

JUDGMENT SHEET
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT,
HYDERABAD**

Criminal Appeal No.D-151 of 2023

PRESENT

Mr. Justice Arshad Hussin Khan.

Mr. Justice Dr. Syed Fiaz ul Hassan Shah.

Appellant : Inayat son of Abdullah Samo, through Mr. Aijaz Ahmed Shaikh, Advocate.

Respondent : The State through Mr. Altaf Khokhar, A.P.G.

Date of Hearing: 16.04.2025.

Date of Judgment: 29.04.2025.

J U D G M E N T

Dr. Syed Fiaz ul Hassan Shah, J: Through this appeal, the appellant has sought acquittal from the Judgment of conviction dated 30.11.2023 passed by the learned Model Criminal Trial Court-I/Special Judge Control of Narcotics Substance Act, Hyderabad in Special Case No.98 of 2023 arising from the Crime No.06 of 2023 under section 9 (i) 3-C, CNS Act, registered at PS Budhani, District Hyderabad, whereby the appellant has been convicted for offence punishable under section 9(c) of CNS Act, and sentenced to undergo Rigorous Imprisonment for nine years and to pay fine of Rs.80,000/- (eighty thousand), in default of payment thereof to

further undergo SI for three months, extending him benefit of section 382-B, Cr.P.C.

2. The relevant facts of the prosecution's case are that on 23.06.2023, SIP Mubarak Lashari of Police Station Budhani, Hyderabad, along with PC Riaz Ahmed, PC Akbar Ali, and PC Amjad Tayyab, departed from the police station for area patrolling and crime prevention duties via police mobile, as per departure entry No. 18 of the roznamcha at approximately 2100 hours. During patrolling at various locations, they reached Gul Khan Petrol Pump, Budhani, Hyderabad, where they received a tip-off that one Inayat Samo, along with three accomplices, was in possession of a large quantity of narcotics including charas, manpurries, raw material for the preparation of manpurries, and Gutka Mawa. They were reportedly waiting for a vehicle in the street adjacent to Inayat Samo's house located in Talib-ul-Mola Colony, Budhani Hyderabad, to transport the aforementioned items. Acting upon this information, the police party proceeded to the pointed location, i.e., a common street near the residence of the accused, Inayat Samo. There, they observed four individuals holding black-colored shopping thailies, with several "kattas" lying in front of them. Upon sighting the police vehicle, the individuals appeared confused and attempted to flee. The police team disembarked, surrounded the area, and apprehended one individual at approximately 2200 hours. The remaining three individuals managed to escape under the cover of darkness, discarding their bags on the spot. They were identified as Khan Muhammad alias Khanoo, Abdul Rehman alias Porhal Majeedano, and Naveed Memon. Due to the unavailability of public witnesses, SIP Mubarak Lashari appointed ASI Ziauddin Shah and

HC Riaz Ahmed as official mashirs for the arrest and recovery proceedings. Upon inquiry, the arrested individual disclosed his name as Inayat Samo, son of Abdullah Samo, and a resident of Talib-ul-Mola Colony, Budhani, Hyderabad. SIP Mubarak Lashari recovered a black-colored bag from the possession of Inayat Samo, which upon inspection, was found to contain two patties of charas. Additionally, a small piece of charas was recovered from the side pocket of his shirt, along with cash amounting to Rs. 400 in various denominations. The recovered charas was weighed using an electronic scale and found to be **1500** grams. Furthermore, the police examined the three black bags thrown by the absconding accused. The bag attributed to Khan Muhammad alias Khanoo contained two patties and a small piece of charas weighing 1060 grams. The bag belonging to Abdul Rehman alias Porhal contained two patties and a small piece of charas weighing 1040 grams. The bag associated with Naveed Memon held two patties and a small piece of charas, weighing 1200 grams. Additionally, the “kattas” found at the location were searched. Six “kattas” contained crushed nuts (choora), weighing 76 kilograms. One “katta” contained 22 kilograms of raw material used in the preparation of supari and manpurries. Two “kattas” contained lime (choona), while seven “kattas” held 471 Ragni Gutka packets. Another “katta” held 100 Boss Gutka packets. Furthermore, three bottles contained lime, and three plastic tubs, one electronic scale, 12 “kattas” of wrappers weighing 257 kilograms, and 200 prepared manpurries were also recovered. Upon further inquiry, the arrested accused, Inayat Samo, confirmed the identities of the absconding co-accused as his accomplices: Khan Muhammad alias Khanoo, Abdul Rehman alias

