

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

Criminal Jail Appeal No.D-04 of 2024

***PRESENT***

***Mr. Justice Arshad Hussin Khan.***

***Mr. Justice Dr. Syed Fiaz ul Hassan Shah.***

Appellant : Sher Muhammad son of Rasool Bux Machi through Mr. Bilal Mustafa Chandio, Advocate.

Respondent : The State through Ms. Rameshan Oad, D.P.G.

Date of Hearing: 06.05.2025.

Date of Judgment: .05.2025.

**J U D G M E N T**

**Dr. Syed Fiaz ul Hassan Shah, J:** Through this appeal, the appellant Sher Muhammad has challenged judgment of conviction dated 07.12.2023, passed by learned Model Criminal Trial Court-I / Special Judge (CNSA), Hyderabad in Special Case No.214 of 2022 re: The State vs Sher Muhammad, emanating from Crime No.164 of 2022, registered at P.S. Hali Road, Hyderabad whereby the appellant has been convicted for offence punishable under section 6/9-(c) of CNS Act, and sentenced to undergo Rigorous Imprisonment for nine years and to pay fine of Rs.80,000/- (eighty thousand only), in default of payment thereof to further undergo SI for three months.

2. The facts of the case are that on 15.10.2022, a police party under the supervision of SIP Muhammad Khan Panhwar left Police Station Hali Road, vide entry No.30 for routine patrolling in

the jurisdiction. During the patrol, on the basis of receiving spy information at Badin Bus Stop proceeded to Muhammadi Chowk, where at approximately 0130 hours, arrested accused Sher Muhammad Machi. He was found in possession of a black plastic shopper containing one large and one small piece of chars. The recovered Chars was weighed on an electronic scale and found to be **1020** grams. A memo of arrest and recovery was prepared on the spot in the presence of mashirs HC Noor Muhammad Rajput and PC Zakriya Masih. The accused, along with the recovered contraband, was taken to the police station where an FIR was registered on behalf of the State. Upon completion of the usual investigation, a challan was submitted, and the accused was sent up for trial.

3. 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 at Exh.2. The accused pleaded not guilty and claimed for fair trial, vide his plea at Exh.2/A.

4. During the trial, the prosecution has presented evidence to support the charge and to prove the allegations against the Appellant / accused. The P.W-1 HC Noor Muhammad, who is witness of event and Mashir had testified at Exh.3, he had only produced a memo of arrest and recovery as Exh.03/A. P.W-2 Moharram Ali, Incharge Malkhana (Store Room of Police Station) had testified at Exh.4 and submitted malkhana Entry No.131 from register No.19, which was marked as Exh.4/A. PW-3 SIP Muhammad Khan Panhwar, who is the Raiding-cum-Seizing

Officer, Arresting Officer, Recovery Officer, and Complainant of the case has testified at Exh.5, he had produced various documents, including the FIR, letter to SDPO Hali Road seeking permission to send property to chemical examiner, roznamcha entries, a sample receipt, letter addressed to chemical examiner Karachi, letter to Incharge CRO Hyderabad regarding obtaining criminal record of appellant and receiving his record from Incharge CRO Branch Hyderabad and chemical report, marked as Exh.5/A to Exh.5/J respectively.

5. Afterwards, the prosecution side was closed at Exh.6 through the ADPP. Thereafter, the statement of the accused under Section 342 of the Cr. P.C was recorded at Exh.7. In the statement, the accused denied all allegations made by the prosecution and asserted his innocence. The accused, in his statement under Section 342 Cr.P.C, opted not to testify under oath as per Section 340(2) Cr.P.C, nor did he call any defense witnesses despite being given the opportunity. However, while answering to question, appellant Sher Muhammad stated that he was innocent and prayed for justice.

6. After completion of trial and final hearing of the State Prosecutor and the Counsel for Defence, the learned trial Court passed Judgment and convicted and sentenced to the Appellant as referred at paragraph-1 hereinabove. The Appellant has impugned the said judgment of conviction before us which was passed on 07.12.2023.

