ORDER SHEET

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Cr. Acquittal Appeal No.D-09 of 2020

Cr. Acquittal Appeal No.D-11 of 2020

DATE	**ORDER WITH SIGNATURE OF JUDGE(S)**

06.04.2022

Mr. Muhammad Ayoub Kassar, Special Prosecutor ANF.

Heard learned Special Prosecutor ANF and perused record.

2. At the outset, it would be relevant to reaffirm the well settled principle of *Criminal Administration of Justice* that ***'in Criminal trial every person is innocent unless proven guilty and upon acquittal by a competent jurisdiction such presumption doubles'.*** Such earned double presumption of *innocence* would not be disturbed unless and until it is established that impugned judgment was *prima facie* shocking, perverse and illegal thereby resulting into grave miscarriage of justice.

3. At this juncture, it would be conducive to refer para-17 of the impugned judgment which is that:

> "On perusal of the above evidence, it would appear that both the eye-witnesses i.e. complainant and mashir have supported each other's version but on its' closer analysis, it does not stand the judicial scrutiny. No doubt there was similarity in their version but they admittedly belonged to the ANF department and were used to often giving evidence in such cases. The admitted features of the case are that alleged recovery was effected from near Isra Hospital, Hyderabad which is a thickly populated area where large number of public including attendants of patients, guards and employees of the hospital remained available and its' timing were also broad hours of the day and the information was also received in advance yet nobody from public was associated as mashir. Not there alone but none was arranged on receiving the information nor was any one picked from the way. Further, while it was deposed by the complainant and mashir that people available at the place of recovery were asked to act as mashirs who declined but no detail of any such person was given nor was any action taken against them. It may be observed that in the cases of narcotics, association of mashirs

> from public was not so essential but it has been held by the Superior Courts in several cases that if people from public were easily available, it would be advisable to associate them to add sanctity to the proceedings of recovery. The complainant and mashir have also not given the details of vehicles in which they went and despite claim of the prosecution that the charas was secured in shape of pieces but neither was their exact number given nor were said pieces weighed separately. Furthermore, it was mentioned in the FIR and mashirnama and also deposed by the complainant and mashir that the ANF party was led by A.D Muhammad Akram Niazi but he was not examined before the Court. As a matter of propriety, he being senior officer of the party ought to have been produced and examined before the Court. Reference be made to the case of Mir Muhammad vs. State (2008 MLD 1333) were owing to non-examination of Assistant Director of ANF who headed the team, the case of prosecution was disbelieved and the accused was acquitted despite the alleged recovery of 24 K.Gs of charas. Moreover, here one other aspect worthy of note was that the accused hailed from district Sanghar and thus it was hard to believe that he would come all the way from Sanghar with charas in a shopping bag unnoticed by anybody during his entire travel from there and make himself available at the alleged place in Hyderabad with charas in broad day time. It was also mentioned by the complainant that after arrest of the accused, they went to his native place in Sanghar but could not recover anything and no previous record of the accused showing his involvement in such cases was produced. These factors if viewed together, create doubt and eclipse the whole case. Thus on the assessment of evidence of the prosecution, I feel no hesitation in holding that the prosecution has not satisfactorily discharged its' burden of proving charge against the accused. Consequently, Point No.1 is answered in 'doubtful'."

4. We have gone through the record carefully, which reflects that respondents/ accused were mainly acquitted on the ground that in presence of the head of ANF party namely Muhammad Akram Niazi, Assistant Director, the appellants were apprehended and the alleged recovery of contraband effected from them was not examined by the ANF authorities as well as the contraband was not weighed separately; despite availability of private witnesses, no efforts were taken to associate any private person to witness the arrest and recovery. It is settled law that the scope of interference in appeal against acquittal is most narrow and limited, because in an acquittal the presumption of innocence is significantly added to the cardinal rule of criminal jurisprudence, that an accused shall be presumed to be innocent until proved guilty. The Courts

shall be very slow in interfering with such an acquittal judgment, unless it is shown to be passed in gross violation of law, suffering from the errors of grave misreading or non-reading of evidence; such judgments should not be lightly interfered and heavy burden lies on the prosecution to rebut the presumption of innocence which the accused has earned and attained on account of his acquittal. Interference in a judgment of acquittal is rare and the prosecution must show that there are glaring errors of law and fact committed by the Court in arriving at the decision, which would result into grave miscarriage of justice; the acquittal judgment is perfunctory or wholly artificial or a shocking conclusion has been drawn. The Court of appeal should not interfere simply for the reason that on the reappraisal of the evidence a different conclusion could possibly be arrived at, the factual conclusions should not be upset, except when palpably suffering from serious and material factual infirmities. Said accused have acquired now a triple presumption of innocence which could not be dispelled by Special prosecutor ANF on any score. Reliance is placed on the case of **The State v. Abdul Khaliq, (PLD 2011 SC 554)**.

5. Under these circumstances, we are of the view that this is not a fit case which may fall within the terms of shocking, perverse and contrary, hence, these appeals are dismissed.

JUDGE

JUDGE

Shahid