Porhal, and Naveed Memon. All recovered items were sealed on the spot for chemical examination. The mashirnama of arrest and recovery was prepared by SIP Mubarak Lashari in the presence of his subordinates, ASI Ziauddin Shah and HC Riaz Ahmed. Subsequently, the police party, along with the arrested accused and case property, returned to Police Station Budhani, Hyderabad. SIP Mubarak Lashari recorded the arrival in the roznamcha and registered FIR No. 06 of 2023 under Section 9-1(3-C) of the CNS Act against the accused persons on behalf of the State. A separate FIR under Sections 336-B, 337-J of the Pakistan Penal Code (PPC), and Section 8 of the SPPMSGMA was also registered against the same accused persons.

3. Upon completion of the usual investigation, the Investigating Officer submitted the challan against the accused persons, namely Inayat Samo, Khan Muhammad alias Khanoo, Abdul Rehman alias Porhal, and Naveed Memon for their trial before the competent court. Subsequently, the accused Khan Muhammad alias Khanoo, Abdul Rehman alias Porhal, and Naveed Memon, after securing pre-arrest bail, also joined the proceedings and became part of the trial.

4. The requisite documents of prosecution file were provided to the Accused/Appellant by the trial Court as required under section 265-C of the Cr.P.C. at Exh.1. Subsequently, the trial Court has framed the "Charge" against the Appellant and others at Exh.2. The accused persons pleaded not guilty and claimed for fair trial, vide their pleas at Exh.2/A to Exh.2/D respectively.

5. During the trial, the prosecution has presented evidence to support the charge and to prove the allegations against the Appellant / accused. P.W-1 SIP Mubarak Ali Lashari who is the

Raiding Officer, Arresting Officer, Recovery Officer, Complainant and Investigation Officer of the case has testified at Exh.3, he had produced various documents, including roznamcha entries, arrest and recovery memo, the FIR, the site inspection memo, a letter to SDPO/DSP Chalgiri, a sample receipt, letters to the chemical examiner and the in-charge CRO, the criminal records of the accused, and the chemical report, marked as Exh.3/A to Exh.3/L respectively. The P.W-2 ASI Ziauddin Shah, who is witness of event and Mashir had testified at Exh.4 but he did not produce any material. The P.W-3 WHC Akram Gill, Incharge Malkhana (Store Room of Police Station) had testified at Exh.5 and submitted malkhana Entry No.6 from register No.19, which was marked as Exh.6/A.

6. Afterwards, the prosecution side was closed at Exh.7 through the ADPP. Thereafter, the statements of the accused under Section 342 of the Cr. P.C was recorded at Exh.8 to Exh.11. In these statements, the accused denied all allegations made by the prosecution and asserted their innocence. The accused persons, in their statements under Section 342 Cr.P.C, opted not to testify under oath as per Section 340(2) Cr.P.C, nor did they call any defense witnesses despite being given the opportunity. However, while answering to question, appellant Inayat stated that on 23.06.2023, he was going to his house at 03:00 p.m. and during the way, police mobile of police station Hatri, stopped him and demanded money/bribe, but he refused to pay whereof police has apprehended him and handed over his custody to police station Budhani, Hyderabad and booked him in this false case as he had previous enmity with the police of police station Budhani. He had some shops

at Budhani Bus stop, Hyderabad. He claimed to be innocent and stated nothing was recovered from his possession as alleged.

7. After conclusion of trial and hearing the State Prosecutor and the Counsel for Defence, the learned trial Court convicted and sentenced the Appellant as referred at paragraph-1 hereinabove. The Appellant has impugned the said judgment of conviction before us which was passed on 30.11.2023 and prayer for setting it aside and acquit the Appellant from the charge.

8. The learned counsel for Appellant/accused argued that on the same set of evidence, the learned Trial Court has been acquitted three accused person ignoring the complainant and mashir inconsistent statements on key points. He further stated that there was a violation of Section 103 Cr.PC regarding the recovery of the alleged contraband and that the parcel was sent to the chemical laboratory three days after the recovery, breaching Rule 4 of the Control of Narcotic Substance (Government Analysts) Rules 2001. Additionally, the counsel claimed that the police falsely implicated the accused due to his existing enmity with PS Budhani Hyderabad and on the alleged day of incident, he was asked to pay bribe but he refused hence booked in this false case. Furthermore, the prosecution allegedly failed to establish any link between the accused and the recovered items and could not prove the case beyond reasonable doubt. Finally, the counsel prayed the court to acquit the accused.