7. The learned counsel appearing on behalf of appellant/accused has contended that PW-3 SIP Muhammad Khan deposed the weight of Chars being 1050 grams which is not

the case of prosecution while PW-1 HC Noor Muhammad produced memo of arrest and recovery Exh.03/A showing the 1020 grams of Chars, as such, there is material contradiction in between their evidence which ought to have not been ignored by the Trial Court while considering the evidence on record; that PW-1 Mashir HC Noor Muhammad deposed the entry No.20 in his evidence while in the FIR available at page-21 of the paper book the same is mentioned as 30 this too contradicts the prosecution story; that despite having been received spy information there was no arrangement made by complainant to associate private witness to make recovery truthful; that according to evidence of PW-3 Muhammad Khan Panhwar available at page-17 of the paper book, he deposed the name of PC Zulfiqar alleged to have signed memo of arrest and recovery while it was actually PW-1 HC Noor Muhammad who acted as mashir per memo of arrest available at page-14 of the paper book; that description of colour of dark brown plus black and monogram of yellow colour has not been deposed by PWs; that signatures differ in examination and FIR; that there is violation of S. 103 Cr.PC in respect of recovery of alleged contraband material; that PWs have failed to depose the shape and colour of case property; that the learned trial Court failed to consider the contradictions made by prosecution witnesses and passed the impugned judgment in haphazard manner; that prosecution has miserably failed to connect the appellant/accused with the recoveries also failed to prove the case without shadow of doubts. Lastly he has prayed for acquittal of accused. In support of his contentions, he has relied upon cases of Zahid Sarfaraz Gill Vs. The State [2024 SCMR 934],

Javed Iqbal Vs. The State [2023 SCMR 139], Qaiser Khan Vs. The State through Advocate-General, Khyber Pakhtunkhwa, Peshawar [2021 SCMR 363], Minhaj Khan Vs. The State [2019 SCMR 326], Ayaz Hussain Vs. The State [2023 YLR 242], and Sartaj Ali alias Maru Vs. The State [2019 P Cr. L J Note 76].

8. The D.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; that appellant is a habitual offender as almost 11 cases have already been registered against him; that the presence of the Appellant has not been denied at crime scene 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.

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

10. It appears that weight of recovered chars is clearly mentioned as 1020 grams in the Exh.3/A (Memorandum of Recovery & Arrest), in the Exh.5/F (Letter addressed to Chemical Lab) as well as in the Chemical Analysis Report Exh.5/J. Conversely, as per evidence of PW-3 Muhammad Khan Panhwar ***"I opened and checked the polythene bag and found containing one big and one small piece of chars therein and the same were weighed on the spot through digital scale which became 1050 grams"***. The factum of 1020 gram chars has not been confirmed by the PW-3 who was the Raiding

Officer—Arresting Officer—and Complainant of the case and his testimony is fatal for the case of prosecution. The prosecution has not given justification about the vast difference in weight and such variance of 30 grams has shattered the case as not proved.

11. The event of Recovery of narcotics substance have seriously contradicted by the official witnesses by deposition on material point of Mashirs presence as eye witness of the event of recovery. The PW-3 deposed ***“I apprehended the accused and took the possession of polythene bag from his possession and checked it in the presence of PC Zulfiqar and co-mashir PC Zakria Masih.....”***. The prosecution has not produced mashir PC Zulfiqar. On the contrary, PW-1 Noor Mohammad was appeared and claimed himself as Mashir / eye witness of event of recovery and arrest. He deposed ***“SIP Muhammad Khan Panhwar apprehended the accused and took the possession of polythene bag checked it in the presence of me and co-mashirs PC Zakria masih....”***. The foundation document of the prosecution has not confirmed through the witness of event.

12. We have also noticed that the signature of the PW-1 PC Noor Mohammad as signed on the deposition are quite different with the signature he has signed on the Memorandum of Recovery Exh. 3/A. This has further negated the presence of PC Noor Mohammad at the time of Recovery of narcotics substance as claimed by prosecution so also his presence has not confirmed by the Raiding Officer/Complainant/IO PW-3 and he has deposed that PC Zulfiqar was Mashir. Consequently, the foundational document of the prosecution in the present case of narcotics substance has spontaneously been disproved.

13. Additionally, the case of prosecution found multifarious undeniable contradictions on material points. The PW-3 deposed ***“....I alongwith HC Noor Mohammad, PC Zakria Masih and DPC Hanif left police station on police mobile No.SPD-972 vide departure roznamcha Entry No.20 at 0030 hours for area patrolling...”***. On the contrary, he produced FIR Exh.5/A, and in the contents of said FIR number of Entry is mentioned as Entry No.30.

