IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD

*Criminal Appeal No.S-**213** of 2021*

Appellants:	**Aijaz Ali @ Arbab Ali S/o Baradi and Javed Ali S/o Ghulam Murtaza @ Tajali Shah** through their counsel Mr. Manzoor Ahmed Panhwar.
Respondent:	**The State** through Ms. Sana Memon, Assistant Prosecutor General, Sindh.
Date of hearing:	**19.05.2025**
Date of Decision:	**18.07.2025**

J U D G M E N T

Riazat Ali Sahar, J.: The appellants, Aijaz @ Arbab Ali and Javed Ali, have preferred this appeal against the judgment dated 12.11.2021 passed by the learned Additional Sessions Judge-I, Tando Muhammad Khan, in Sessions Case No. 92 of 2021. By the impugned judgment, both appellants were convicted under Section 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Gutka and Manpuri Act, 2019 ("the Act of 2019"), and each sentenced to **one year of rigorous imprisonment** and a fine of Rs.200,000/- (Two Lac rupees), with a further six months' simple imprisonment in case of default. The appellants were taken into custody upon conviction, their bail bonds cancelled, and they now seek acquittal on the grounds that the conviction is legally and factually unsustainable**.**

2. The prosecution case, as gleaned from the FIR (Crime No. 122/2021 of P.S. Tando Muhammad Khan) and trial record, is that on *09.05.2021* at about 11:00 a.m., a police party led by ASI Soof Khan departed on patrol (Entry No. 9) along with HC Fateh Muhammad, PC Abdul Rehman, and others. During patrolling, ASI Soof Khan claims to have received a tip-off that two individuals – later identified

as appellant Aijaz (alias Arbab Ali) and appellant Javed Ali – were preparing (filling) *Manpuri* packets in large sacks (kata) at a roadside cabin near Dodo Wah Mori. Acting on this information, the police proceeded to the indicated spot, which was near a bus stop (*Lakhat Fatak*) in a populated area. Upon arrival at around 11:30 a.m., the police allegedly saw two persons busy filling *Manpuri* into two white sacks. The suspects attempted to flee; one (said to be Javed Ali) escaped into nearby shrubbery after discarding a sack, but the other (Aijaz) was apprehended on the spot along with the second sack.

3. The police recovered two large white sacks, each reportedly containing *3000 packets of "Manpuri"*, a chewable mixture injurious to health. Ten (10) packets were separated as samples from each sack (total 20 packets) for chemical analysis, and the remaining packets (approximately 2990 in each sack) were sealed. A personal search of appellant Aijaz yielded Rs.200/- in currency notes. No private persons were present or approached to witness the proceedings, so the police prepared a **mashirnama** (memo) of arrest and recovery on the spot in the presence of the accompanying police officials (HC Fateh Muhammad and PC Abdul Rehman) as mashirs. The apprehended appellant and the case property were then taken to Police Station Tando Muhammad Khan City, where ASI Soof Khan lodged the FIR at about 1:30 p.m. as complainant on behalf of the State. The other suspect, Javed Ali (appellant No.2), was shown as an absconder who had fled; notably, nothing was recovered from his person or possession at the time.

4. Investigation was entrusted to SIP (Sub-Inspector of Police) Ismail Mashori. The Investigating Officer visited the scene on the next day (10.05.2021) along with mashirs to prepare a memo of site inspection. On 17.05.2021, SIP Ismail forwarded two sample parcels (each containing 10 packets of the seized substance) to the chemical examiner through PC Junaid, vide entry No. 17 at 7:00 a.m. The sealed sacks of remaining packets were retained in the police *malkhana* (storehouse) in the interim. A chemical analysis

report (dated 04.06.2021) was received in due course, opining that the substance was hazardous and unfit for human consumption. Upon completion of investigation, the appellants were sent up for trial and charged under Section 8 of the Act of 2019 (punishable for preparation/manufacture of Gutka/Manpuri). Both appellants pleaded 'not guilty' and claimed trial.

