JUDGMENT SHEET

ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Jail Appeal No.396 of 2024

Sajid Sohail
Versus
The State

Appellant by:	Mr. Ibrahim Rashid and Mr. Muhammad Shahzad Qureshi, Advocates.
State by:	Rana Hassan Abbas, ADPP. Muhammad Imran, SI, P.S Khanna, Islamabad.
Date of Hearing:	**15.05.2025.**

INAAM AMEEN MINHAS, J:- Through the instant jail appeal, the appellant has assailed the judgment dated 30.07.2024 **("Impugned Judgment")**, passed by the learned Additional Sessions Judge-VI, Islamabad (East), **("Trial Court")**, whereby the appellant was convicted and sentenced under Section 9-C, Control of Narcotics Substances Act, 1997 **("CNSA")** to undergo Rigorous Imprisonment of four years and six months along with fine of Rs.20,000/-, in case of default in payment of fine, the appellant shall undergo further five months Simple Imprisonment, in case FIR No.143, dated 02.04.2020, u/s 9-C, CNSA & 3/4 P.E.O H, registered at police station Khanna, Islamabad.

2. Brief facts of the case are that on 02.04.2020, at about 07:30 p.m within the jurisdiction of P.S Khanna, Islamabad, on the tip of spy information, after obtaining search warrant, raid was conducted at the house of appellant Sajid Sohail at Phase-1, Margallah Town and during search of said house, Chars Garda weighing 1202 grams and three canes containing alcohol (each of 30 liter) were recovered, beside said

UNCERTIFIED

canes, three bags containing bottles stickers and caps of bottles were also found there, therefore, the FIR was registered against the appellant.

3. After completion of the investigation, report u/s 173 Cr. P.C in respect of offence u/s 3/4 P.E.O.H was submitted before the learned Magistrate, P.S. Khanna, whereas report u/s 173 Cr.P.C. to the extent of Section 9-C CNSA was submitted before the learned Trial Court. The learned Trial Court framed the charge, to which the appellant did not plead guilty and claimed trial, therefore, the prosecution evidence was summoned. The prosecution produced five witnesses to establish its case.

4. A gist of the prosecution evidence is reproduced hereunder for later assessment and consideration.

> **PW-1:** Zaheer Ahmed SI stated that on 02.04.2020, he chalked out FIR No.143/20, u/s 9-C CNSA and 3/4 of Hadood Ordinance Exh-PA on the complaint sent and prepared by Tariq Rauf SI.
>
> **PW-2:** Naeem Ul Hassan ASI, Moharrar Malkhana, kept parcels of Charas and Alcohol in Malkhana in safe custody. He then handed over a sealed parcel of Charas to constable Sher Khan 3985 for chemical analysis, vide road certificate No.22/20, dated 07.04.2020.
>
> **PW-3:** Tariq Rauf SI, complainant/ Investigating Officer (1.O) apprehended the appellant, recovered narcotic substance, conducted personal search, prepared unscaled site plan, made parcels of narcotics, etc, deposited case property in the Malkhana for safe custody, recorded statements of the witnesses u/s 161 Cr.P.C and handed over the case file to SHO concerned for preparation of report u/s 173 Cr.P.C.
>
> **PW-4:** Sher Khan (retired constable No. 3985) stated that on 07.04.2020, he received a parcel said to contain Charas weighing 10 grams having the stamp of "TR" from Moharrar of P.S Khanna through road certificate No.22/10 and deposited the same in the laboratory, Islamabad.
>
> **PW-5:** Fawad Khalid SI is the witness of the recovery proceedings.

UNCERTIFIED

5. After examination of the prosecution witnesses, to enable the appellant to explain the circumstances appearing in the evidence against him, statement of the appellant as mandated under Section 342 Cr. P.C. was reduced into writing, wherein the appellant denied the allegations of the prosecution and pleaded innocence. The appellant did not opt to record his statement under Section 340(2), Cr. P.C. and also did not produce any defence evidence. The learned Trial Court after hearing the arguments passed the Impugned Judgment and convicted and sentenced the appellant, hence, this appeal.

6. The learned counsel for appellant contended that the entire case is based on illegal and unlawful raid conducted by the CIA Staff without observing the legal procedure and in violation of statutory provision of law; that no recovery was affected from the possession of the appellant and a false and bogus case was registered against the appellant; that no witness was associated from public; that the prosecution has failed to prove the charge against the appellant as there are discrepancies in the statements of the prosecution witnesses and that the learned Trial Court has not appreciated the evidence in its true perspective, therefore, the appellant is entitled to be acquitted.

7. On the other side, the learned ADDP appeared on behalf of the State and contended that a huge quantity of narcotics was recovered from the appellant's possession in the presence of the prosecution witnesses, which is corroborated by the FSL report; that there is no *mala fide* or ill will on the part of the prosecution; that the appellant's conviction is based on evidence and that the prosecution proved its case beyond any shadow of doubt, therefore, the instant appeal may be dismissed.

