

IN THE HIGH COURT OF SINDH BENCH AT SUKKUR

(i) Spl. Cr. Appeal No. D-60 of 2025

Before:
Mr. Justice Amjad Ali Bohio, J.
Mr. Justice Khalid Hussain. Shahani, J.

Appellant : Mumtaz Hussain s/o Khuda Bux, Baladi
Through Mr. Sohail Ahmed Khoso, Advocate

AND

(ii) Spl. Cr. Appeal No. D-63 of 2025

Appellant : Ali Gohar s/o Ali Gul, Jamro
Through Mr. Shah Muhammad Bango, Advocate

The State : Through Mr. Muhammad Raza Katohar, DPG

Date of hearing : 21.10.2025

Date of Judgment : 18.11.2025

J U D G M E N T

KHALID HUSSAIN SHAHANI, J.— Since both these criminal appeals arise out of one and the same crime, as well as impugned judgment, the same are being decided together through this consolidated judgment. The appellants named above, being aggrieved and dissatisfied by the impugned judgment dated 14.07.2025, passed by learned Additional Sessions Judge-I/Model Criminal Trial Court/Special Judge for Control of Narcotic Substances, Khairpur, in Special Case No. 151/2024, whereby both appellants were convicted for offence under Section 9(1)(d) of the Control of Narcotic Substances (Amendment) Act, 2022 and sentenced to suffer imprisonment for life and to pay fine of Rs.2,00,000/- each (Rupees Two Hundred Thousand each), and in default of payment of fine, to suffer simple imprisonment for one year more, have preferred these appeals. The benefit of Section 382-B Cr.P.C was extended to them.

2. The brief facts of the prosecution case, as disclosed in the FIR No.88/2024 dated 28.04.2024, lodged by complainant ASI Nizakat Ali Wassan on behalf of the State at Police Station Kumb, are that on 28.04.2024 at 1630 hours, the police party of Police Station Kotdiji, headed by the complainant,

arrested accused Mumtaz Hussain S/o Khuda Bux Baladi from Mehran National Highway link road leading from Nangreja to Ranipur, near bridge of Ali Bahar Canal. The complainant allegedly recovered hemp/*bhang* weighing 21,000 grams lying in a white color bachka from his possession. Besides this, five denomination notes of Rs.100/- (total Rs.500/-) were also secured. Due to non-availability of private persons, the complainant prepared the recovery memo in the presence of police mashirs, namely PC Muhammad Azhar and PC Habibullah. Thereafter, the captive accused and recovered case property were brought to the Police Station, where the FIR was lodged against accused Mumtaz Hussain on behalf of the State.

3. It is further alleged that after lodging the FIR, on 03.05.2024 (after a delay of six days), the complainant got recorded his further statement under Section 162 Cr.P.C, wherein he disclosed that the recovered hemp/*bhang* (21,000 grams) was purchased by accused Mumtaz Hussain from one Ali Gohar alias Goho S/o Ali Gul Jamro, who was a narcotic dealer. It is pertinent to note that the name of appellant Ali Gohar was not mentioned in the original FIR dated 28.04.2024, nor in any statement recorded under Section 161 Cr.P.C of the prosecution witnesses on the same date or immediately thereafter.

4. The investigation of the instant crime was assigned to SIP Ghulam Mustafa Jalbani, to whom the memo of arrest and recovery, copy of FIR, property in sealed condition, and custody of accused Mumtaz Hussain were delivered by the complainant. The investigating officer recorded the statements of prosecution witnesses, visited the place of incident on 29.04.2024, and on completion of procedural formalities, submitted the charge-sheet against both accused before the Court of learned Civil Judge & Judicial Magistrate-I, Kotdiji. After completing legal formalities, the Records and Proceedings were submitted to the Court of learned Sessions Judge, Khairpur, wherefrom the same were transferred

to the Court of Additional Sessions Judge-I, Khairpur, for disposal according to law. The copies of police papers were supplied to the accused at Exh.1. The charge framed against the accused at Exh.2, both pleaded "*not guilty*" and claimed to be tried at Exh.2/A and Exh.2/B respectively.