14. The letter to Chemical Lab Exh. 3/J so also the PW-1 Noor Muhammad has deposed about affixation of 03 seals on parcel of Case property while the PW-3 Raiding Officer has not specifically deposed about the 03 seals. The claim of affixation of 03 seals on parcel of case is inconsistent with the Report of Chemical Examiner Exh.5/J which stated that only one seal parcel of case property was received at the chemical lab. The evidence of Raiding-cum-seizing Officer, Arresting Officer, Recovery Officer, Complainant and Investigation Officer PW-3 Muhammad Khan Panhwar so also the evidence of the Mashir of seizure, recovery and arrest PW-1 HC Noor Muhammad have revealed that on 15.10.2022 after seizure of case property and preparation of Memorandum of Recovery at about 01.30 hours, the case property was brought at PS Hali Road Hyderabad and thereafter at about 0230 hours FIR was registered at PS Hali Road Hyderabad. Notably, at the relevant time when the case property was brought into the PS Hali Road, District Hyderabad, the said Case property was not deposited by the Raiding-cum-Seizing Officer in the Malkhana (Store room) of the Police Station).

15. The PW-1 Noor Muhammad, mashir of event in his evidence deposed: ***"It is fact that the small piece of chars is wrapped with yellow colour polythene bag and big piece of chars is having some monogram, which was tried to erase, however, this fact was not disclosed in the contents of memo.... I am not confirmed that the presently case property is having the same seals, that were made by SIP Muhammad Khan Panhwar when sealed the same. Voluntarily says, the case property was sent to office of chemical examiner during the course of investigation where the seals of the case property were broken and then the office of chemical examiner Karachi put their own seals, accordingly.... It is fact that on the sealed parcel of the case property, FIR No.164/2022 was not written with the hand of SIP Muhammad Khan Panhwar on the spot."*** Both Mashir of event and complainant / seizing-cum-arresting officer contradicted to each other on material point. The PW-3 Muhammad Khan Panhwar deposed that ***"The case property was deposited in the malkhana of police station against an entry No.131 of register No.19 and on 17.10.2022, I took the case property from the malkhana of police station and against an entry No.33/0710 hours, I went to the office of chemical examiner Karachi along with case property and deposited the same for chemical examination."***

16. The prosecution has failed to establish that the case property, allegedly recovered from the possession of the accused on 15.10.2022, was ever handed over by P.W-3 SIP Muhammad Khan Panhwar to P.W-2 HC Moharram Ali (Incharge Malkhana)



for safe custody in the Malkhana (police station storeroom), who during his evidence deposed: **"It is fact that I have not produced an entry of police station dated 15.10.2022, showing my arrival on duty therein on 15.10.2022..... It is fact that the complainant of this case who also conducted investigation has been dismissed from his service."** He has also not confirmed as to on which date and time the case property was returned from the Chemical Lab and thereafter it was produced before the trial Court. The said link is missing in the file of prosecution. Furthermore, the scanning of statement of PW-2, his presence at the police station on 15.10.2022, the date on which the case property was allegedly handed over to him by P.W-3 SIP Muhammad Khan Panhwar is doubtful. Even the Road certificate for moving the case property towards chemical lab has also not produced by the prosecution.

17. Another aspect of the case is that investigation of instant case has been conducted by SIP Muhammad Khan Panhwar, who was heading the police party during the patrolling, arrested the accused with alleged contraband Chars and besides, he lodged the FIR and has figured as complainant of the case and he himself conducted investigation of the entire case. Such conduct on the part of police officials has not been appreciated by the Superior Courts, being violative of Police Order (22 of 2002) and Police Rules, 1934. In fact, in such an eventuality, the Investigating Officer who himself is the complainant cannot be expected to collect and preserve evidence which goes against his case and that such Investigating Officer cannot properly perform duties like an independent and fair Investigating Officer. In case

of **Agha QAIS Vs. The State** reported in **2009 P. Cr.L.J. 1334**, Honourable Lahore High Court, while dealing with this point exhaustively, held as under:

