THE HIGH COURT OF SINDH, CIRCUIT COURT AT HYDERABAD

Criminal Appeal No.S-66 of 2022

Appellant:	Shahzad Ali through Mr. Shahid Mirbahar Advocate holding brief for Mr. Ghulamullah Chang, Advocate.
Respondent:	The State through Mr. Siraj Ahmed Bijarani, Assistant Advocate General Sindh.
Date of hearing:	**12.05.2025**
Date of Judgment:	**12.05.2025**

J U D G M E N T

RIAZAT ALI SAHAR, J. The appellant namely, Shahzad Ali has assailed the legality and propriety of the judgment dated 09.05.2022, passed by the learned Additional Sessions Judge-I, Tando Muhammad Khan in Sessions Case No.53 of 2022, arising out of Crime No.46 of 2022, registered at Police Station Tando Muhammad Khan, for the offence punishable under section 8 of Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019, whereby, the learned trial Court after full-fledged trial, convicted and sentenced the appellant to suffer imprisonment for two years and to pay fine of Rs.200,000/- and in case of default whereof, to suffer S.I. for three months more.

2. As per the prosecution, on 02.02.2022, the complainant, who was posted as Sub-Inspector of Police (SIP) at Police Station

Tando Muhammad Khan, departed from the police station at about 1815 hours in pursuance of patrolling duty, as recorded in Roznamcha Entry No. 29. He was accompanied by his subordinate staff, namely HC Abdul Khalique, PC Muhammad Sadar, and DPC Ghulam Abbas, in a government police mobile bearing registration number SPD-779. During the course of patrolling, the police party visited various locations including City Bridge, Seerat-ul-Nabi Chowk, Shell Pump, Burdi Mori, and Tando Saindad. While proceeding towards Hyderabad via Tando Muhammad Khan Road the police mobile was stationed at the Check Post Shaheed Baba, where the team commenced snap-checking duties. At about 2000 hours, during snap checking, the police team observed a light green rickshaw approaching the checkpoint. The police signaled the rickshaw to stop using torchlight; however, the rickshaw driver allegedly attempted to evade the checkpoint by turning around. This raised suspicion, prompting the police to intercept and stop the rickshaw. The driver was alighted from the rickshaw and upon inquiry disclosed his name as Shahzad Ali son of Maqbool Ahmed Chang, a resident of Village Majnoo Chang, Hoosri, Hyderabad. Upon inspection of the rickshaw, the police allegedly recovered four *kata* (bags) from the back seat, each containing approximately 15 kg of *mainpuri choora*. Furthermore, two black shopping bags were found beside the driver's seat: one bag allegedly contained 200 packets of *mainpuri*, while the other contained 5 packets of JND *ghutka*, each packet comprising 110 pouches, totaling 550 pouches. The accused was further stated to have confessed to the police that

he used to sell *mainpuri choora* and JND *ghutka*. A personal search of the accused led to the recovery of two currency notes of Rs.100 each from his left-side pocket. Details of the rickshaw were also noted, being a Unique brand, model 2017, bearing chassis No.DSC-10538552 and engine No.DSE-78628381. Subsequently, from each *kata*, 500 grams of *choora* were separated—totaling 2 kilograms—for chemical analysis, sealed in white cloth parcels. Five samples of *mainpuri* and 10 pouches of JND *ghutka* (two from each packet) were similarly sealed for chemical examination. The remaining property was sealed accordingly. The recovered currency notes were sealed in a brown envelope. Due to non-availability of private witnesses, the arrest and recovery memo (*mashirnama*) was prepared in the presence of official witnesses, HC Abdul Khalique and PC Muhammad Sadar. Thereafter, the accused along with the case property was brought to the police station, where an FIR was lodged against him.

3. After completing the investigation, challan was submitted before the competent Court of law where after the case was entrusted to the learned Court for trial.

4. Learned trial Court framed the charge against the appellant on 28.03.2022 under Section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Mainpuri Act, 2019, to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined the following witnesses:

- **PW-1 SIP Muhammad Ismail Mashori** (Complainant) was examined at Ex.03. He produced the relevant documentary evidence, including Roznamcha Entry No. 29, Mashirnama of arrest and recovery, FIR, and Entry No. 38, which were exhibited as Ex.03/A to Ex.03/D.

- **PW-2 HC Abdul Khalique** (Mashir) was examined at Ex.04. He produced the mashirnama of the place of incident.

- **PW-3 SIP Haji Mehmood** (Investigating Officer) was examined at Ex.05. He produced the malkhana register entry No.30, and other relevant entries including Entry Nos. 21, 25, 36, and 43, along with the letter for chemical analysis and the chemical examiner's report. These documents were exhibited as Ex.05/A to Ex.05/G.