5. To prove the charge against the accused, the prosecution examined PW-1 ASI Nizakat Ali Wassan (complainant) was examined at Exh.3. He produced relevant roznamcha entries, memo of arrest and recovery, copy of FIR, and further statement at Exh.3/A to Exh.3/D respectively. PW-2 WHC Imam Bux Burdi was examined at Exh.4. He produced entry No.34 of register book No.19 at Exh.4/A. PW-3 SIP Ghulam Mustafa Jalbani (Investigating Officer) was examined at Exh.5. He produced roznamcha entries, memo of inspection of wardhat, road certificate, letter to Incharge Chemical Examiner Laboratory Rohri, roznamcha entries, memo of arrest of accused Ali Gohar (imaginary memo), criminal records of both accused, and chemical examiner report at Exh.5/A to Exh.5/I respectively. PW-4 Mashir/witness PC Muhammad Azhar Shar was examined at Exh.6. PW-5 HC Bashir Ahmed Khaskheli was examined at Exh.7. Prosecution closed its side through statement at Exh.8. The statements of accused were recorded under Section 342 Cr.P.C at Exh.9 and Exh.10, wherein they pleaded their innocence and claimed that they have falsely been implicated in this case by the police and the recovery of alleged substance has been foisted upon them. Accused Mumtaz Hussain opted to examine himself on oath at Exh.11, wherein he produced certified copies of Criminal Complaint No.133/2023, case diary, court orders, and photographs at Exh.11/A to Exh.11/F respectively, to demonstrate that he had a civil dispute with one Mir Panhyar regarding illegal dispossession of agricultural land, and that the present case was registered at the instance of his adversary. Accused Ali Gohar did not venture into the witness box.

6. The learned trial Court, vide judgment dated 14.07.2025, convicted both appellants and awarded them the sentence as stated above.

7. Mr. Sohail Ahmed Khoso, learned counsel for appellant Mumtaz Hussain argued at length and submitted that learned trial Court has committed serious illegality while convicting the appellant without applying an independent and judicious mind to the facts and circumstances of the case. The impugned judgment is against the law and facts. The learned trial Court completely failed to consider the material contradictions and omissions brought out during the cross-examination of prosecution witnesses. The Court relied solely upon the examination-in-chief of the witnesses, which amounts to an irregular assessment of the available evidence and results in a miscarriage of justice. The very presence of the prosecution witnesses at the place of occurrence is shrouded in doubt and has not been proved in accordance with law. The complainant ASI Nizakat Ali Wassan admitted during cross-examination that on the day of the incident, he was duty incharge at Police Post (PP) Talpur Wada, not at P.S Kumb. He left P.P Talpur Wada at about 1200 hours and reached P.S Kumb at about 1300 hours. However, this crucial fact is not mentioned anywhere in the FIR. Furthermore, the complainant admitted that he did not make any entry at P.S Kumb upon his arrival from P.P Talpur Wada. This creates serious doubt about the bona fides of the prosecution case. The complainant admitted that after reaching P.S Kumb at 1300 hours, he left for patrolling duty at 1500 hours vide roznamcha entry No.16. However, the complainant failed to explain what he was doing during the intervening period of two hours. Moreover, the complainant admitted that HC Chand Khan was the duty incharge at P.S Kumb when he left for patrolling. This fact creates further doubt as to why the complainant, who was posted at P.P Talpur Wada, was conducting patrolling from P.S Kumb. The prosecution case suffers from serious contradictions regarding the receipt of spy

information. The complainant stated that he received spy information at Nangreja Chowk at about 1600 hours that notorious drug dealer Mumtaz Hussain Baladi was standing at Ali Bahar Canal having *katta* containing hemp. However, the complainant admitted during cross-examination that he verbally informed the Investigating Officer about the point of receiving spy information but failed to disclose the source of such information. The non-disclosure of the source of spy information is fatal to the prosecution case, as it creates doubt about the genuineness of the information. No independent or reliable evidence has been produced to establish that any such information was ever received. There is a patent violation of Section 103 Cr.P.C. The place of alleged recovery is on Mehran National Highway near the bridge of Ali Bahar Canal, which is a public place with sufficient movement of traffic and people. The complainant admitted during cross-examination that at a distance of 80/90 meters from the place of wardhat, there is a Government High School, and near the place of wardhat, there are quarters of Water Supply Department with solar plants installed on the roof. This clearly establishes that the area was not deserted or remote. Despite the availability of private persons in the vicinity, no independent witness was associated with the recovery proceedings. Instead, only police officials were appointed as mashirs. Although Section 25 of the CNS Act excludes the application of Section 103 Cr.P.C, the Honourable Superior Courts have consistently held that where independent witnesses are easily available, their association adds sanctity to the recovery proceedings and strengthens the prosecution case. The deliberate non-association of independent witnesses in the present case creates serious doubt about the recovery. The prosecution witnesses are interested witnesses. All the witnesses examined by the prosecution are police officials who are subordinates of the complainant. There is no independent witness to corroborate the prosecution story. The evidence of interested witnesses

