposing of the said habeas corpus application, took serious note of the

allegations, observing that the contentions raised by the mother warranted consideration. The learned Judge directed the high-ranking police officials to verify the matter and ensure that no police officer dares to trespass upon citizens' homes or violate the law in such a manner. This sequence of events creates a serious doubt as to the genuineness of the alleged recovery proceedings. It also gives rise to a possibility of false implication of the appellant.

13. PW Tariq Aziz, Incharge of Malkhana, testified that the complainant handed over the case property to him for depositing into Malkhana and that he recorded the same under proper Roznamcha entry. However, Register No. 19 contradicts this version, as it fails to mention the name of the depositor as the Malkhana Incharge and instead reflects the name of complainant as the depositor. Further discrepancies arise regarding the chain of custody of the recovered narcotics. While the complainant deposed that he handed over the case property along with the police papers directly to the Investigating Officer. This contradiction further aggravates the uncertainty about the manner in which the case property was handled, thereby raising a reasonable doubt concerning its admissibility. Additionally, the Road Certificate (RC), which is a confirming the dispatch of narcotics samples to the Chemical Examiner, was not signed by the Investigating Officer, raising further questions about the procedural steps of the sample transmission. Even more, the record shows that PC Fida Hussain, the dispatcher, received the case property not from the complainant or Investigating Officer, but through the Station House Officer, Police Station Moro, yet another break in the chain of custody, sabotage safe custody and its transmission. It is the duty of the prosecution to establish each and every step of the chain of custody from the recovery



of the contraband, preparation of sample parcels, to its safe custody and secure transmission to the concerned laboratory. In the event of any lapse or defect in this process, it cannot be held with any degree of certainty that the prosecution has successfully established its case against the accused. Reliance is placed upon the case of ***Abdul Haq vs the state 2025 SCMR 751, Asif Ali and another vs the state 2024 SCMR1408 and Javed Iqbal vs. The State (2023 SCMR 139)***.

14. It is also significant to note that while PW Tariq Aziz deposed that the complainant handed over the case property to him directly, the complainant himself stated that he handed over the same to the Investigating Officer. This contradiction creates a serious doubt regarding the safe and uninterrupted custody of the recovered substance.

15. Furthermore, the Chemical Examiner Certificate mentioned a specific sample number, which is neither reflected in Register No. 19 nor indicated in the other document. The absence of such identification details in the official records, particularly where sealed narcotics are concerned, raises serious suspicions about the link between the seized property and the item actually analyzed. This discrepancy violates the principle of safe and secure transmission of case property, which is vital in establishing guilt in narcotics cases.

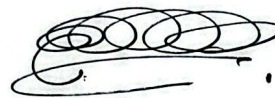
16. Another material inconsistency lies in the manner of sealing and sampling of the recovered narcotics. The case property allegedly consists of two separate pieces of charas, each weighing one kilogram. However, the prosecution asserts that these two pieces were jointly sealed and that 100 grams were separated from each and sealed for chemical analysis. Such joint sealing contradicts standard protocols for



sealing narcotics as reiterated in the case of **Sarfaraz Ahmed vs the state 2024 SCMR 1571**.

17. In view of the above inconsistencies, contradictions, and procedural irregularities, particularly regarding the chain of custody, handling of the case property, and contradictions in witness testimonies, the prosecution has failed to prove its case beyond a reasonable doubt. The benefit of such doubt, as per settled principles of criminal jurisprudence, must go to the accused.

18. Based on what has been discussed above, the instant appeal is allowed. Consequently, the judgment dated 07.11.2024 passed by the learned trial Court is set aside. The appellant, Faisal Raza Rajper, is acquitted of the charge. He shall be released forthwith, if not required to be detained in any other case.



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Announced in open Court
by us today viz 25.06.2025.

