

[Supreme Court of Pakistan]

Present: Manzoor Ahmad Malik, Mazhar Alam Khan Miankhel and Syed Mansoor Ali Shah,**JJ****Mst. SAKINA RAMZAN---Petitioner****Versus****The STATE---Respondent**

Criminal Appeal No. 184 of 2020, decided on 6th January, 2021.

(On appeal from the judgment of High Court of Sindh, Karachi, dated 01.6.2018, passed in Crl. A.

No. D-98/2016)

(a) Control of Narcotic Substances Act (XXV of 1997)---

---S. 9(c)---Possession and transportation of 45 kilograms of charas---Reappraisal of evidence---Safe custody and transmission of samples of the narcotic from the warehouse to the chemical examiner not established---Held, that the letter of the Superintendent Preventive Service written to the Chemical Examiner stated that 43 sealed samples were being forwarded to the chemical examiner---Author of said letter was not produced as a witness---In the absence of the statement of the warehouse in-charge and the statement on behalf of the complainant (the official who recovered the narcotics), regarding the delivery of the samples of the narcotic drugs to the office of the chemical examiner, it could not be ascertained whether the narcotic drugs and the representative samples were deposited in the warehouse by the complainant; when and who collected the representative samples from the warehouse; and who delivered them by hand to the office of the Chemical Examiner---Such facts revealed that the chain of custody had been compromised and was no more safe and secure, therefore, reliance could not be placed on the Report of the Chemical Examiner to support conviction of the accused---Conviction and sentence recorded against the accused-lady were set aside in circumstances and she was acquitted of the charge---Appeal was allowed.

Imam Bakhsh's case 2018 SCMR 2039 and Ikramullah's case 2015 SCMR 1002 ref.

(b) Control of Narcotic Substances (Government Analysts) Rules, 2001---

---Rr. 4, 5 & 6---Control of Narcotic Substances Act (XXV of 1997), S. 9(c)---Possession of narcotics--Report of Chemical Examiner---Safe custody and transmission of samples of the narcotic from the police to the chemical examiner---Scope---Chain of custody or safe custody and safe transmission of narcotic drug began with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing---Such chain of custody must be safe and secure, because, the Report of the Chemical Examiner enjoyed critical importance under the Control of Narcotic Substances Act, 1997 and the chain of custody ensured that correct representative samples reached the office of the Chemical Examiner---Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples made the Report of the Chemical Examiner unsafe and unreliable for justifying conviction of the accused---Prosecution, therefore, had to establish that the chain of custody had been unbroken and was safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner.

Syed Rifaqat Hussain Shah, Advocate-on-Record and Hassan Mahmood Mandviwala, Advocate High Court for Petitioner.

Moulvi Ijaz-ul-Haq, DAG for the State.

Date of hearing: 6th January, 2021.

JUDGMENT

SYED MANSOOR ALI SHAH, J.---During snap checking on 26.11.2014, Customs officers stopped a vehicle on the RCD Highway, Karachi loaded with three LCD TVs, two room heaters and one washing machine. The driver of the vehicle was Abdul Ghaffar (since acquitted) and the appellant was the only passenger in the vehicle. Upon thorough examination of the body frames of the three LCD TVs, two room heaters and one washing machine, 45 Kgs (gross) of charas was recovered hidden in the body frames of these items. The appellant along with co-accused were booked in FIR No.150 dated 27.11.2014, for an offence under section 9(c) of the Control of Narcotic Substances Act, 1997 ("CNSA").

2. After regular trial, the appellant was convicted under section 9(c), CNSA and sentenced to imprisonment for life and to pay fine of Rupees One million or in default thereof to suffer simple imprisonment for five years, while benefit of section 382-B, Cr.P.C was also extended to the appellant. The co-accused Abdul Ghaffar was acquitted of the charge by the trial court being a taxi driver having no involvement in the matter. The appellant challenged her conviction and sentence before the Sindh High Court, where her appeal was dismissed and the conviction and sentence of the trial court was maintained. Leave was granted by this Court vide order dated 04.3.2020 for reappraisal of the entire evidence so as to ensure safe administration of criminal justice.

3. We have gone through the record of the case with the assistance of learned counsel for the parties. We have noticed that according to the statement of the complainant Muhammad Younus Sabir (PW-1), SPO, Customs Preventive, he recovered the narcotic drugs from the items mentioned above on 26.11.2014 and prepared the memo of recovery along with inventory (Ex-9/A & Ex-9/A-1) and deposited the same in the warehouse. Zulfiqar Ali (PW-3), PO, Customs Preventive, stated that SO Khalid was Incharge of the warehouse, however, the said incharge was not produced by the prosecution to confirm the safe custody of the narcotic drugs after its recovery on 26.11.2014. The Report of the Director Laboratories and Chemical Examiner (Ex-11A/1) reveals that the narcotic drugs were received by hand in the office on 28.11.2014 through ASO Muhammad Younas Sabir. No "ASO" Muhammad Younas Sabir was produced before the court. Considering it to be SPO Muhammed Younas Sabir, wrongly mentioned as ASO in the Report, even SPO Muhammed Younas Sabir, while appearing as PW-1 never stated that he delivered by-hand the narcotic drugs at the office of the Director Laboratories and Chemical Examiner. Infact he stated that:

"we had sent 43 samples sent (sic) for chemical examiner with the letter of superintendent of customs."

The letter of the Superintendent Preventive Service dated 27-11-2014 (Ex 9/B) written to the Chemical Examiner states that 43 sealed samples are being forwarded to the chemical examiner. The author of this letter was not produced as a witness. In the absence of the statement of the warehouse in-charge and the statement on behalf of Muhammed Younas Sabir (PW-1) regarding the delivery of the samples of the narcotic drugs to the office of the chemical examiner, it cannot be ascertained whether the narcotic drugs and the representative samples were deposited in the warehouse by PW-1; when and who collected the representative samples from the warehouse; and who delivered them by hand to the office of the Chemical Examiner. The chain of custody or safe custody and safe transmission of narcotic drug begins with seizure of the narcotic drug by the law enforcement officer, followed by separation of the representative samples of the seized narcotic drug, storage of the representative samples and the narcotic drug with the law enforcement agency and then dispatch of the representative samples of the narcotic drugs to the office of the chemical examiner for examination and testing. This chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples makes the Report of the Chemical Examiner unsafe and unreliable for justifying conviction of the accused. The prosecution, therefore,

has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner.

4. The facts of the present case reveal that the chain of custody has been compromised and is no more safe and secure, therefore, reliance cannot be placed on the Report of the Chemical Examiner to support conviction of the appellant. See Imam Bakhsh¹ and Ikramullah.² For the above reasons we allow this appeal and set aside the conviction and sentence of the appellant. The appellant is directed to be released forthwith, if not required in any other case.

5. Foregoing are the reasons for the short order dated 06.1.2021, which is reproduced hereunder for convenience:-

"For reasons to be recorded later, the instant criminal appeal is allowed. The conviction and sentence of appellant Mst. Sakina Ramzan is set aside. She is acquitted of the charge framed against her. She is behind the bars and is ordered to be released forthwith, if not required to be detained in any other case."

6. Before parting with the judgment we wish to place our appreciation on record for the pro bono assistance rendered by Mr. Hassan Mahmood Mandivala, Advocate representing the appellant on behalf of Legal Aid Committee for the Welfare of the Prisoners.

MWA/S-4/SC Appeal allowed.