5. The prosecution examined four witnesses. **PW-1 ASI Soof Khan** (complainant) narrated the raid and arrest, and produced the departure entry, mashirnama of arrest/recovery, arrival entry and the FIR. **PW-2 HC Fateh Muhammad** (mashir) corroborated the complainant's version of the incident and produced the memo of site inspection prepared the next day. **PW-3 SIP Ismail Mashori** (I.O.) described post-arrest formalities, including diary entries, the dispatch of samples to the laboratory (on 17.05.2021), and produced the relevant station diary entries, the letter to Chemical Examiner, and the Chemical Examiner's report. **PW-4 WHC Zaheer Hussain** (the head constable *malkhana* in-charge) testified to receiving the case property on 09.05.2021 (two sealed sacks and two sample parcels) and its dispatch on 17.05.2021 for analysis. All the witnesses were police officials; no independent witness was presented. The reappraisal of evidence is as under:

> **Deposition of PW-1: ASI Soof Khan (Complainant).** The prosecution's first witness, ASI Soof Khan, deposed that on 09.05.2021, he was posted at Police Station Tando Muhammad Khan and, as per Entry No. 09, departed at 1100 hours in official vehicle No. SPE-709 along with HC Fateh Muhammad and others for routine patrolling. While at Lakhat Fatak, he allegedly received spy information that two individuals, namely Aijaz Samejo and Javed Shah, were engaged in the activity of filling *Manpuri* into white sacks near Dodo Wah Mori. Acting upon this information, the police party proceeded to the spot where they observed both individuals engaged in said activity. According to him, Javed

Shah managed to escape while Aijaz Samejo was apprehended with a sack containing 3000 *Manpuri* packets. He further stated that 10 packets were separated and sealed for chemical analysis, and a sum of Rs. 200 was recovered from Aijaz. A mashirnama of arrest and recovery was prepared on the spot in the presence of police personnel only, without associating any private witnesses. On returning to the police station, he handed over the accused and case property to the Investigating Officer (I.O), SIP Ismail Mashori, and an FIR was registered.

During cross-examination, the complainant admitted that although they had arrived at Lakhat Fatak around 1110 hours and reached the alleged place of incident by 1200 hours, no effort was made to associate any private individual as a mashir, despite the presence of a populated area nearby. He also acknowledged not informing his superiors about the spy information. Importantly, he conceded that he was serving as an ASI, and not as a Sub-Inspector, thus lacking the requisite legal authority under Section 14 of the SPPMSGM Act, 2019, to lodge the FIR or conduct the search and arrest. He admitted that the mashirnama, FIR, and other entries were all written by WPC Nomi Wassan in identical handwriting, which casts further doubt on procedural authenticity. He denied the allegation that the case was fabricated or foisted upon the accused, yet could not offer a plausible explanation for the exclusion of independent witnesses.

Deposition of PW-2: HC Fateh Muhammad (Mashir of arrest and recovery).

The second witness for the prosecution, HC Fateh Muhammad, substantially corroborated the version narrated by ASI Soof Khan. He confirmed that while on patrol duty in the official police vehicle on 09.05.2021, they received

intelligence regarding the suspects' activities. Upon reaching the described location, they found Aijaz and Javed allegedly filling *Manpuri* into sacks. He stated that Javed managed to escape, while Aijaz was apprehended with one of the sacks. The witness affirmed the seizure of 3000 *Manpuri* packets from Aijaz's possession, of which 10 were separated and sealed, along with the recovery of Rs. 200 from his person. He signed the mashirnama of arrest and recovery and also participated in the site inspection memo.

However, in his cross-examination, he admitted that upon receiving the spy information around 11:15 a.m., they arrived at the place of incident by approximately 11:30 a.m. and arrested Aijaz by 12:00 noon. He conceded that the area surrounding the place of incident included settlements belonging to the Mallah and Jiskani communities, thereby reinforcing the presence of potential independent witnesses, yet none were associated. When questioned on the time of their return to the police station, he first stated it was 12:30 p.m. but later revised it to 1:30 p.m., reflecting inconsistency. He also confirmed the proximity and visibility of the jungle from the cabin area, suggesting that the location was neither remote nor inaccessible to witnesses. Though he denied that the mashirnama was written at the police station by WHC, he failed to provide a satisfactory explanation for such denial, especially in light of the same handwriting appearing across documents.

Deposition of PW-3: SIP Ismail Mashori (Investigating Officer).