9. On the other hand, the A.P.G while supporting the impugned judgment has contended that the prosecution by examining prosecution witnesses and producing positive chemical examiner's report has proved its case beyond reasonable doubt and the

presence of the Appellant has not been denied at crime scene even no enmity has been proved against the police and the testimonies of prosecution's witnesses remain consistent on material points, as such the prosecution has proved its case beyond reasonable doubt and the trial Court has rightly convicted the Appellant and the present appeal is liable to be dismissed.

10. We have heard the Counsel for Appellant and the APG for State and with their assistance perused the evidence brought on record.

11. The first glaring contradiction surfaced out that as per FIR, Challan / charge sheet so also according to Memorandum of Recovery, Arrest and Seizure, on 23.06.2023, a police party Headed by SIP Mubarak Ali Lashari accompanying staff ASI Zia-uddin Shah, HC/602 Riaz Ahmed, PC/2441 Akbar Ali PC/3232 Muhammad Tayyab through Station diary No.18 around 2100 hours were patrolling in a private car and during snap checking, they had received spy information about the Narcotics. During testimony on oath before the trial Court, the P.W-1 Mubarak Ali Lashari, who has had four character in the present case (Raiding Officer / Seizing Officer / Arresting Officer, Complainant and Investigation Officer of the present case) has deposed in a manner utter opposite to what is logically stated in the Memorandum of Recovery & Arrest, FIR and Police Report. He deposed that: ***"On 23.06.2023 I was posted at police station Budhani, Hyderabad and on the same date, I along with PC Riaz Ahmed, PC Akbar Ali and PC Amjad Tayyab left police station for area patrolling and prevention of crimes through police mobile, vide departure roznamcha entry No.18 at about 2100 hours....."*** On the same line, the PW-2 Ziauddin Shah,

who is the mashir and witness of event deposed that: ***“On 23.06.2023 I was posted at Police station Budhani, Hyderabad and on the same date, SIP Mubarak Ali Lashari along with me, PC Riaz Ahmed, PC Akbar Ali and PC Amjad Tayyab left police station for area patrolling and prevention of crimes through police mobile, vide roznamcha entry No.18 at about 2100 hours..... It was a grey colour car through that police arrived on the spot and it was belong to SIP Mubarak Lashari, however, I do not know its registration number and the registration number/colour of the car has not been shown in the memo of arrest and recovery. That car was driven by SIP Mubarak Lashari. It is fact that I am subordinate of SIP Mubarak Ali Lashari”***. The PW-01 (Raiding Officer, Recovery Officer, Complainant so also the Investigation Officer of the case in hand) and PW-02 (Mashir and eye witness) have controverted the contents of Memorandum of Recovery, FIR and Police Report in their testimony on oath in the manner that it has triggered out contradiction on the means of transport used for raid, recovery and brining the case property at police station. The PW-1 and PW-2 have not confirmed the contents of Memorandum of Recovery, FIR and Police Report in their testimony that they have used private car (although without its description, registration number or color) on the contrary both witness of event deposed that they have headed for patrolling in Police Mobile and this statement on oath rebutted the contents of Memorandum of Recovery, FIR and Police report and so also clouded shadows of doubt about the handling of case property from the crime scene to the police station and it cannot believe that as which of mode or means of transport were used to rely on the

momentous recovery and initial handling and safe custody of case property until it has allegedly brought at the police station for further proceedings.

12. Another contradiction appears in the testimony of the PW-01 and PW-02 is about the manners of arrest of the Appellant/Accused. The PW-1 deposed; ***“On seeing the police mobile, they became confused and tried to escape. Police party alighted from police mobile, encircled and apprehended one person at 2200 hours and three persons were succeeded to make their escape good while taking an advantage of darkness and throwing their respective thailies on the spot.”*** The PW-2 Ziauddin Shah, in his testimony has deposed: ***“Police parked the vehicle at right side in the street of Talib Mola colony. The escapee accused were chased by me along with SIP Mubarak Lashari, PC Akbar, HC Riaz and PC Tayyab apprehended the accused Inayat Samo. SIP Mubarak Lashari has conducted the search of apprehended accused Inayat Samo and at that time I was standing with SIP Mubarak Ali Lashari.”*** The deposition of PW-2 about chasing the Appellant and subsequently recovery from him has become doubtful as according to the prosecution rest three accused on viewing Police party had thrown away the narcotics while running out as such same view can conveniently be formed about the present Appellant in view of evidence of PW-02 that the Appellant has also run away and had chased but he had not thrown away Narcotics while the evidence of PW-1 states that the Appellant was arrested on spot had become gross contradictory and have doubted the direct arrest and recovery from the spot at crime scene.

