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**ORDER-SHEET**  
**IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA**

Cr. Acq. Appeal No.D-27 of 2017.

Date of hearing	Order with signature of Judge
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Fresh Case

1. For orders on office objection at flag .A.

2. For Hg. of main case.

Notice issued to APG

**06.08.2017.**

Mr. Khadim Hussain Khoharo Addl. Prosecutor General.  
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Through this criminal appeal the State has impugned Judgment dated 21.2.2017 passed by Special Judge (CNSA), Jacobabad in C.N.S Case No.34/2016, Crime No.59/2016 registered at Police Station City Jacobabad under section 9 (c) C.N.S Act, whereby the respondent Ashad Ali alias Muno alias Manzoor has been acquitted giving benefit of doubt.

Learned Additional Prosecutor General submits that trial court has erred in passing the judgment and has mainly relied on the issue as to how the complainant while preparing seizer memo had disclosed/ revealed various crime numbers alongwith sections in which allegedly respondent was also involved. He submits that in view of such position the impugned judgment is liable to be set-aside and notice be issued.

We have heard learned Additional Prosecutor General and perused the record.

After perusal of impugned judgment we are of the view that the same has been passed after considering entire evidence and not merely the question of revealing the crime numbers in seizer memo. The learned trial court while answering point No.2 has considered application of section 20 and 21 of C.N.S, Act and so also the contradiction and the delay in timing so revealed by the prosecution witnesses. The relevant observations of the learned trial court at Para 15 and 16 reads as under:-

15. Complainant HC Nazaquat Ali was cross examined by learned defence counsel, who replied that: "I received spy information via mobile phone that phone message was received by me. The place of spy information is at the distance of ½ kilometer from place of occurrence". He further replied that;" after apprehending the accused person I put hand-cuffs to him. No independent person was available to whom I could ask to become mashir. Crime numbers were disclosed to me by the spy informer". From perusal of memo of arrest/recovery, which reveals accused was involved in crime Nos.03/2011 u/s 392 P.P.C., 04/2011 u/s 324, 353 P.P.C, 05/2011 u/s 23-DAO of PS Civil Line Jacobabad. The accused further involved in crime No.56 and 58 of PS City Jacobabad. As per complainant's version, the crime numbers alongwith relevant offences were disclosed to him by the spy informer, which is quite surprising and beyond understanding. There is possibility that the spy informer could disclosed information about involvement of any person in a crime number, however, it is not appealing to prudent mind that spy informer disclosed each crime number with the relevant offences in which the accused is required. Furthermore, the prosecution produced mashir PC Ghulam Akbar, who replied that: "HC Nazaquat received spy information when we were available near Sher Hotel Chowk". Keeping in view the contents of memo of arrest/recovery, the story mentioned therein is causing doubt regarding preparation of the memo of arrest/recovery at place disclosed by the complainant, as if the said memo was prepared at place of occurrence, there is hardly any possibility that the complainant could mention each crime number alongwith relevant offences, wherein the arrested person was required, which indirectly suggests that memo of arrest/recovery was prepared at P.S. In the light of above facts and circumstances, I am of the view that the prosecution has failed to establish point No.1, which is determined as "not proved".

16. **Point No.02:** The responsibility lies upon prosecution to establish this point and the prosecution produced & examined complainant HC Nazaquat Ali, mashir PC Ghulam Akbar and I/O S.I.P Muhammad Usman, as well as, PC Muhabat, who took the case property to chemical examiner. As discussed in the foregoing Para, the complainant has disclosed that; he has prepared memo of arrest/recovery at the spot, however, he has mentioned that; spy informer disclosed that the said person is involved in so many crime numbers, along with relevant sections, which story is not appealing to prudent mind. Furthermore, I/O stated in his deposition that, he has left fort site inspection vide entry No.13 at about 09-50 hours and reached at place of occurrence at 11-00 hours, as per contents of F.I.R., the place of occurrence is situated at the distance of 01 kilometer from PS and it is quite surprising that I/O consumed one hour and 10 minutes in

reaching from PS to place of occurrence. I/O replied that: "I had not called any private person to become mashir of place of incident". He further replied that: "the case property was kept in malkhana for 10 to 11 days". As per provision of section 20 and 21 of CNS Act, a Police Officer is bound to seek written permission from the competent Court of law for the arrest or recovery of narcotic substance and in case Police Officer is of the view that he could not seek permission, otherwise, the accused may escape, only a Police officer not below rank of Sub Inspector could make arrest and recovery of narcotic substance. However in present case a Police official was Head Constable, who below the rank of S.I.P. Furthermore, as discussed in foregoing Para, the complainant has mentioned number of crime alongwith relevant sections of PS Civil Line Jacobabad, which story is not appealing to prudent mind which suggest that memo of arrest was not prepared at spot, which is fatal to prosecution case. Furthermore, the case laws referred by I/c DPP for the State, admittedly Honourable Supreme Court has held that police officials are as good witnesses, as others, but each case had its own facts and circumstances, therefore, the case laws referred by I/c DPP for the State are not applicable to this case. In the light of above facts and circumstances, I am of the view that; prosecution has failed to establish this point, which is also determine as "not proved".

In view of herein above facts and circumstances, we are of the view that impugned judgment is correct in law whereas the learned trial court after appreciation of entire evidence alongwith material contradictions in the prosecution's case so surfaced through their cross examination has come to a just and fair conclusion by extending benefit of doubt and acquitting the accused under section 265-H(1) Cr.P.C. therefore, instant criminal acquittal appeal being misconceived is dismissed in limine.

JUDGE  
6.9.17

S Ashfaq