The third prosecution witness, SIP Ismail Mashori, testified that on 09.05.2021 he received custody of the accused Aijaz and the case property from ASI Soof Khan and registered the FIR. He maintained that he carried out the site inspection the next day, on 10.05.2021, in the presence of HC Fateh

Muhammad. He further deposed that on 17.05.2021, he dispatched two sealed parcels containing 10 *Manpuri* packets each to the chemical examiner via PC Junaid, after making entry No.17 in the relevant register. He received the chemical examiner's report on 04.06.2021, indicating that the seized material contained hazardous substances and was unfit for human consumption. He subsequently submitted the final challan before the Court.

Under cross-examination, the I.O admitted that there was a delay of eight days in dispatching the case property to the chemical examiner, during which time it remained in the police malkhana. He failed to provide a satisfactory justification for this delay. He further acknowledged that co-accused Javed Ali had not been arrested or identified, and he did not examine PC Junaid, who had allegedly carried the parcels to the chemical examiner. Notably, he conceded that the chemical examiner's report contained handwritten additions, including the name of the accused and parcel details, despite the rest of the report being computer-generated. He did not offer any explanation for these suspicious inconsistencies, nor did he produce Dr. Shahid Mustafa Memon, the author of the report, for examination to verify the handwritten alterations.

Deposition of PW-4: WHC Zaheer Hussain (Malkhana In-charge / Station Clerk).

The final prosecution witness, WHC Zaheer Hussain, confirmed that he received sealed case property on 09.05.2021 from ASI Soof Khan and duly made an entry in the malkhana register. He stated that on 17.05.2021, he dispatched the sample parcels to the chemical examiner through PC Junaid, and produced the relevant

documentation and register entries before the Court to affirm the chain of custody.

During cross-examination, he admitted that the date of receipt of case property was not recorded on the envelope or the parcels. Moreover, he failed to mention the specific times of dispatch and return in the malkhana register. He acknowledged that only 10 packets out of the total recovered 3000 were sent to the chemical examiner. This raises legitimate doubts about the authenticity and representativeness of the chemical analysis, particularly when the alleged contraband was not fully examined.

After the prosecution evidence, the statement of both accused was recorded under Section 342, Cr.P.C. They denied the allegations and professed innocence. Appellant Aijaz claimed that he was falsely implicated at the instance of one DSP (alleging that he was actually picked up from home by one DSP and later framed with the contraband), whereas appellant Javed maintained that he had no involvement and was roped in due to malice. The appellants pointed out various contradictions and illegalities in the prosecution case in their defence. The learned trial Court, however, found the charge proved and convicted both the appellants, as noted above.

6. Learned counsel for the appellants contended that the conviction is miscarried and unsustainable **in law** and facts. He highlighted multiple contradictions and discrepancies in the evidence of the prosecution's own witnesses (ASI Soof Khan, HC Fateh Muhammad, and SIP Ismail Mashori) that, in his view, strike at the veracity of the prosecution story. It was pointed out that the prosecution failed **to associate** any private witness **de**spite the raid occurring in a public place (near a road and bus stop), which is a direct violation of Section 103, Cr.P.C, thereby casting doubt on the recovery proceedings. It was further argued that under the special law (Gutka/Manpuri Act, 2019), the **FIR and raid were conducted by**

an ASI who was not competent under Section 14 of the Act to do so, as the law requires action by an officer not below the rank of Sub-Inspector. This statutory infraction, counsel submitted, renders the very initiation of the case illegal and void. The learned counsel also assailed the **Chemical Examiner's report** and chain of custody of the samples. He emphasized that the case property (the seized *Manpuri* packets) was sent to the laboratory **after an unexplained delay of 8 days**, remaining in the police malkhana from 09.05.2021 to 17.05.2021 without any satisfactory account. Such delay, it was submitted, opens the door to tampering or substitution of the samples. Moreover, the Chemical Examiner's report itself contains **handwritten overwriting/alterations** on what appears to be a computer-printed format – for instance, the number of parcels was typed as "one" but later changed by hand to "two," and the name of appellant Javed was inserted by pen where only Aijaz's name was originally typed. These irregularities, coupled with the fact that **only a small portion of the alleged contraband (20 packets out of 6000)** was tested, render the report's reliability questionable. Learned counsel argued that the **entire bulk of seized substance was not chemically analyzed**, rising doubts whether all of it was of the same nature and quality as the samples tested. It was also pointed out that the report's conclusion was generic – merely stating the material was *hazardous and unfit for human consumption* – without specifying what harmful ingredients were found (e.g. tobacco, areca nut, and chemicals) and in what quantity. This omission fails to conclusively bring the material within the defined ambit of "gutka/manpuri" under the law (which includes any mixture of betel nut, catechu, tobacco, lime, etc., injurious to health). Crucially, **Dr. Shahid Mustafa Memon**, the Chemical Analyst who signed the report, was not produced at trial to explain these alterations or to testify as to the analysis. The defence submits that the prosecution's failure to examine this material witness (the expert who could clarify the report's authenticity and findings) must give rise to an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984