13. Doctrine of safe custody and safe transmission—Now moving towards the essential question of safe custody and safe transmission of the case property.

14. The first dent in the prosecution story is the evidence of P.W-1 Mubarak Ali Lashari, the Raiding Officer/Seizing Officer/Complainant deposed: **“I secured/recovered one black colour thaili (shopper) from front fold side of his shalwar which I opened, checked and found chars in shape of two plates types patties therein. I also secured one small piece of chars from side pocket of his shirt besides cash Rs.400/-... The piece of secured chars of accused Inayat Samo were weighed through electronic scale which became 1500 grams.”** We are lost to understand that a person having 1.5 KG weight of Narcotics folded in his shalwar and that too he ran away with it while the police party has chased him and arrested him while his 03 accomplice run away by throwing chars.

15. Secondly, according to PW-1 the seized Narcotics/chars comprised three pieces, however, weight and description of each piece has not been mentioned in Memorandum of Recovery Exh.3/C or in FIR Exh.3/B or in the letter to Chemical Lab Exh.3/G or even in Chemical Report Exh.3/L. On the other hand, the evidence of PW-1 in his cross-examination about the specific details of 04 parcels connecting 04 Accused (including Appellant) is also unbelievable to a prudent man especially the position of escaped accused at crime scene so also the exact location of thrown away narcotics of each accused have not documented or referred in Map of crime scene or deposed in Examination in Chief by said PW-01 and only explained in cross which hit under doctrine of improvement. Furthermore, PW-1 admitted that it was dark night and none of the Mashir has

supported the statement of PW-1 which he has deposed: **“I saw the accused Khan Muhammad alias Khanoo, Naveed Memon and Abdul Rehman alias Porhal in the headlights of vehicle when they threw the polythene bags on the spot and ran, hence, I identified their shoppers/polythene bags when secured from the place of incident and such fact has not been mentioned in detail in the contents of the FIR as well memo of arrest and recovery.....”**. The self-admission in the later portion of above evidence by the PW-1 that descriptions of thrown away narcotics by other 3 accused, in a dark night, was not documented, is also creating story of prosecution as doubtful.

16. The third tragedy with the prosecution case is again the evidence of PW-1 who is the Raiding Officer / Seizing Officer / complainant and the Investigation Officer has shown complete ignorance as to when and on which date and time and under what document he has received the case property from the Chemical Lab and how and under what manners it has been entered in the Malkhana finally before producing in the trial Court during evidence. The P.W-1 Mubarak Lashari has deposed: **“It is fact that the sealed case property parcels do not bear the dates thereon under my signatures.....Accused Inayat Samo and the secured chars were brought to police station through car, however, the remaining properties of crime number 7/2023 was shifted to police station through one loading Suzuki, in which HC Riaz was boarded.....I do not remember when the chemical examiner report was recovered. I do not remember the entry number of police station Budhani, consequence thereupon the chemical examiner report was received along with case**

property. It is fact that in an entry No.6 of register No.19, the date of receiving the chemical examiner report along with case property after its examination to the office of chemical examiner Karachi has not shown.”

17. On the other hand, to establish continuity of safe custody, the evidence of P.W-3 Akram Gill / WHC Malkhana Incharge is not supportive. He deposed: ***“On 26.03.2023, vide entry No.13/0630 hours SIP Mubarak Ali Lashari has received the parcels of case properties from me for depositing the same in the office of chemical examiner Karachi.”*** In his cross examination, he has not supported the prosecution while answering to questions: ***“I received the case property(s) of FIR No.6/2023 and FIR No.7/2023 respectively. Against an entry No.6/2023 of register No.19 I received the case property(s) of FIR No.6/2023. It is fact that column No.6 of entry No.6, register No.19 is blank. On 26.6.2023, SIP Mubarak Lashari has taken the case property parcels from malkhana of crime No.6/2023 for depositing the same in the office of chemical examiner Karachi. I do not know the date when the case property parcels were returned to police station after chemical examination. I did not produce an entry of police station/malkhana of register No.19, consequently the case property(s) of crime No.6/2023 was returned to police station after chemical examination..... It is fact that entry No.6 of register No.19 does not bear the signature of SIP Mubarak Ali Lashari.”***

18. We have noticed that in the evidence of P.W-3 typed page-42 of the paper book, wherever the word case property has been used, there is addition of handwritten word “parcels” at three different

places and there is no signature of the learned Presiding Officer are available for addition through his handwritings. The prosecution has failed to move proper application to rectify the addition of hand written words without any initial signature of Presiding officer.