should be scrutinized with great care and caution, and in the absence of independent corroboration, the same cannot be relied upon to sustain a conviction. There are material contradictions in the evidence of prosecution witnesses regarding the place of arrest. The complainant in his examination-in-chief stated that the accused was standing on the northern side at the place of wardhat and was apprehended at a distance of 08/10 paces from the bridge. However, the mashir PW-4 PC Muhammad Azhar stated in his evidence that they saw one person standing there who, seeing the police, became confused, and they tactfully apprehended him alongwith one white colour bachka bag. These contradictions are material and create serious doubt about the actual occurrence. The safe custody and safe transmission of the case property have not been established by the prosecution. The complainant stated that the case property was sealed at the spot and brought to the Police Station at about 1730 hours. The FIR was lodged at 1800 hours. The case property was handed over to *Malkhana* Incharge WHC Imam Bux Burdi, who kept the same in *Malkhana* under entry No.34 of register book No.XIX. However, the Investigating Officer took out the sample on 29.04.2024 at 1020 hours for sending to the Chemical Examiner Laboratory Rohri. The sample was sent through PC Muhammad Azhar on 29.04.2024. However, there is no evidence on record to show where and under whose custody the sample remained during the intervening period. The prosecution has failed to establish the unbroken chain of safe custody. The appellant has produced documentary evidence to establish that he has been falsely implicated in this case due to civil enmity with one Mir Panhyar. The appellant examined himself on oath at Exh.11 and produced certified copies of Criminal Complaint No.133/2023 filed under Sections 3 & 4 of the Illegal Dispossession Act, 2005, against Mir and his sons, wherein the appellant had alleged that Mir had illegally occupied his agricultural land. The appellant also

produced photographs and court orders to substantiate his plea. The learned trial Court, however, failed to appreciate this material defence evidence and wrongly convicted the appellant. The impugned judgment is perverse, illegal, and against the settled principles of criminal jurisprudence. The prosecution has miserably failed to prove its case against the appellant beyond reasonable doubt. The benefit of doubt must be extended in favour of the appellant.

8. For Appellant Ali Gohar Mr. Shah Muhammad Bango, Advocate submitted that learned trial Court has committed serious illegality while convicting the appellant Ali Gohar when there is no evidence whatsoever against him to show his guilt. The conviction of the appellant is wholly illegal, unlawful, and without any material evidence. The appellant Ali Gohar was not named in the original FIR dated 28.04.2024. His name was introduced through a supplementary statement under Section 162 Cr.P.C, recorded by the complainant ASI Nizakat Ali Wassan on 03.05.2024, after a delay of six days from the date of FIR. No plausible explanation has been given by the prosecution for this inordinate delay. The complainant admitted during cross-examination that after lodging the FIR on 28.04.2024, the Investigating Officer recorded his further statement on 03.05.2024, wherein he disclosed that accused Mumtaz Hussain had purchased the alleged hemp from accused Ali Gohar. This belated disclosure after six days is highly suspicious and creates serious doubt about the genuineness of the prosecution case against the appellant. The source of information regarding the involvement of appellant Ali Gohar has not been disclosed. The complainant has not stated from whom or through what source he came to know that Mumtaz Hussain had purchased the hemp from Ali Gohar. No independent evidence has been produced to establish any connection or transaction between the two appellants. The prosecution has failed to examine any witness who could depose about seeing the appellant Ali Gohar selling