(that had he been examined, his testimony would have been unfavourable to the prosecution). The learned counsel further drew attention to **contradictions in the oral testimonies** of the key witnesses. For instance, ASI Soof Khan stated that the police party received the spy information at around 11:10 a.m. at Lakhat Fatak, whereas HC Fateh Muhammad testified the time to be approximately 11:15 a.m. While a difference of five minutes may be minor, a more notable discrepancy emerged regarding the time of return to the police station: PW-1 (ASI) said they reached the station with the accused and case property at about 1:35 p.m. (1335 hours), whereas PW-2 (HC Fateh) in cross-examination first stated they arrived at 12:30 p.m., then corrected himself to 1:30 p.m.. This inconsistency in timeline was highlighted as indicative of a **chaotic or falsified chronology** of events. Moreover, the WHC (PW-4) testified that the police party actually arrived back at the station around 8:00 p.m. on the day of the incident, even though the FIR was officially registered at 1:30 p.m. – a glaring discrepancy that suggests the possibility that paperwork was antedated or the occurrence time manipulated. It was also argued that the mashirnama of recovery, though claimed to have been prepared at the spot, might actually have been drafted later at the police station, given that no independent witness could verify its time and place and a suggestion to that effect was made during cross-examination (denied by the police witnesses). All these contradictions, counsel argued, go to the root of the prosecution's version and create reasonable doubt. As for appellant Javed Ali, learned counsel submitted that **no recovery whatsoever was made from him**, and he was not arrested at the scene. His implication rests solely on the word of the co-accused (appellant Aijaz) allegedly naming him to the police and the fact that police supposedly saw two individuals at the spot. It was contended that the disclosure by Aijaz to the police regarding Javed's identity is legally inadmissible against Javed and, in any event, was never reiterated on oath in Court. There is no confessional statement, no identification parade, and no independent corroboration of Javed's involvement. Thus, the **case against Javed Ali is entirely**

unproved; at best, he was a suspect who was never caught with any contraband. His conviction, it was argued, is unjustified in the absence of concrete evidence linking him to the offence. Finally, the defence stressed that the myriad deficiencies in the prosecution case entitle the appellants to the benefit of doubt. It was submitted as a cardinal principle of criminal justice that the prosecution must prove its case beyond reasonable doubt, and even a single reasonable doubt is sufficient to secure acquittal. Learned counsel cited the landmark judgment ***Tariq Pervez v. The State* (1995 SCMR 1345)** emphasizing that if a **single circumstance** creates reasonable doubt in a prudent mind about the guilt of an accused, the accused shall be entitled to its benefit as of right. In the present case, counsel maintained, there are numerous doubts – regarding the legality of the raid, the integrity of the recovered samples, the truthfulness of the witnesses, and the adequacy of the evidence – each of which independently and collectively mandates the appellants' acquittal.

7. Conversely, learned Assistant Prosecutor General (APG) vehemently supported the trial Court's decision. She submitted that the police officials had no enmity with the appellants and their testimony is credible and sufficient to sustain the conviction. The APG argued that the quantity of contraband recovered (6000 packets) was enormous and it is implausible that such a haul would be foisted upon the appellants without reason. She maintained that minor time discrepancies do not detract from the core fact that Aijaz was caught red-handed with a huge quantity of injurious *Manpuri*, and that he himself divulged the identity of the absconding co-accused on the spot. The learned APG further contended that non-examination of private witnesses is not fatal when the police evidence is consistent, and that the Chemical Examiner's report – notwithstanding some handwritten notations – confirmed the recovered substance was hazardous, thus fulfilling the requirement of the law. She prayed for dismissal of the appeal, arguing that the appellants were duly found guilty of an offence that endangers public health and should not be lightly acquitted on technicalities.