- **PW-4 WHC Zaheer Hussain Shah** was examined at Ex.06.

Thereafter, the learned Assistant District Public Prosecutor closed the prosecution side by submitting a statement at Ex.07.

5. The statement of the accused was recorded under Section 342 Cr.P.C. on 25.04.2022, wherein he denied the allegations leveled against him. He also declined to examine himself on oath under Section 340 (2) Cr.P.C. and did not opt to produce any defense evidence. He claimed his innocence and that he has been falsely implicated in this case and prays for justice.

6. After hearing the learned counsel for the parties and examination of the case file, learned trial Court convicted and sentenced the appellant in the manner as stated above.

7. Learned counsel for the appellant contended that the prosecution case is riddled with glaring contradictions, procedural

irregularities and a complete lack of independent corroboration. He contended that the recovery proceedings allegedly conducted at a public place during snap-checking were witnessed only by police officials, all of whom were subordinates of the complainant and no effort was made to associate any independent witness despite the incident having taken place on a public access road. He contended that the non-association of any private person, when easily possible, adversely affects the credibility of the prosecution case. He further contended that the weight and quantity of the recovered material were not determined through any scientific or reliable means and the entire assessment was based on conjecture. He further pointed out that the prosecution witnesses themselves admitted that no weighing machine was available and the alleged weight of the contraband was only presumed and the description of the recovered material, including *mainpuri* and *ghutka*, is vague and the details of their packaging, quantity or markings were not described in the FIR or in the mashirnama. He also pointed out that even the number of seals and samples is inconsistent in the testimonies of the prosecution witnesses. Learned counsel also pointed out that the chain of custody of the case property is doubtful as the WHC who received the property could not confirm whether it was sealed or when exactly it was handed over. He further contended that the lack of proper sealing and documentation raises a serious question on whether the same property was analyzed and produced in Court. Learned counsel has further contended that the investigation was biased, mechanical and incomplete and the Investigating Officer did

not attempt to verify the background of the accused and no effort was made to determine whether he was ever involved in similar offences. Learned counsel further contended that the prosecution has failed to establish its case against the appellant reasonable doubt, therefore, he prayed for the acquittal of the appellant by extending him the benefit of doubt.

8. Conversely, the learned Assistant Prosecutor General appearing for the State supported the impugned judgment and contended that the prosecution had successfully established its case through the evidence of four witnesses, including the complainant, mashirs, Investigating Officer and WHC. He argued that the recovery was made during lawful snap-checking and the accused was caught red-handed with contraband material including *mainpuri*, *choora*, and *ghutka*, which were sealed and sent for chemical analysis, confirming the presence of prohibited substances. Learned A.P.G. further contended that mere non-association of private mashirs does not render the prosecution case doubtful, particularly, when the evidence of official witnesses is consistent and corroborated by documentary evidence. He further that there is no animosity alleged against the police officials that would suggest false implication of the accused. He further contended that the discrepancies pointed out by the learned counsel for the appellant are minor and not material enough to override the presumption of truth attached to official acts performed in due course. He prayed that the appeal being devoid of merit may be dismissed.

9. Heard and perused the record very carefully.

10. From a reassessment of the evidence of the prosecution witnesses, it appears that there are material contradictions and procedural irregularities, which cast serious doubt on the veracity of the prosecution case. The complainant SIP Muhammad Ismail Mashori (PW-1) and mashir HC Abdul Khalique (PW-2) both deposed regarding the patrolling activity and the alleged recovery from the accused. However, both claimed that they left the police station at 1815 hours and arrived at CP Shaheed Baba around 1930 hours, while simultaneously asserting that 10 to 15 vehicles were checked along the way. Given the short duration and number of vehicles allegedly inspected, the timeline appears improbable, especially when there is no documented entry or independent corroboration of these checks.

11. I have found that there are also contradictions with respect to the preparation of the mashirnama. PW-1 SIP Muhammad Ismail Mashori stated that it was prepared while sitting on a bench using the torchlight and clipboard, whereas PW-2 H.C. Abdul Khalique contradicted this by claiming that it was written while standing on the dictation of the complainant. These inconsistencies dent the reliability of the mashirnama, which is central to proving the alleged arrest and recovery. The critical contradiction also arises in relation to the case property. Both witnesses admitted that the *kata* (bags) recovered had printed markings, but no such details were mentioned in the mashirnama

or FIR. This omission raises suspicion about the genuineness of the recovery and whether the property was foisted upon the accused at a later stage. Moreover, neither witness used a weighing scale to determine the weight of the contraband; instead, it was guessed to be 15 kg per bag. This assumption-based quantification lacks evidentiary value, particularly in cases under special penal statutes requiring strict proof of substance and quantity. Furthermore, the description of the recovered contraband, including *mainpuri* and *ghutka*, is also vague and insufficient. The FIR and mashirnama do not describe their color, packaging, or distinguishing features. The count of 110 pouches per *ghutka* packet was taken from the labeling without actual verification. Such casual and mechanical preparation of crucial documents weakens the reliability of the recovery proceedings.