narcotics to Mumtaz Hussain or having any dealing with him. The prosecution totally failed to establish or bring any evidence on record to show that the appellant had any connection, knowledge, or concern with the alleged offence or that he had any relationship with the co-accused Mumtaz Hussain. No evidence has been brought on record to prove that the appellant was involved in drug trafficking or had any conscious hand in the commission of the offence. The arrest of appellant Ali Gohar is highly questionable and illegal. The appellant was already confined in Central Jail Khairpur in connection with another criminal case. The Investigating Officer SIP Ghulam Mustafa Jalbani admitted during his examination-in-chief at Exh. 5 that on 27.06.2024, he prepared an "imaginary memo of arrest" of accused Ali Gohar, who was already confined in Central Prison in another case, and such memo was prepared in the presence of mashirs HC Bashir Ahmed Khaskheli and PC Abdul Ghafoor Sanjrani. This admission by the Investigating Officer that he prepared an "imaginary memo of arrest" is fatal to the prosecution case against the appellant. The preparation of an imaginary arrest memo is a serious irregularity and illegality, which vitiates the entire proceedings against the appellant. No recovery of any contraband was ever effected from the possession of appellant Ali Gohar. The appellant was never present at the place of occurrence. No evidence has been produced to show that the appellant was apprehended red-handed with any narcotic substance. The entire case against the appellant is based on the uncorroborated and belated statement of the complainant, which has been recorded six days after the FIR. The learned trial Court has failed to apply its judicial mind into the facts and circumstances of the case while awarding punishment to the appellant. The learned trial Court mechanically accepted the prosecution version without independently scrutinizing the evidence and without considering the serious lacunae and defects in the prosecution case. The evidence believed by the learned

trial Court is not against the appellant and is not sufficient to award conviction to the appellant. The entire prosecution case against the appellant is doubtful, and the benefit of doubt must be extended in his favour. However, it is clear from the record that the appellant has previous criminal cases registered against him, and the prosecution has tried to capitalize on his criminal antecedents to falsely involve him in the present case.

9. The learned Deputy Prosecutor General, Mr. Muhammad Raza Katohar, vehemently opposed the appeals and contended that all the prosecution witnesses have fully supported the case of the prosecution and have remained consistent throughout. He submitted that the offence committed by the accused is against society and involves a huge quantity of contraband (21,000 grams of hemp), which is sufficient to destroy the lives of innocent youth. The learned DPG submitted that the complainant ASI Nizakat Ali Wassan is a public servant and has no personal enmity or animus with the appellants. He further submitted that minor contradictions in the evidence of prosecution witnesses do not shake the trustworthiness of their testimony. The learned DPG relied upon the case of *State/ANF v. Muhammad Arshad* (2017 SCMR 283), wherein it was held that minor discrepancies in the evidence of witnesses should be overlooked when the prosecution has otherwise proved its case. Regarding the non-association of private witnesses, the learned DPG contended that by virtue of Section 25 of the Control of Narcotic Substances Act, 1997, the provisions of Section 103 Cr.P.C are excluded, and therefore, the evidence of police officials alone is sufficient to prove the charge. The learned DPG for the State further submitted that the chemical examiner's report produced at Exh.5/I is positive and confirms that the recovered substance was hemp/bhang. He contended that the prosecution has successfully established the safe custody and safe transmission of the case

property from the place of recovery to the Chemical Examiner Laboratory Rohri and back to the Court.

10. Regarding appellant Ali Gohar, the learned DPG submitted that the further statement of the complainant recorded under Section 162 Cr.P.C on 03.05.2024 is admissible in evidence and can be used for the purpose of corroboration and contradiction. He submitted that the delay of six days in recording the further statement is not fatal to the prosecution case, as the complainant has given a plausible explanation that he came to know through a reliable source after the arrest of Mumtaz Hussain that the hemp was purchased by him from Ali Gohar. The learned DPG for the State prayed that both appeals may be dismissed, and the impugned judgment of conviction and sentence may be maintained.

11. We have heard the learned counsel for the appellants and the learned Deputy Prosecutor General for the State at considerable length. We have also examined the record of the case, the impugned judgment, and the case law cited by both sides.

12. At the outset, it is pertinent to observe that in appeals against conviction, this Court, acting as an Appellate Court, has the power to re-appreciate and re-evaluate the entire evidence on record. The scope of interference by the Appellate Court in cases of conviction is well-settled. It is not confined to examining whether the view taken by the trial Court is a possible view; rather, the Appellate Court is empowered to re-assess the evidence, scrutinize the findings, and arrive at its own conclusion. This Court is duty-bound to examine whether the prosecution has been able to prove its case beyond reasonable doubt and whether the conviction can be sustained on the basis of the evidence on record.