8. I have heard the learned counsel for the appellants and the learned APG, and carefully perused the entire trial Court record and the law. The findings of the trial Court have been examined in light of the submissions made and the grounds agitated.

9. At the very outset, it is observed that the police did not associate **any independent witness** in the recovery proceedings, despite the raid taking place in broad daylight at a location near a bus stop and surrounded by houses of local residents (Mallah and Jiskani communities, as admitted). Both ASI Soof Khan and HC Fateh Muhammad conceded that no private person was present or was asked to become a mashir during the arrest and seizure. Section 103 of the Code of Criminal Procedure mandates that for search or seizure in any place, at least two respectable inhabitants of the locality shall be associated as witnesses (unless the exigencies of the case otherwise require). In the case at hand, no effort at compliance was made. The explanation that *"no public person was available*" rings hollow given that the spot was a public place (a road side cabin at a bus stop) in broad daylight. The failure to include any neutral witness is a **material omission** that diminishes the credibility of the prosecution's evidence of recovery. It is a settled principle that the evidence of police officials, if trustworthy, is not to be discarded merely for want of private witnesses. However, when the occurrence is in a populous area and the entire case hinges on police testimony, the Courts have repeatedly held that such evidence must be received with caution and subjected to a **heightened scrutiny**. Here, not only is the case based exclusively on police witnesses, but the prosecution did nothing to even attempt securing independent corroboration, which raises an inference that perhaps the **prosecution wanted to keep the witnesses "in-house" to control the narrative**. In **Mohsin alias Mullan vs. The State *(2023 PCrLJ Note 50 Karachi),*** a case involving gutka recovery, the High Court set aside the conviction, noting that the place of arrest was thickly populated yet no independent person was approached to witness the event, which, coupled with other contradictions, fatally undermined the

prosecution's case. Likewise, in ***Abdul Qahir vs. The State*** **(2023 YLR Note 14 Karachi),** it was observed that where the incident took place on a busy road but no private witnesses were associated, the case called for further inquiry and could not be safely accepted at face value. The instant case falls in line with these precedents – the omission of independent witnesses in a situation that naturally provided for them is a significant red flag, warranting doubt as to whether the recovery was truly conducted as claimed or at the time and place alleged.

10. Another legal infirmity afflicting this case is the manner in which it was initiated. The Act of 2019, which is a special law addressing the menace of gutka and manpuri, prescribes in Section 14 that the powers of entry, search, seizure and arrest without warrant under the Act may be exercised only by an officer ***"not below the rank of Sub-Inspector of Police or equivalent, authorized in this behalf by the Home Department"***. In the present case, the raid was led by **ASI Soof Khan**, who is admittedly junior in rank to a Sub-Inspector, and there is no evidence on record that he was specially authorized by the Home Department as an "Authorized Officer" under Section 18 of the Act. The FIR was registered on the complaint of ASI Soof Khan himself, which means the entire proceeding – from raid to FIR – was initiated by an officer lacking the requisite mandate under the law. This is not a mere technicality; it goes to the **jurisdiction and legality of the proceedings**. When a statute expressly designates a certain rank for enforcement actions, any contravention of that stipulation can render the action **ultra vires**. In similar contexts, our Superior Courts have disapproved of prosecutions launched by incompetent persons in violation of statutory requirements, treating the proceedings as vitiated from inception. By analogy, an FIR lodged by an officer not authorized under the Act of 2019 is illegal, and any consequent trial and conviction cannot stand on a null foundation. The learned trial judge appears to have overlooked this fundamental illegality. On this score alone, the

appellants have a strong case for acquittal, as the entire recovery and FIR suffer from **want of sanction of law**.

11. The timeline of handling the case property raises serious questions about the **chain of custody**. It is undisputed that the samples of the seized substance were not dispatched to the chemical examiner until **17.05.2021**, a full *eight days* after the recovery on 09.05.2021. During this period, the sacks of contraband and the sample parcels remained in the police custody (malkhana). The Investigating Officer (PW-3) gave no plausible reason why the dispatch was delayed so abnormally. In crimes involving narcotics or contraband, any **unexplained delay in sending samples for analysis** is viewed with suspicion, because it provides a window in which the possibility of tampering or manipulation cannot be ruled out. Here, the I.O admitted in cross-examination that the property remained in the malkhana for 8 days and that he sent it after that delay. The record (roznamcha entries) confirms the dispatch on 17.05.2021 without detailing what transpired in the interim. Even PW-4 (WHC Zaheer) acknowledged that the entry in the register did not record the dates on which the property was handed over for chemical analysis, nor the times, etc., and that he was on duty round the clock on 09.05.2021. These omissions further muddy the transparency of the custody chain.