19. We have also scanned minutely the Ex.05/A produced by P.W-3 which is an Entry dated 26.06.2023 of Register No.19. We have further noticed that the prosecution has failed to prove the save custody of case property after the said case property was returned by the Chemical Laboratory, Karachi. There is nothing on record to demonstrate that on which day or time the case property has been returned from the Chemical Laboratory Karachi and re-deposited in the Malkhana. Similarly, no details or documents have produced by the Prosecution that may establish that the case property was taken out from the Malkhana and produced before the Trial Court. The Entry dated 26.06.2023 of the Register No.XIX has only last reference that the case property was sent to Chemical Laboratory Karachi, however, no reference is available in Register XIX or any other documents that the case property was returned back from the Chemical laboratory to the Malkhana and it was kept in Malkhana until produced before the trial Court. Therefore, the prosecution has failed to prove the save custody and save transmission of case property from collection from the crime scene, deposit into Malkhana and transmission to Chemical Laboratory and its subsequent return from Chemical Laboratory and production before the Court and no departure or arrival entry or the entry in the Register No.19 or any other document has produced by the prosecution to prove the safe custody and safe transmission.

20. On the contrary, the admission of Raiding Officer / Seizing Officer / Complainant and Investigation Officer that there is no reference in the Register No.19 with regard to receiving of chemical examination report and case property at the police station which demonstrates that the case property produced in Court vide Article P/1 to P/4 is not the same which was earlier sent to the Chemical Laboratory and it cannot be safely relied upon in the safe Administration of Justice. Even no Road certificate as required under the Police Rules, 1934 to carry out case property from the *Malkhana* to the Chemical Lab or vice-versa has been produced which put another dent in the case of prosecution.

21. We are mindful to hold that it was the prime duty of the Investigating Officer to enter the factum of handing over the case property as well as sealed sample parcels and other recovered articles from the possession of Appellant in the relevant register of police station i.e. register No.2 but the same was not done in the present case which proved fatal to the prosecution case. The first provision of law relating to daily diary is section 44 of the Police Act, 1861 which is hereby reproduced as under for ready reference:

Section 44 in [The Police Act, 1861] 44. Police-officers to keep diary: It shall be the duty of every officer in charge of a police station to keep a general diary in such form shall, from time to time, be prescribed by the Provincial Government and to record therein all complaints and charges preferred, the names of all persons arrested, the names of the complainants, the offences charged against them, the weapons or property that shall have been taken from their possession or otherwise, and the names of the witnesses who shall have been examined.

The Rule 22.48 of the Police Rules 1934, Rule 22.48 pertains to Register No.II:

Register No. II. –

(1) The Daily Diary shall be maintained in accordance with section 44 of the Police Act.

It shall be in Form 22.48(1) and shall be maintained by means of carbon copying process. There shall be two copies. One will remain in the police station register and the other shall be dispatched to a Gazetted Officer to be designated by the Superintendent of Police or to the Superintendent of Police himself every day at the hour fixed in this behalf. Shortly before the close of each quarter, books containing the proper number of pages for the ensuing three months shall be issued to police stations by the Superintendent. The Superintendent shall fix the hours at which station diaries shall be daily closed with reference to the hour of dispatch of the post or messenger.

(2). The daily diary is intended to be complete record of all events which take place at the police station. It should, therefore, record not only the movements and activities of all police officers, but also visits of outsiders, whether official or non-official, coming or brought to the police station for any purpose whatsoever.

(3) All entries in the station diary shall be made by the officer in charge of the police station or by the station clerk. Literate officers making a report shall read the report re-corded and append their signatures. Every matter recorded in such diary shall be so recorded as soon as possible; each separate entry shall be numbered and the hour at

which it was made shall commence each such entry. If the hour at which the information, or otherwise containing such entries reaches the police station differs from the hour at which such entry was made, both hours shall be stated. As soon as entry has been made in the diary, a line shall be drawn across the page immediately below it.