13. Now, let us proceed to examine the prosecution case in detail and analyze the evidence on record to determine whether the guilt of the appellants has been established beyond reasonable doubt.

14. One of the fundamental principles of criminal investigation is that the police party must maintain a contemporaneous record of its departure from and arrival at the police station. This is mandated by Rule 27.14 read with Rule 25.8 of the Police Rules, 1934, and the maintenance of Roznamcha (Register No. 2) is obligatory for ensuring transparency and accountability in police actions. In the present case, the complainant ASI Nizakat Ali Wassan admitted during cross-examination that on the day of the incident (28.04.2024), he was posted as duty incharge at Police Post (P.P) Talpur Wada, not at Police Station Kumb. He stated that he left PP Talpur Wada at about 1200 hours along with PC Habibullah and reached P.S Kumb at about 1300 hours. However, this crucial fact is not mentioned anywhere in the FIR dated 28.04.2024. The complainant further admitted that he did not make any entry at PS Kumb upon his arrival from PP Talpur Wada. This is a material omission and contradiction. The FIR gives the impression that the complainant left PS Kumb for patrolling duty at 1500 hours vide roznamcha entry No.16, but it does not disclose that the complainant had actually come from P.P Talpur Wada at 1300 hours and remained at P.S Kumb for two hours before leaving for patrolling. No plausible explanation has been given by the complainant as to what he was doing during this intervening period of two hours. Moreover, the complainant admitted that HC Chand Khan was the duty incharge at P.S Kumb when he left for patrolling. If the complainant was posted at P.P Talpur Wada, the question arises as to why he was conducting patrolling from PS Kumb and not from his own place of posting. This creates serious doubt about the bona fides of the prosecution case and suggests that the entire story has been manufactured.

15. Although Section 25 of the Control of Narcotic Substances Act, 1997, excludes the application of Section 103 Cr.P.C, it is well-settled that where independent witnesses are easily available, their association with the recovery proceedings adds sanctity and credibility to the prosecution case and minimizes the possibility of false implication. In the present case, the place of alleged recovery is on Mehran National Highway near the bridge of Ali Bahar Canal. The complainant admitted during cross-examination that at a distance of 80/90 meters from the place of occurrence, there is a Government High School, and near the place of wardhat, there are quarters of Water Supply Department with solar plants installed on the roof. This clearly establishes that the area was neither deserted nor remote, and private persons were easily available in the vicinity. Despite the availability of independent persons, the complainant did not make any genuine effort to associate them with the recovery proceedings. Instead, only his subordinate police officials were appointed as mashirs. The complainant's explanation that no private person was available is not acceptable in light of his own admission that there were government quarters and a school nearby. This Court notes that when the place of recovery is a populated area and independent witnesses are easily available, their non-association raises serious doubts about the recovery.

16. Furthermore, in the recent judgment of *Zahid Sarfaraz Gill v. The State* (2024 SCMR 934) the Honourable Supreme Court of Pakistan has observed that in the modern age, police officials should use mobile phones and cameras to record photographic or videographic evidence of the search, seizure, and recovery proceedings to ensure transparency and credibility. In the present case, no such photographic or videographic evidence has been produced, despite the fact that the alleged recovery was made in broad daylight at 1630 hours. All the witnesses examined by the prosecution are police officials who are

subordinates or colleagues of the complainant. There is no independent witness to corroborate the prosecution story. The complainant ASI Nizakat Ali Wassan is himself PW-1. The mashirs are PC Muhammad Azhar (PW-4) and PC Habibullah (not examined). The Investigating Officer SIP Ghulam Mustafa Jalbani is PW-3, and the Malkhana Incharge WHC Imam Bux Burdi is PW-2. While it is true that police officials are competent witnesses and their evidence can be relied upon if it is found to be trustworthy and confidence-inspiring, as held in *Hussain Shah and others v. The State* (PLD 2020 Supreme Court 132), the fact remains that in the present case, all the witnesses are interested witnesses having a common cause with the prosecution. The evidence of interested witnesses must be scrutinized with great care and caution, and in the absence of independent corroboration, the same cannot be relied upon to sustain a conviction, especially when the case carries a sentence of life imprisonment.