***“As pointed out above, P.W.5 acted as complainant, witness and Investigating Officer. Under the law, complainant and accused are two opponent parties. In other words, they are two contesting parties. Role of an Investigating Officer is of a neutral authority whose object is to unearth the truth. The Investigating Officer cannot be a part or a member of a party in a case which he is investigating. In this regard, guidance may be sought from Chapter 25 of Investigation from Police Rules, 1934. Rule 25.2(3) reads as under:-***

***"It is the duty of an Investigating Officer to find out the truth of the matter under investigation. His object shall be to discover the actual facts of the case and to arrest the real offender or offenders. He shall not commit himself prematurely to any view of the facts for or against any person."***

***The language of Rule 25.2 above noted clearly requires of an Investigating Officer not to commit himself prematurely to any view of the facts for or against any person. This cannot be expected from an Investigating Officer who himself is a party. As a matter of fact, concept of honest investigation is based on non-partisanship and neutrality. The reason and spirit of separating investigation wing from the operation wing of police also emanates from the same fact which reflects in Article 18 of the Police Order, 2002, therefore, we feel that element of honest, transparent and fair investigation lacks in the instant case. The same point has been discussed by the learned Sindh High Court reported in Nazir***

***Ahmad v. The State PLD 2009 Kar. 191. The Honourable Supreme Court has analyzed the above point from another angle also. According to the Honourable Supreme Court, Investigating Officer is an important witness for the defence also and in case he acts as a complainant and raiding officer, the defence is deprived of his very precious right at the same time and is forced not to depend upon the same. The Federal Shariat Court also observed that such an investigation is biased investigation. (Ashiq alias Kaloo v. State 1989 PCr.LJ 601). In State v. Bashir and others PLD 1998 SC 408, the Honourable Supreme Court observed that "as observed above, Investigating Officer is as important witness for the defence also and in case the head of the police party also becomes the Investigating Officer, he may not be able to discharge his duties as required of him under the Police Rules".***

18. In this context, reference can also be made to the case of ***Nazeer Ahmed vs. The State*** reported in **PLD 2009 Karachi 191**, wherein this Court held that *Police Officer who himself is the complainant cannot be expected to collect and preserve evidence which goes against his case and that such Investigating Officer cannot properly perform duties of an independent and fair investigating officer.* Similar observations were also made in the cases reported as ***Mohammad Siddique Vs. The State*** (2011 YLR 2261 [Karachi]) and ***Mohammad Akram Vs. The State*** (1995 MLD 1532 [Peshawar]).

19. 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 and 19 properly for each movement 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 recorded 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 7 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. XVI<sup>1</sup> every

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<sup>1</sup> Punjab Police Rules, 1934 in volume III and chapter No.22 10

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.**

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

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(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.

**20. Broken Safe custody and safe transmission of case property.** 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. 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.

21. The case of prosecution is based on spy information and prior knowledge as such no independent or private witnesses were arranged by the police despite sufficient time was available to the police party. There was an unhindered possibility to engage an independent person to witness the search and arrest of the

Appellant. We are mindful about the exclusion of Section 103 Cr.P.C. in the cases registered under the Control of Narcotics Substance Act, 1997 as envisaged under section 25 of the Act *ibid*, which reads as under:

“25. Mode of making searches and arrest: The provision of the Code of Criminal Procedure, 1898, except those of Section 103, shall *mutatis mutandis*, apply to all searches and arrests in so far as they are not inconsistent with the provisions of sections 20, 21, 22 and 23 to all warrants issued and arrests and searches made under these sections.”

(underlining supplied for emphasis)

A bare perusal of Section 25 of the Control of Narcotics Substance Act, 1997 expound that while making search and arrest, it is not absolute to avoid the provisions of Section 103 Cr.P.C. In our humble view, seizing officer has to meet the pre-conditionalites. For instance, the compliance of Section 21 of the CNS Act, 1997 for non-compliance of Section 103 of the Code by invoking Section 25 of the CNS Act, 1997 or that by the time warrant could be obtained, a possibility either of escape of the accused from crime scene or conceal or removal of evidence may involve which may put the prosecution in trouble to unearth the evidence. The Hon'ble Supreme Court in cases observed that it is not absolute requirement. Reliance can be placed on “**Zardar vs. The State**” (1991 SCMR 458) as well as in the case “**The State vs. Muhammad Amin**” (1999 SCMR 1367) held that:

“It is not an absolute requirement that in every case witness of the public must necessarily be produced. It depends upon the facts of each case. In the case in



hand the Police Officers were in the ordinary course of duty looking for the suspects and errant.”

