



registered, investigated and the samples were dispatched to the expert while the statements of the witnesses were respectively recorded by the seizing officer.

3. After usual investigation, charge was framed against accused/respondents to which they pleaded not guilty and claimed to be tried. After examination of witnesses and hearing learned counsel for the parties, learned trial Court by judgment dated **08.12.2012** acquitted accused/Respondents by extending him benefit of doubt. Therefore, the appellant/State has filed instant Special Criminal Acquittal Appeal against the said judgment.

4. Learned counsel for the Appellant/ANF Authorities has contended that the learned trial Court without examining the record and evidence passed the impugned order whereby Respondents were acquitted. He argued that whole prosecution story set up by the Complainant has been fully corroborated by the prosecution witnesses, therefore, the impugned order may be set aside.

5. I have heard learned Spl. Prosecutor ANF and perused the record.

6. The perusal of impugned judgment shows that this was the case of no evidence against the respondents/accused, therefore, in the impugned judgment, learned trial Court has observed as follows:

.....“The recovery is not witnessed by the public witness at all and nature of the evidence wants independent corroboration which is nowhere available; more so, if at all the case as to recovery is accepted to have taken place in the reported manner, in absence of proof of knowledge of presence of such narcotics in the wooden pallets to the accused Ali Raza, it is hard to hold him responsible while there appears a wish of the prosecution that the court should presume such knowledge in the light of the facts, which are of inspiring no confidence in nature. Since I am not

certain about the sanctity of the evidence as to the case to its aspects of transportation and booking and delivery etc., the question of fixing the accused or anybody else with crime liability of the concealed stuff, which as stated, is not proved to have stood so recovered as alleged or indicated in the memo or FIR etc., beyond shadow of any reasonable doubt, does not arise.

In short, the salient aspects requiring consideration are that:

- i. The statement of the witness Shah Zaman needs corroboration which is nowhere available at all.
- ii. The statements of the officials need corroboration which too, is not available.
- iii. The seizing officer and the mashir aforesaid deposed to have contacted general people available on the spot, and asked them to become their witness but they refused. Such statement is proved untrue in the light of the statement of the private and independent witness produced by the prosecution whose statement shows that the officials made no recovery of the crime stuff on the spot at all;
- iv. More so the officials aforesaid avoided to take natural witness such as the staff and labourers of the witness Ubaidur Rehman, despite availability, in such proceedings, for their own reasons, which cannot be termed to be bonafide;
- v. The words of the officials alone, can serve the purpose of law in a matter of like nature only where they would positively appear to the Court, to have carried nothing but the truth as to the accounts of all the events relating to them respectively, in all respects, and in case of any lapse fatal to the veracity of the case, they will need independent corroboration for being given any weight in the case.
- vi. Such aspects make the officials and their proceedings on the spot as alleged, cloudy and as a result, the case becomes doubtful in its entirety, for which the officials concerned are responsible who in presence of evidence of independent nature, avoided to avail the same and on the contrary made false statement that they got refusal of the people to become witness on the spot when they asked them to become such witness to their proceedings at the relevant time while

admittedly, they obtained one private witness (Ubaidur Rehman) therefrom to get support to their case as to delivery and documents aforesaid against the accused, and the same person could have been utilized for the other aspect(s) of the case, too, but the officials neglected such aspect for their own reasons. Besides, there is nothing being record of the persons who when asked to become witness to official proceedings in question, refused while the officials concerned took no legal action against such persons, for their own reasons. Furthermore, for the sake of arguments, if it is assumed that the goods in question had been there on the spot, as alleged, yet the crime stuff is not proved to have stood secured as alleged, for want of positive evidence there against; and similarly, even if the crime stuff, is said to have stood so secured out of such goods, then too, being hidden one, the same would require conscious knowledge of the accused in regard thereto, for being fixed against him, particularly when the documents do not show exactly that it was he who served the goods as consigner and consignee; and such knowledge is not proved nor is there any evidence in that regard; there is no confession of the accused in the matter. There is no identification parade of the accused before the competent person through the witness Shah Zaman who claimed the accused to have met him in the matter of the business aforesaid at Peshawar by the name of 'Mohsin'.

- vii. The statement of the witness Ubaidur Rehman shows that the same stood recorded by the seizing officer before registration of the FIR in the matter, and hence, the statement of the said officer as first I.O that he recorded such statement during the course of investigation of such FIR, becomes incorrect and false with the result, his own statement being false to such a material extent, becomes cloudy in its entirety and reflects his unfairness as well.
- viii. There is no positive incriminating evidence against the other accused at all, and their prosecution without such evidence, can hardly be termed to be a service to public interest and justice rather it reflects unfair, unjust, unwarranted and arbitrary conduct and no service to law and justice.
- ix. In such circumstances, the entire case becomes cloudy.

Consequently, the under discussion point therefore, stands answered as 'not proved' as free from doubt in the above terms, accordingly.".....

The above observations of the learned trial Court are enough for acquittal of the respondents.

7. In view of the above, no case is made out for setting aside the impugned acquittal order. Therefore, this Criminal Acquittal Appeal was dismissed by short order dated **30.11.2020** and above are the reasons for the same.

JUDGE

JUDGE

Karachi  
Dated:11.12.2020