12. Notably, the **person who carried the samples to the laboratory (PC Junaid)** was also not examined at trial. His testimony would be crucial to affirm that he received intact parcels and delivered them intact to the lab, and to explain where the samples were kept during transit and any delays on route. The prosecution's failure to examine this *material link witness* is a critical lapse, as recognized in ***Muhammad Ali Abro vs. The State*** **(2022 MLD 1420 Karachi)** – a case also concerning Gutka recovery – where the Court disbelieved the recovery and overturned the conviction due to a 3-day delay in sending samples to the chemical examiner with no explanation, combined with the non-examination of the constable who

took the samples to the lab. The High Court in that case held that such an unexplained delay and missing link was *"sufficient to disbelieve the recovery"* and concluded that the prosecution had failed to prove safe custody and transmission of the contraband. In the present case, the delay is even longer (8 days) and similarly unexplained, and the sample carrier is absent – circumstances which, on the strength of the precedent, make the prosecution's version of *safe custody* highly doubtful. This lapse fatally taints the evidence of chemical analysis because the Court cannot be confident that the tested samples were indeed the same that were recovered from appellant Aijaz, or that they remained untampered.

13. The Chemical Examiner's report (Ex.05/G) was relied upon by the prosecution to establish that the recovered substance was *gutka/manpuri*and injurious. However, the manner in which this report was prepared and presented renders it a shaky piece of evidence. First, as noted, the report appears on a **computerized template with multiple handwritten insertions/overwriting**. For instance, where the form stated "one sealed parcel" was received, the word "one" is stricken out and "two" is written by hand above it. Similarly, the printed text identified the sample under the name of accused Aijaz, but the name of "Javed Shah" (appellant Javed) was manually added. Additionally, in describing the contents of parcels, the typwritten form mentions a parcel containing *"10 mainpuri in plastic pouch,"* and in handwriting the words "10 mainpuri" are added (suggesting perhaps two such parcels). These corrections are ostensibly initialed and stamped by the laboratory, as observed by the trial Court. Nonetheless, the presence of such alterations raises the question: **why were they necessary?** They indicate either an error in communication (the lab initially was told only one parcel, then it was clarified to be two) or a mistake in the report preparation. In either event, the defense was entitled to probe these irregularities by cross-examining the author of the report. Regrettably, the Chemical Examiner (Dr. Shahid Mustafa Memon) was **never called as a witness**. This deprives the appellants of the opportunity to challenge

the report's integrity through the person who could explain the reasons for the handwritten changes and the exact findings.

14. Moreover, the substantive content of the report is less than illuminating. It concludes that the substance is *hazardous for health and unfit for human consumption*. While this finding aligns with the broad definition of gutka/manpuri in the law (which includes any mixture containing betel nut, tobacco, etc., that is injurious to health), the report **fails to specify which ingredients or chemicals render it hazardous**. There is no mention of detecting tobacco (nicotine), areca nut (betel nut) or any specific carcinogenic or toxic substance in the sample. In effect, the report's conclusion could apply to any filthy or unhygienic material; it does not concretely link the samples to the prohibited substances enumerated by the Act or the Pakistan Penal Code (e.g. those relevant to sections 269, 270, 337-J PPC which are often invoked in such cases). This vagueness undermines the probative force of the report. In ***Muhammad Ali Abro vs. State* (2022 MLD 1420 Karachi),** the chemical examiner's report showed that only a subset of the seized packets were received (two packets, in that case), which, coupled with a discrepancy in the count of packets, led the Court to find *"very serious doubt about the recovery"* and to extend benefit of doubt to the accused. Here, too, only a small subset of the contraband was tested, and while there is no numerical discrepancy in count (since 10 packets from each sack were separated, leaving 2990 in each, which matches the evidence of PW-4), the **qualitative gap** remains – I do not know what those 20 packets contained apart from a generic hazard, and whether the remaining packets in the sacks were of identical composition. Without a clear identification of the substance (for example, confirming the presence of nicotine/tobacco or other banned additives), it becomes difficult to definitively say that the recovered material was the same injurious concoction that the law forbids. The trial Court treated the Chemical Analyst's report as unimpeachable merely because the alterations bore official initials, but this Court cannot lose sight of the fact that **procedural and substantive doubts** hover over that document