17. There are several material contradictions in the evidence of prosecution witnesses which have been glossed over by the learned trial Court:

- (i) *The complainant stated that the accused was standing on the northern side at the place of wardhat and was apprehended at a distance of 08/10 paces from the bridge. However, mashir PW-4 PC Muhammad Azhar stated that they saw one person standing there who, seeing the police, became confused, and they tactfully apprehended him alongwith one white colour bachka bag.*
- (ii) *The complainant stated that the bachka containing hemp was tied with rope/rasi and he himself opened the recovered bachka at the spot. However, this fact is not mentioned in the memo of arrest and recovery produced at Exh. 3/B.*
- (iii) *The complainant stated that he conducted the body search of the accused and recovered five currency notes of Rs. 100/- (total Rs. 500/-). However, mashir PW-4 stated in his evidence that during body search, "I recovered" five currency notes. This contradiction is material because it is not clear who actually conducted the body search and recovered the money.*
- (iv) *The complainant stated that the computerized weight scale was fetched by PC Habibullah from the police mobile. However, the fact that the police party carried a computerized weight scale in the mobile is not mentioned in the FIR or in the roznamcha entry No. 16, which records the departure of the police party for patrolling.*

These contradictions may appear to be minor, but when viewed cumulatively, they create serious doubt about the truthfulness of the prosecution story. In the case of *Zakir Khan v. The State* (1995 SCMR 1793), the Honourable Supreme Court of Pakistan has held that minor contradictions in the evidence of witnesses should be overlooked if the prosecution has otherwise proved its case, but material contradictions which go to the root of the matter cannot be ignored and must be given due weight while assessing the credibility of the prosecution case.

18. One of the cardinal principles in narcotic cases is that the prosecution must establish an unbroken chain of safe custody and safe transmission of the case property from the place of recovery to the Chemical Examiner Laboratory and back to the Court. Any break in the chain of custody makes the chemical examiner's report unreliable and worthless for justifying the conviction of the accused. In the present case, the complainant stated that the case property was sealed at the spot and brought to the Police Station at about 1730 hours. The FIR was lodged at 1800 hours, but not disclosed whom he handed over case property. *Malkhana* Incharge WHC Imam Bux Burdi testified complainant handed over property to him, whereas IO says property was lying in Malkhana. PW-2 WHC Imam Bux Burdi further testified on 29.04.2024 at 1020 hours, the Investigating Officer SIP Ghulam Mustafa Jalbani took two sealed parcels of hemp from him, but no such separate entry maintained in register No.XIX to corroborate such fact, nor produced as the I.O admitted in cross examination by saying “*I have taken the case property from WHC under entry but I do not remember said entry nor produced in evidence.*”

19. Moreover, PC Habibullah Wassan, who was present at the time of recovery as mashir, has not been examined by the prosecution. His non-examination creates doubt about the safe custody of the case property. The

prosecution has failed to explain why this material witness was not produced. The Honourable Supreme Court of Pakistan in the cases of *Ikramullah and others v. The State* (2015 SCMR 1002), *The State v. Imam Bakhsh* (2018 SCMR 2039), *Abdul Ghani v. The State* (2019 SCMR 608), and *Kamran Shah v. The State* (2019 SCMR 1217) has consistently held that the chain of custody must be safe, secure, and indisputable. Any lapse on the part of the prosecution in establishing the safe custody or safe transmission of the representative samples casts doubt and vitiates the conclusiveness and reliability of the chemical examiner's report.

20. Appellant Mumtaz Hussain has examined himself on oath at Exh. 11 and has produced credible documentary evidence to establish that he has been falsely implicated in this case due to civil enmity with one Mir Panhyar and his sons. The appellant has produced certified copies of Criminal Complaint No. 133/2023 filed under Sections 3 & 4 of the Illegal Dispossession Act, 2005, against Mir and his sons, wherein he had alleged that Mir had illegally occupied his agricultural land bearing Survey No. 378/1-32 acres situated in Deh Bago Daro, Taluka Kotdiji, District Khairpur.