22. 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).**

23. 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).***

24. This has brought down to a complete end of the physical recovery, existence of Memorandum of Recovery or its usefulness to prove the case beyond reasonable doubts in terms of Article 117 of the Qanun-e-Shahadat Order, 1984. The many and unwary captain PW-3 (a Raiding and Arresting Officer so also complainant of the case) has wrecked his ship on the shoals that surround and faded obscurity and skepticism and doubts instead of duty to prove the case beyond reasonable doubts. The inexcusable susceptible evidence adduced by the prosecution 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 of Conviction dated 07.12.2023 passed by the learned Model Criminal Trial Court-I/Special Judge (CNSA), Hyderabad in Special Case No.214 of 2022 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 case/crime.

25. The Government has also intercepted the process of tagging a suspect with criminal liability through introduction of an institution of Prosecution, primarily in year 1992 through Code of Criminal Procedure (Amendment) Act XXV of 1992 but later through promulgation of Sindh Criminal Prosecution Service

(Constitution, Functions and Powers) Act, 2009, prosecutors are obliged to scrutinize the police reports, forward it to the court if it is fit for filing or return the same for removal of defects, careful pre-trial and post-trial scrutiny that can be of any types including applicability of proper offences or collection of any particular evidence. Reliance is on cases reported as ***“AZIZULLAH KHAN Versus S.H.O. POLICE STATION SADAR MIANWALI and 4 others” (2013 P Cr L J 1411) & “NADEEM alias DEEMA v. DISTRICT PUBLIC PROSECUTOR, SIALKOT and 7 others” (2012 P Cr. L J 1823).***

26. We have also noticed that in the present case and so also in most of the Narcotics cases, the quality of investigation and prosecution is not satisfactory and in case the Prosecutor General Sindh office if carefully conduct the pre-trial and post-trial scrutiny in the light of verdict of superior courts, the anomalies and defects could be cured. The Sindh Criminal Prosecution (Constitution, Functions & Power) Act, 2009 so also other contemporary enactments have been enforced throughout Pakistan for the establishment of independent prosecution of case. The role of Prosecutor starts with the commission of offence and it does not end after the finalization of appeals but it continues to deal with jail appeals, question of remission, parole etc. We would further elaborate the steps and role of prosecutor:

- (i) **Role of a Prosecutor in Pre-Trial Stage**—the expression trial is neither defined in the Code of Criminal Procedure, 1872 nor it has been defined in the subsequent codes of 1882 and 1898. The meaning of these expressions can be retrieved from the dictionary meanings. According to

Stroud's Judicial Dictionary<sup>2</sup>, "trial" means the conclusions by the competent court, of question in issue in any legal proceedings. The statutory role of prosecutor before the presentation of Police Report/Charge Sheet/Challan under section 173 Cr.P.C. is recognized with a duty to scrutinize the entire case. The Section 9 of the Sindh Criminal Prosecution (Constitution, Functions & Powers) Act, 2009 provides:

**Section 9:**

(1).....

(2).....

(3) A police report under section 173 of the Code, including a report of cancellation of the First Information Report or a request for discharge of a suspect or an accused shall be submitted to a Court through the Prosecutor appointed under this Act.

(4) The Prosecutor shall scrutinize the report or the request and may –

(a) return the same within three days to the Officer Incharge of Police Station or Investigation Officer, as the case may be, if he finds the same to be defective, for removal of such defects, as may be identified by him; or

(b) if it is fit for submission, file it before the Court of competent jurisdiction.

(5) On receipt of an interim police report under section 173 of the Code, the Prosecutor shall –

(a) examine the reasons assigned for the delay in the completion of investigation and if he considers the reasons compelling, request the Court for the postponement of trial and in case investigation is not completed within reasonable time, request the Court for commencement of trial; and

(b) in cases where reasons assigned for delay in the completion of investigation are not

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<sup>2</sup> Stroud's Law Dictionary is a law dictionary first published in 1890 by Frederick Stroud, a Barrister and Recorder of Tewkesbury, England. He is also known for his writings like County Court Practice in Bankruptcy and Practical Law affecting Bills of Sale.

compelling, request the Court for commencement of trial on the basis of the evidence available on record.