(4) The opening entry each day shall give the name of each person in custody, the of-fence of which he is accused, and the date and hour of his arrest, the name of each accused person at large on bail or recognizance and the date of his release on such security. The last entry each day shall show (a) the balance of cash in hand as shown in the cash account, and (b) the balance of the cattle-pound account.

Similarly, as per requirement of Rules, the Form register No.XIX in Punjab Police Rules,1934 is as follows:

RULE NO.22.70: REGISTERS NO. XIX:

This register shall be maintained in Form 22.70. With the exception of articles already included in register No. XVI¹ every article placed in the store-room shall be entered in this register and the removal of any such article shall be noted in the appropriate column. The register may be destroyed three years after the date of the last entry.

FORM NO.22.70 **POLICE STATION,**
DISTRICT Register No. XIX.

¹ Punjab Police Rules, 1934 in volume III and chapter No.22 10

Store-Room Register (Part I).

Column 1.

Serial No. 2. No of first information report (if any), from whom taken (if taken from a person), and from what place.

3. Date of deposit and name of depositor.

4. Description of property.

5. Reference to report asking for order regarding disposal of property.

6. How disposed of and date.

7. Signature of recipient (including person by whom dispatched).

8. Remarks. (To be prepared on a quarter sheet of native paper)

Rule 22.49 of the Police Rules 1934,

Rule 22.49. - Matters to be entered in Register No. II

- The following matters shall, amongst others, be entered

(h) All arrivals at, and dispatches from, the police station of persons in custody, and all admissions to, and removals from, the police station lock-ups, whether temporary or otherwise, the exact hour being given in every case.

22. The prosecution has failed to prove safe custody of property due to overt contradiction in the statement of the Raiding Officer PW-1 and report of Chemical examiner and even the procedure to record the date, time and purpose of taking out and returned back the case property, has also not been followed as prescribed in the above-mentioned laws. We are mindful that conviction can be awarded to an Accused or maintained by this Court on the basis of direct oral evidence of only one eye-witness if same is reliable,

trustworthy and confidence-inspiring as has been held by the Supreme Court of Pakistan in cases reported ***“Muhammad Ehsan vs. The State” (2006 SCMR 1857) and “Niaz-Ud-Din v. The State” (2011 SCMR 725)***. However, the Hon’ble Supreme Court has greatly emphasized in narcotics cases reported as ***“Ikramullah Vs. The State” (2015 SCMR 1002) “Amjad Ali Vs. The State” (2012 SCMR 577), “Haji Nawaz Vs. The State” (2020 SCMR 687) and “Qaiser Khan Vs. The State” (2021 SCMR 363)*** that safe custody or safe transmission of the Narcotics to be considered and focused carefully and if it is not substantiated or based on unpersuasive evidence, the Report of Government Analyst becomes doubtful and unreliable. The prosecution is under mandatory duty to prove its case not only beyond reasonable doubt but also lays with burden of proof of safe-custody and safe-transmission of case property under Article 117 of the Qanun-e-Shahadat Order, 1984. The Supreme Court of Pakistan held in cases ***“Javed Iqbal v. The State” (2023 SCMR 139); “Mst. Sakina Ramzan v. The State” (2021 SCMR 451) and “Qaiser Khan v. The State” (2021 SCMR 363)*** that the chain of events—series of things linked, connected or associated together, would have to demonstrate and prove by the prosecution and if any link is missing or division occur, the benefit would go in favor of the accused.

23. Any anomaly or defect in investigation may usually led to draw a negative inference reckon definite reason of either unskillfulness—capacity building—or malafides. The Police Rules, 1934 impose comprehensive duty and burden to the Investigation Officer for seizure, recovery of case property and its safe handling and production before the Court whilst linchpin supervisor of

investigation with further responsibility of legal scrutiny by the prosecutor. The guidance can be taken from the dictum laid down by Hon'ble Supreme Court of Pakistan in case ***“Ahmed Ali & another vs. The State” (Criminal Appeal No.48 of 2021)***. The relevant portion is re-produced:

The Rule 22.16 of the Police Rules, 1934

(“The Police Rules”) deals with the —case property.

Sub-rule (1) thereof provides, inter alia, that in certain circumstances, police shall seize weapons, articles and property in connection with criminal cases, and take charge of property which is unclaimed.