12. Not only the above contractions are found but the prosecution's failure to associate any private witness with the arrest and recovery—despite the incident allegedly occurring on a public road during routine snap-checking—remains unexplained. All mashirs cited are police officials subordinate to the complainant. It is settled law that in such situations, the absence of independent witnesses must be viewed with caution. The prosecution's reliance solely on official witnesses, without any attempt to include neutral persons, affects the transparency and fairness of the proceedings. There is also inconsistency in the number of seals and samples. PW-1 SIP Muhammad Ismail Mashori stated that seven samples were sealed with a total of 39 seals, while PW-2 H.C Abdul Khalique

stated only six samples were taken. No documentary record explains the purpose or placement of such a large number of seals, nor is there any verification of the same. This raises further doubt about the handling and integrity of the case property.

13. It is also worthwhile to note that the evidence of the Investigating Officer SIP Haji Mehmood (PW-3) also discloses multiple procedural lapses. He admitted that he neither verified the antecedents nor visited the native village of the accused to confirm any criminal history. Although he claimed efforts were made to obtain a criminal record from other districts, no documentary proof in this regard was produced. He also conceded that the distinguishing features or markings on the recovered bags were not mentioned in the 161 Cr.P.C. statements of the prosecution witnesses, which reflects investigative negligence. The prosecution's evidence further fails to establish a credible chain of custody. WHC Zaheer Hussain Shah (PW-4), who received the case property for malkhana entry, could not recall the time of receipt and admitted that his statement under Section 161 Cr.P.C. did not record whether the property was received in sealed condition. In narcotics-related offences, where the sanctity of the case property is of utmost importance, such lapses severely affect the prosecution's case.

14. In today's era of digital technology and mobile accessibility, the failure to associate any private person, record visual evidence, or contemporaneously document the recovery further points toward a mechanical and one-sided investigation.

The omissions are not minor but strike at the root of the prosecution story.

15. It is a settled principle that while the evidence of police officials cannot be discarded merely due to their official status, such testimony, when uncorroborated by any independent source, and coupled with procedural flaws, must be assessed with judicial caution. In the present case, the prosecution's case hinges entirely on police witnesses, all of whom were subordinates of the complainant, thereby reducing the credibility of the version put forth.

16. In view of these glaring contradictions, omissions and investigative deficiencies, the prosecution's case appears doubtful. It is a well-settled proposition of law that in order to extend the benefit of doubt to an accused, it is not necessary for multiple circumstances to exist that create uncertainty. Rather, if a single circumstance gives rise to a reasonable doubt regarding the guilt of the accused, then such doubt must be resolved in favour of the accused, entitling him to the benefit thereof. In this respect, reliance can be placed upon case of ***Muhammad Hassan and Another v. The State*** **[2024 SCMR 1427]** wherein the Honourable Supreme Court has held that:

> *"According to these principles, once a single loophole/ lacuna is observed in a case presented by the prosecution, the benefit of such loophole/lacuna in the prosecution case automatically goes in favour of an*

accused."1

17. In view of the foregoing discussion and in reliance upon the established judicial precedents, as well as considering that even a single material loophole in the prosecution is sufficient to entitle the accused to acquittal and the instant case suffers from multiple inconsistencies both factual and procedural, which collectively shake the foundation of the prosecution version, the instant appeal was **allowed** through my short order dated 12.05.2025. Consequently, the impugned judgment dated 09.05.2022, passed by the learned Additional Sessions Judge-I, Tando Muhammad Khan, was set aside, and the appellant was acquitted of the charge. As the appellant was on bail, as such, his bail bond stood cancelled and surety was discharged. **The foregoing constitutes the detailed reasons for the short order dated 12.05.2025.**

J U D G E

Abdullahchanna/PS

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[1] See also; *MUHAMMAD MANSHA v. The STATE 2018 SCMR 772- "4.Needless to mention that while giving the benefit of doubt to an accused it is not necessary that there should be many circumstances creating doubt. If there is a circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused, then the accused would be entitled to be benefit of such doubt, not as a matter of grace and concession, but as a matter of right. It is based on the maxim, "it is better that ten guilty persons be acquitted rather than one innocent person be convicted". Reliance in this behalf can be made upon the cases of Tarique Parvez v. The State (1995 SCMR 1345), Ghulam Qadir and 2 others v. The State (2008 SCMR 1221), Mohammad Akram v, The State 2009 SCMR 230) and Mohammad Zaman v. The State (2014 SCMR 749)."*