The appellant has also produced the case diary dated 20.05.2024 of Criminal Complaint No.133/2023, which shows that reports were called from the Mukhtiarkar (Revenue) Taluka Kotdiji and SHO PS Kumb. The order dated 14.11.2024 passed in Criminal Complaint No.133/2024 has also been produced, which shows that the complaint is pending adjudication.

21. The appellant has also produced photographs to substantiate his plea. During cross-examination, the complainant ASI Nizakat Ali Wassan has admitted that he knows that Mir and his sons have forcibly occupied the land of accused Mumtaz Hussain, but he stated that he does not know whether the appellant has filed a complaint under the Illegal Dispossession Act or not. However, the complainant denied the suggestion that he has lodged the present

FIR at the instance of Mir Panhyar. The learned trial Court has rejected this defence plea on the ground that it is an afterthought. However, we are of the view that the documentary evidence produced by the appellant cannot be brushed aside lightly. The fact that there is a civil dispute between the appellant and Mir Panhyar over agricultural land has been established by the documentary evidence. The complainant's admission that he knows about the forcible occupation of the appellant's land by Mir further corroborates the appellant's plea. The timing of the registration of the present FIR (28.04.2024) and the pendency of the civil complaint (filed on 23.12.2023) create a strong inference that the appellant has been falsely implicated due to civil enmity.

22. In cases where the accused sets up a specific defence of false implication due to enmity, and produces credible evidence to support his plea, the prosecution is under an obligation to rebut such defence evidence. In the present case, the prosecution has failed to discharge this burden.

23. Now, we come to the case against appellant Ali Gohar. As noticed above, the appellant Ali Gohar was not named in the original FIR dated 28.04.2024. His name was introduced through a supplementary statement under Section 162 Cr.P.C, recorded by the complainant ASI Nizakat Ali Wassan on 03.05.2024, after a delay of six days from the date of the FIR. Section 162 Cr.P.C provides that no statement made by any person to a police officer in the course of investigation shall be signed by the person making it, and no such statement or any record thereof shall be used for any purpose at any inquiry or trial except for the purpose of contradicting the witness in the manner provided by Section 145 of the *Qanun-e-Shahadat Order, 1984*. In the present case, the further statement of the complainant recorded under Section 162 Cr.P.C on 03.05.2024 cannot be used as substantive evidence against the appellant Ali Gohar. It can only be used for the limited purpose of contradiction. However, even for the purpose of contradiction, the further statement must be reliable and inspire confidence.

24. The delay of six days in recording the further statement is highly suspicious and has not been satisfactorily explained by the prosecution. The complainant has stated that he came to know through a "reliable source" after the arrest of Mumtaz Hussain that the hemp was purchased by him from Ali Gohar. However, the complainant has not disclosed who this "reliable source" was and why it took six days for such information to come to his knowledge. More importantly, no independent evidence has been produced to establish any connection or transaction between appellant Mumtaz Hussain and appellant Ali Gohar. The prosecution has not examined any witness who could depose about seeing Ali Gohar selling narcotics to Mumtaz Hussain or having any dealing with him. No recovery of any contraband was ever effected from the possession of Ali Gohar. He was never present at the place of occurrence. More importantly in testimony the I.O has not deposed a single word that he had recorded further statement of complainant; such alone fact has dented upon the prosecution case.

25. The complainant ASI Nizakat Ali Wassan admitted during his cross-examination (conducted by the counsel for Ali Gohar) that none of the police officials have seen the present accused Ali Gohar while selling the alleged hemp to co-accused Mumtaz Hussain. He further admitted that he has not got recorded the confessional statement of accused Mumtaz Hussain before the learned Magistrate regarding the selling of hemp by accused Ali Gohar. The most damaging admission against the prosecution case is the evidence of PW-3 SIP Ghulam Mustafa Jalbani, the Investigating Officer. During his examination-in-chief at Exh. 5, he stated:

"On 27.06.2024, I prepared imaginary memo of arrest of accused Ali Gohar, who was already confined in Central Prison in another case, and such memo was prepared in presence of mashirs namely HC Bashir Ahmed Khaskheli and PC Abdul Ghafoor Sanjrani and obtained their signatures thereon."