Sub-rule (2) thereof provides, inter alia, that each weapon, article or property (not being cattle) seized under the above sub-rule shall be marked or labelled with the name of the person from whom, or the place where, it was seized, and reference to the case diary or other report submitted from the police station. If articles are made up into a parcel, the parcel shall be secured with sealing wax, bearing the seal impression of the responsible officer, and shall similarly be marked or labelled. Such articles or parcels shall be placed in safe custody, pending disposal as provided by law or rule.

Sub-rule (3) thereof provides, inter alia, that the police shall send to headquarters or to magisterial outposts all weapons, articles and property connected with cases sent for trial, as well as suspicious, unclaimed and other property, when ordered to do so by a competent Magistrate. Sub-rule (4) thereof provides, inter alia, that motor vehicles detained or seized by the police in

connection with cases or accidents shall be produced before a Magistrate after rapid investigation or by means of in-complete challan.

Rule 22.18 of the Police Rules deals with —custody of property.

Thus, under the Police Rules and the High Court Rules, mentioned above, in all cases, especially in the cases of articles sent to the chemical examiner, it is necessary that there be no doubt as to what person or persons have had charge of such articles throughout various stages of the inquiry. Besides, the person who packed, sealed, and dispatched such articles should invariably be examined. Further, the clothes, weapons, money, ornaments, food and every other article that forms a part of the circumstantial evidence has to be produced in court, and their connection with the case and identity should be proved by witnesses.”

The Hon’ble Supreme Court in the case **“Ahmed Ali & another case (*supra*)** held that:

“Thus, the Police Rules mandate that case property be kept in the Malkhana and that the entry of the same be recorded in Register No. XIX of the said police station. It is the duty of the police and prosecution to establish that the case property was kept in safe custody, and if it was required to be sent to any laboratory for analysis, to further establish its safe transmission and that the same was also recorded in the relevant register, including the road certificate, etc. The procedure in the Police Rules ensures that the case property, when is produced before the court,

remains in safe custody and is not tempered with until that time. **A complete mechanism is provided in Police Rules qua safe custody and safe transmission of case property to concerned laboratory and then to trial Court.**

24. It is mandatory for the Prosecution to undergo two tests for case property. Firstly, to recover, seize, present in charge sheet or challan and to establish safe custody by preparation of documents flawless in description, accuracy, deposit in safe custody with proper status and secondly, safe transmission of it under proper documents from safe custody to Chemical Lab and from Chemical laboratory to the Police and production before the Court as an admissible evidence. Any violation of it would lead to draw a negative inference that led basis for acquittal of an accused. Reliance can be placed on the cases ***“Qaiser and another v. The State” (2022 SCMR 1641); “Ikramulah v. The State” (2015 SCMR 1002), “The State v. Imam Bakhsh” (2018 S’CMR 2039), “Abdul Ghani v. The State” (2019 SCMR 608), “Kamran Shah v. The State” (2019 7 SCMR 1217), “Mst. Razia Sultana v. The State” (2019 SCMR 1300), “Faizan Ali v. The State” (2019 SCMR 1649), “Zahir Shah alias Shat v. State through AG KPK” (2019 SCMR 2004), “Haji Nawaz v. The State” (2020 SCMR 687), “Qaiser Khan v. The State” (2021 SCMR 363), “Mst. Sakina Ramzan v. The State” (2021 SCMR 451), “Zubair Khan v. The State” (2021 SCMR 492), “Gulzar v. The State” (2021 SCMR 380).***

25. Furthermore, the time of offence as mentioned in the FIR is 2200 hours while memorandum of recovery has also prepared at the same time 2200 hours although a joint memorandum of recovery of

Chars and huge quantity of Gukta Mainpuri were not only searched, seized, arrested and prepared but the Police Party remained engaged in arrest of four accused out of whom three accused have been absconded from the crime scene. This create a doubt in a prudent mind that both documents have prepared simultaneously as the time of both documents i.e. Memorandum of Recovery and FIR is same.