– doubts which were not cleared due to the prosecution's omission to call the Chemical Examiner to testify under oath. In our criminal justice system, a report of an expert is admissible per se under certain provisions, but when the defense meaningfully challenges an expert's conclusion (as was done here by pointing out anomalies), the failure to produce the expert for cross-examination can render the report **insufficient** to sustain a conviction on its own. In sum, the Chemical Examiner's report in this case, fraught with unexplained notations and lacking detail, does little to bolster the prosecution; if anything, it adds to the list of uncertainties.

15. The defence has rightly underscored various contradictions in the evidence of the prosecution witnesses. While some discrepancies can be overlooked as innocent mistakes or time-lapse errors, others cannot be brushed aside so lightly. One such issue is the **timing of the FIR and arrival at the police station**. According to ASI Soof (PW-1), after completing the proceedings at the spot, he reached the police station with the accused at about 1:35 p.m., where the FIR was promptly registered (indeed, the FIR bears the time 1330 hours). HC Fateh (PW-2) initially gave a conflicting time (12:30 p.m.), and then aligned it to 1:30 p.m. upon further reflection. However, WHC Zaheer (PW-4), who was in charge of the station diary and malkhana, stated that ASI Soof and the apprehended accused arrived at the police station at around **8:00 p.m. (2000 hours)** on 09.05.2021. This is an alarming discrepancy: if the arrival was truly as late as 8:00 p.m., the FIR's recording time of 1:30 p.m. would be patently false, suggesting the FIR was registered (or at least officially timed) long before the accused and case property actually came to the station. Such a scenario indicates that the documents may have been prepared in advance or manipulated, which profoundly **shakes the confidence** one can place in the police version. The learned trial Court, in its judgment, attempted to reconcile some timing differences (finding a 5-minute or even an hour's difference immaterial in its view). However, the Court did not address the 8:00 p.m. vs 1:30 p.m. contradiction at all – an oversight that deprives the judgment of a

critical analysis. This Court cannot simply ignore a discrepancy of over six hours between witnesses about a key event (the return and FIR lodging) – it goes to the heart of **case fabrication possibility**.

16. Other inconsistencies include the distance and travel details to the scene (minor variances in stating 7/8 km vs 8/9 km), and a suggestion brought out in cross-examination that the documents (mashirnamas, entries) might have been prepared at the police station rather than on the spot – which the witnesses denied, but the denial itself shows that the defence successfully planted doubt as to the **authenticity of the contemporaneous preparation** of those documents. The cumulative effect of these inconsistencies cannot be simply washed away by terming them trivial. It is well-established that if **two material witnesses give conflicting accounts on a significant aspect, the benefit must go to the accused**, as it is not the Court's function to choose which version to believe when the prosecution's own case is fissured. The case of *Mohsin alias Mullan* (supra) explicitly notes that the witnesses in gutka recovery cases had given contradictory statements on material particulars, which was one of the reasons the conviction was not sustained. In the present matter, the material particulars under dispute (timing of crucial events, place of document preparation, etc.) are such that they create a reasonable doubt about the veracity of the prosecution's narrative of the raid and subsequent proceedings.

17. The case against appellant Javed Ali is remarkably weak – in fact, non-existent in evidentiary terms. He was not arrested at the scene; he allegedly **ran away**. No illicit material was recovered from his possession then or later. The only link connecting him to the offence is the oral statement of co-accused Aijaz at the time of arrest, wherein Aijaz supposedly disclosed Javed's name and involvement to the police. It scarcely needs mention that any such disclosure made in police custody is not admissible in evidence against the co-accused (Section 38 of the Qanun-e-Shahadat embodies the rule that the confession of an accused is only evidence against himself, not against