(6) The Prosecutor may forward the report under section 173 of the Code, to the Court and applicability of offences against all or any of the accused as per facts and circumstances of the case.

(ii) **Role of a Prosecutor during the Trial Stage**—During the trial stage, the prosecutor plays an unrivalled role to represent the State than the government or police. In the actual trial, there are various stages and, in each trial, the prosecutor plays a pivotal role. After the pre-trial scrutiny, the prosecutorial decision is important when the Court takes cognizance of the case and frames the charges against the accused person and subsequent stage to lead evidence of prosecution and during such process involve with various techniques including assist the Court for proper application of offences, apply rule of confrontation due to hostility of witness or re-examination in terms of Article 133 of Qanun-e-Shahadat Order, 1984 or sole decision to examine or not to examine the witness or request the court to call any other person not cited as prosecution witness under section 540 Cr.P.C. and address final arguments. This is the statutory duty of trial prosecution as provided in section 9 of the *ibid* Act.

9. (1) The Prosecutors shall be responsible for the conduct of prosecution on behalf of Government.

(iii) **Role of a Prosecutor in Post-Trial Stage—** The provisions of Section 374 or 422 of the Code of the Criminal Procedure and 9 (1-A) connote post-trial role of prosecutor. The Section 9 (1-A) ibid Act caste duty and provides:

S.9. (1-A) The Prosecutor General or any Prosecutor authorized by him shall distribute work to the Prosecutors in the Supreme Court, High Court, Federal Shariat Court or a Special Court, Tribunal established under any law for the time being in force.”

S.11 ....

(4) Where a Prosecutor is of the opinion that an application for enhancement of sentence or a revision should be filed in any case, he shall refer the matter to the District Public Prosecutor or the Prosecutor General, who shall take appropriate measures thereon under the law.

(5) In case of acquittal by a –

- (i) Court in a District, the concerned District Public Prosecutor; and
- (ii) Special Court, the concerned Prosecutor, shall report the details of the case to the Prosecutor General, along with grounds for appeal and the Prosecutor General may request Government for preferring an appeal.

After judgement by the competent court, a prosecutor or an aggrieved party may file Appeal or Revision before the Appellate court. On appeal to the higher court, the prosecutor is again under duty to conduct post-trial scrutiny, prepared brief and apprise the Appellate Court(s). The wisdom of legislature is constituted a contrasting element of task that distinguishes between the prosecutor at trial and prosecutor at Appellate forum. The former is statutory obligated to grapple with the duty of stopping or subduing

curative defects and the latter is under legal obligation to scrutinize Judgments for the purpose either to challenge it or to thoroughly and carefully identify the lacunas or defects and inform the Head of Service for regular framework and case studies to prevent anomalies in future cases by effective coordination with relevant offices or departments such as Police hierarchy, Experts of Health Department, or Forensic or other concerned offices.

27. It may be observed that by inserting the above provisions, the legislature has placed a stringent duty upon the Prosecutor General Office and the Prosecutor General and his team are under obligation to carefully scrutinize the police file and prepare brief after removing the defects. Reliance can be placed on case of ***“Abdul Hafeez Junejo v. State”, (2010 Y L R 470)***. The role and responsibilities of pre-trial and post-trial scrutiny are also highlighted in case ***“Malik Mudassar Ali & Others vs. Secretary Public Prosecution”, (W.P. No.6630 of 2022); “Rahat Abbas vs. The State & another”, (Crl Misc. No.1979-B/2024)*** by the Lahore High Court. The Hon’ble Supreme Court of Pakistan in case reported as ***“Amjid Khan vs. The State & another”, (2021 SCMR 1458) held***

“The Prosecution Institution is required to ensure that the police properly investigate cases and the investigation report is comprehensive and accords with the law. The object of the Prosecution Institution is not to create hurdles in the timely submission of investigation reports (challans).....

**28.** We therefore, direct the Chief Secretary, Sindh, Govt. of Sindh to ensure the effective and careful mechanism of pre-trial and post-trial scrutiny in the light of observation recorded at paragraph 25, 26 & 27 and submit a comprehensive report on 29-05-2025 for our perusal.

**29.** The Jail Appeal is disposed of in above terms.

JUDGE

JUDGE

Muhammad Danish\*