26. The Rule of exclusion of section 103 Cr.P.C in the Narcotic cases is provided under section 25 of the CNS Act 1997; however, the same is not absolute as per the story of the prosecution the police party had sufficient time before reaching towards the crime scene but they failed to incorporate any independent witness and again failed when the crime scene is thickly populated *Bazar*. The PW-1 deposed: ***“It is correct that it is a well populated street where from the accused Inayat Samo was arrested. Voluntarily says, on seeing the police party in police uniforms, none from public was stayed in the street. I cannot disclose the names of the neighbors of the accused Inayat Samo.*** The PW-1 further deposed ***It is fact that the private Suzuki driver has not been cited as witness in this FIR nor I recorded his statement under section 161 Cr.P.C. Voluntarily says, he refused/excused to record his statement in this case nor I have mentioned his name in the entire police papers.”*** The Divisional Bench in the case of Mukhtiar Ali Vs. The State (2023 P.Cr.LJ 1662 held that:

“It has come on record that the accused was arrested from main road leading from Mataro-Kario Ganhwar near Haji Ezzo Khan stop which is a populated area and the complainant/SIP Adam Khan had sufficient time to call the independent

persons of the locality to witness the recovery proceedings but it was not done by him for the reasons best known to him and only the police officials who are subordinates to him were made as mashirs of arrest and recovery proceedings. It is settled principle that judicial approach has to be a conscious in dealing with the cases in which entire testimony hinges upon the evidence of police officials alone. We are conscious of the fact that provisions of section 103, Cr.P.C are not attracted to the cases of personal search of accused in narcotic cases but where the alleged recovery was made on a road (as has happened in this case) and the peoples were available there, omission to secure independent mashirs, particularly, in police case cannot be brushed aside lightly by this court. Prime object of section 103, Cr.P.C is to ensure transparency and fairness on the part of police during course of recovery, curb false implication and minimize the scope of foisting of fake recovery upon accused. There is also no explanation on record why no any independent person from the vicinity has been joined to witness the recovery proceedings. No doubt police witnesses were as good as other independent witnesses and conviction could be recorded on their evidence, but their testimony should be reliable, dependable, trustworthy and confidence worthy and if such qualities were missing in their evidence, no conviction could be passed on the basis of evidence of police witnesses.”

27. We hold that impugned Judgment of Conviction based on unpersuasive evidence of broken safe custody and safe transmission of the case property that causing miscarriage of justice.

In conclusion, we refer about the doctrine of benefit of doubt. The rule of benefit of doubt is essentially the rule of prudence which cannot be ignored while dispensing justice. The steadily commandment of law necessitate unremitting attention for conviction that it must be based on un-impeachable evidence and certainty of guilt and where any doubt emerges would indispensably favor the Accused. The Hon'ble Supreme Court of Pakistan has ruled down in several cases that it does not need to be a plethora of circumstances raising doubt—a single event that creates reasonable doubt in the mind of a prudent person regarding an accused's guilt would entitle him acquittal as a matter of right and not as clemency or grace. Reliance can be placed on ***“Tariq Pervez v. The State”, (1995 SCMR 1345), “Riaz Masih alias Mithoo v. The State”, (1995 SCMR 1730), “Muhammad Akram v. The State”, (2009 SCMR 230), “Hashim Qasim and another v. The State”, (2017 SCMR 986), “Ikramullah Vs. The State”, (2015 SCMR 1002), “The STATE through Regional Director ANF V. IMAM BAKHSH and others (2018 SCMR 2039)”, and “KHAIR-UL-BASHAR V. The STATE”, (2019 SCMR 930).***

28. It is trite law that single dent in the case of prosecution is sufficient for acquittal as held in cases ***“Rehmatullah vs. The State” (2024 SCMR 1782); “Muhammad Mansha versus The State” (2018 SCMR 772), “Abdul Jabbar and another versus The State” (2019 SCMR 129), “Mst. Asia Bibi versus The State and others” Crl. Appeal No.40132/2023 8 (PLD 2019 SC 64) and “Amir Muhammad Khan versus The State” (2023 SCMR 566).***

The case in hand is glaringly noticeable because of inexcusable susceptible evidence adduced by the prosecution which does not

qualify test of law as required under Article 2(iv) and Article 117 of the Qanun-e-Shahadat Order, 1984, therefore, the instant appeal is **allowed**. Consequently, the impugned Judgment dated 30.11.2023 of conviction passed by the learned Model Criminal Trial Court-I/Special Judge Control of Narcotics Substance Act, Hyderabad in Special Case No.98 of 2023 is **set aside** and the Appellant is acquitted from the charge. He is ordered to be released from the custody forthwith if he is not required in any other custody case/crime.

JUDGE

JUDGE

Muhammad Danish*