8. We have heard the learned counsel for the parties and perused the record.

9. The entire prosecution case rests upon the raid conducted by the CIA staff and the subsequent recovery of the alleged Charas Garda

UNCERTIFIED

weighing 1202 grams from the appellant's residence. The raid on the house of the appellant was carried out by the CIA staff, which led to the recovery of the contraband substance. Under Section 156(1), Cr.P.C only an officer, who is incharge of a police station within the jurisdiction of the area, where the offence took place has the legal power to conduct such investigation. The term "officer in charge of a police station" is specifically defined in Clause (p) of Section 4, Cr.P.C and this definition does not include CIA personnel. Therefore, the CIA staff lacks the lawful authority to investigate cognizable offences or conduct such a raid without knowledge of the concerned police station.

10. It is an admitted fact on the record, as confirmed by the investigating officer (PW-3) that no formal entry or report of this raid was recorded at the concerned police station. Furthermore, neither the SHO, police station Khanna was informed regarding the raid nor any officer from the local police station was informed or involved in the operation. This complete lack of non-compliance with statutory procedure renders the raid of the CIA unlawful and in direct violation of Section 156, Cr.P.C. As a result, all the proceedings initiated based on the CIA raid are without any legal standing. This legal position is also supported by the authoritative judgment of the Honourable Supreme Court of Pakistan in the case ***State vs. Bashir & others***, **(PLD 1997 SC 408)**, which reinforces the principle that any investigation conducted by an un-authorized agency like the CIA is void in the eyes of the law.

11. As per the testimony of the recovery witness Fawad Khalid SI (PW-5), the narcotic substance was allegedly found on an iron stand. However, there is no mention in the FIR Exh-PA or the examination-in-chief that this recovery was made following a disclosure or pointation by the appellant. Additionally, the recovery was not made from the appellant's person. Instead, the record shows that the contraband was found on an iron stand located in the basement of the house and it was the investigating officer, who independently recovered the substance.

UNCERTIFIED

Both the FIR Exh.PA and the statement of investigation officer PW-5 confirm that the narcotics was recovered without any direct or indirect involvement of the appellant. The only connection the prosecution claims is the appellant's presence at the site during the recovery, which alone is not sufficient to establish conscious possession or knowledge of the narcotics under the law. This significant gap in the chain of evidence casts a serious shadow over the prosecution's case.

12. According to the contents of the complaint, the contraband substance was allegedly recovered from House No. 669, Street No. 33, Phase I, Margalla Town. However, Tariq Rauf SI while appearing as PW-3 stated that after receiving information from an informant, he went to the house of the appellant located in Sohan, which is a different location. This statement directly contradicts the location mentioned in the FIR Exh-PA and his examination-in-chief. Notably, PW-3 failed to mention the specific address recorded in the FIR during his testimony. This inconsistency between the version given in the FIR and the witness statement creates a serious doubt regarding the actual place of recovery. In criminal law, particularly in narcotics cases, the exact location of recovery of the narcotic substance is crucial to establish the prosecution's case credibility. Such a contradiction on a material point casts doubt on the truthfulness of the recovery and weakens the prosecution's version. Moreover, the recovery took place from the appellant's house but the prosecution did not produce any oral or documentary evidence to establish that the appellant was either the owner or tenant of that house, or even in lawful possession of it. The absence of such proof creates a serious doubt about the appellant's link to the recovered narcotics.

13. It is an established principle of law that the Control of Narcotic Substances Act (CNSA) is a special law that imposes strict provisions and harsh penalties for offences involving narcotics. Due to the severity of such punishment, the prosecution bears a heavy responsibility to prove its case with the highest degree of certainty. This view is

UNCERTIFIED

reinforced by the ***Ameer Zeb's case*** **(2012 PLD 380)**. The law requires that the case be proven beyond a reasonable doubt in matters involving narcotics, even a minor doubt arising from contradictions or gaps in the evidence must be resolved in favour of the accused.

14. In view of the above discussion, the prosecution has failed to prove its case beyond any reasonable doubt, rather there are several aspects, which create doubt in the prosecution case. Consequently, the instant appeal is **allowed**. The Impugned Judgment of the learned Trial Court is **set aside**. The appellant is **acquitted** from case FIR No.143, dated 02.04.2020, u/s 9-C, CNSA & 3/4 P.E.O H, registered at police station Khanna, Islamabad. He be released forthwith, if not required in any other case.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(INAAM AMEEN MINHAS)
JUDGE

Announced in open Court on 23.06.2025

JUDGE **JUDGE**

R.Anjam

UNCERTIFIED