others, unless coming within the scope of a legally recognized exception such as a conspiracy, etc., which is not the case here). During the trial, PW-1 and PW-2 did reiterate that Aijaz named Javed as the accomplice who fled. Even if one were to accept this as true, it is essentially **hearsay against Javed** – the appellants being tried jointly, Aijaz's out-of-court statement implicating Javed carries no probative value against the latter. The prosecution did not examine any independent witness who saw Javed at the spot (no bus traveler or local villager was called to say that a man fled). They did not recover any article from Javed's home or possession that could connect him to gutka/manpuri trade. In fact, Javed remained absconding until he later joined proceedings obtaining bail before arrest), and the case against him rests entirely on police assertions. Our Courts have consistently required **independent corroboration** when an accused is to be roped in solely on the word of another accused or on weak circumstantial inferences. Here, there is none. It is also notable that the investigative officer (PW-3) admitted that co-accused Javed *"was neither arrested by me nor did he join my investigation, therefore I cannot identify him"*. This candid admission means that beyond the initial FIR, even the I.O gathered no evidence of Javed's involvement. In such circumstances, maintaining Javed's conviction would be against the settled principles of criminal law. Even if one were to believe that Javed was present and ran away, mere presence (or flight) does not prove his guilt in the alleged preparation or possession of contraband without more substantive evidence. No doctrine of presumption can fill this evidentiary void. Therefore, the conviction of appellant Javed Ali is found to be **entirely unwarranted and unsafe**.

18. In light of the foregoing analysis, the case of the prosecution is replete with doubts and legal defects. The cumulative effect of: (i) violation of the mandatory provision of the special law regarding authorization of the raiding officer, (ii) absence of independent witnesses in a situation calling for their presence, (iii) unexplained delay and breaks in the chain of custody of the alleged

contraband, (iv) irregular and unpersuasive chemical examination evidence, (v) material contradictions in the testimonies of official witnesses, and (vi) a lack of credible evidence against one of the appellants (Javed), is that the prosecution **has not proved the charge beyond reasonable doubt**. It is a well-settled doctrine of criminal jurisprudence that if there is any reasonable doubt in the prosecution's case, the accused must be given its benefit as of right, not as a concession. In the present matter, not just one but multiple reasonable doubts arise, each sufficient on its own to entitle the appellants to acquittal. The combined weight of these deficiencies utterly eclipses the prosecution's story. As the Hon'ble Supreme Court famously held in ***Muhammad Hassan and Another v. The State (2024 SCMR 1427)***[1] , it is not necessary for the defence to establish a multitude of doubts; even a single circumstance that creates reasonable doubt in a prudent mind about the guilt of an accused entitles him to be acquitted. Here, the "multitude of doubts" standard is amply met, and it would be against the dictates of justice and the law to uphold the conviction under such shaky circumstances.

19. In view of the above, the conviction and sentences of the appellants recorded by the learned trial Court vide judgment dated 12.11.2021 are **set aside**. The appeal is ***allowed***. The appellants Aijaz @ Arbab Ali and Javed Ali are hereby **acquitted of the charge**. The appellants were on bail vide order dated 10.12.2021, therefore, their bail bonds stand cancelled and sureties discharged. The case property (the seized gutka/manpuri packets) shall be **forfeited and**

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[1] *"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."* See also, Daniel Boyd (Muslim Name Saifullah) and another v. The State (1992 SCMR 196); Gul Dast Khan v. The State (2009 SCMR 431); Muhammad Ashraf alias Acchu v. The State (2019 SCMR 652); Abdul Jabbar and another v. The State (2019 SCMR 129); Mst. Asia Bibi v. The State and others (PLD 2019 SC 64) and Muhammad Imran v. The State (2020 SCMR 857).

Tariq Pervez v. The State (1995 SCMR 1345; *For giving benefit of doubt to an accused, it is not necessary that there should be many circumstances creating doubts. If a simple circumstance creates reasonable doubt in a prudent mind about the guilt of the accused, then he will be entitled to such benefit not as a matter of grace and concession but as a matter of right."*

destroyed in accordance with the law, since it is a hazardous substance.

20. In view of the observations contained in paragraph 10 of this judgment, it is expected that in future cases arising under the Act of 2019, the police shall strictly adhere to the mandate of the law, particularly with regard to authorized officers, association of independent witnesses, and careful handling of case property, so as to prevent any miscarriage of justice. Let a copy of this judgment be transmitted to the Inspector General of Police, Sindh, with a direction to circulate the same among all subordinate police officers/officials for strict compliance.

J U D G E

Ahmad/P.S