26. This admission by the Investigating Officer that he prepared an "imaginary memo of arrest" is fatal to the prosecution case against appellant Ali Gohar. The term "imaginary memo" itself indicates that the arrest was fictitious and the memo was prepared only as a paper formality because the appellant was already in judicial custody in another criminal case. The preparation of an imaginary arrest memo is a serious irregularity and illegality. It shows that the Investigating Officer was not sincere in the investigation and was merely going through the motions to somehow implicate the appellant in this case. The fact that the appellant was already in jail at the time of his alleged "arrest" on 27.06.2024 further establishes that he could not have been involved in the alleged transaction of selling hemp to Mumtaz Hussain on 28.04.2024. PW-5 HC Bashir Ahmed Khaskheli, who is the mashir of the imaginary arrest memo, was examined at Exh. 7. His evidence is brief and he merely stated that on 27.06.2024, SIP Ghulam Mustafa Jalbani arrested the accused Ali Gohar from jail and prepared the imaginary memo in his presence. He does not add anything to establish the guilt of the appellant.

27. In view of the above discussion, we are of the considered opinion that there is absolutely no evidence on record to connect appellant Ali Gohar with the alleged offence. His involvement in the case is based solely on the belated and uncorroborated statement of the complainant recorded under Section 162 Cr.P.C after six days, which is inadmissible as substantive evidence. The preparation of an imaginary arrest memo further exposes the hollowness of the prosecution case against him.

28. Having examined the evidence on record and identified the serious infirmities and contradictions in the prosecution case, we now proceed to apply the relevant principles of law laid down by the Honourable Superior Courts. It is a fundamental principle of criminal jurisprudence that the prosecution must prove

its case beyond reasonable doubt. The benefit of even a single circumstance creating reasonable doubt must be extended in favour of the accused. As held by the Honourable Supreme Court in *Zakir Khan v. The State* (1995 SCMR 1793), minor discrepancies in the evidence of witnesses can be overlooked if the prosecution has otherwise proved its case, but material contradictions and omissions which go to the root of the matter create reasonable doubt and entitle the accused to acquittal. In the present case, the prosecution has failed to prove its case beyond reasonable doubt. The material contradictions and omissions discussed above create serious doubt about the truthfulness of the prosecution story.

29. Although narcotic offences are grave offences against society and the Courts must adopt a proactive approach in dealing with such cases, as held in *State/ANF v. Muhammad Arshad* (2017 SCMR 283), it is equally well-settled that the prosecution must establish its case with credible and persuasive evidence and must follow a transparent process to rule out the possibility of any error or false implication. The Honourable Supreme Court in *Shazia Bibi (Supra)* has held that when a substantial quantity of contraband is involved, it is implausible to suggest that it was falsely foisted upon the accused. However, this principle is applicable only when the recovery itself is proved beyond doubt and there is no suspicion about the bona fides of the prosecution case. In the present case, as discussed above, the recovery itself is shrouded in doubt due to the material contradictions, omissions, and infirmities in the prosecution case.

30. The Honourable Supreme Court in the cases of *Ikramullah and others v. The State* (2015 SCMR 1002), *The State v. Imam Bakhsh* (2018 SCMR 2039), and *Kamran Shah v. The State* (2019 SCMR 1217) has consistently held that the chain of custody of the contraband and its representative samples must be safe, secure, and indisputable. Any break in the chain of custody makes the

chemical examiner's report unreliable. In the present case, as discussed above, the prosecution has failed to establish the unbroken chain of safe custody and safe transmission of the case property. The non-examination of PC Habibullah Wassan, who was the mashir at the time of recovery, creates a gap in the chain of custody.

31. The Honourable Supreme Court in *Hussain Shah* (Supra) and *Muhammad Hanif* (Supra) has held that police officials are competent witnesses and there is no absolute requirement for corroboration by independent witnesses. However, the evidence of police officials must be scrutinized under the same standards as any other witness. In the absence of animus or flaws in their evidence, their testimony can be relied upon. In the present case, however, the evidence of the police officials suffers from serious flaws, contradictions, and omissions. Moreover, the appellant Mumtaz Hussain has established through documentary evidence that he has been falsely implicated due to civil enmity. In such circumstances, the uncorroborated evidence of interested police officials cannot be relied upon to sustain a conviction.

32. The non-disclosure of the source of spy information is a serious infirmity, particularly when the entire prosecution case rests on such information. The Honourable Superior Courts have held that in such cases, the prosecution must establish the reliability of the information and, if possible, examine the informer to lend credibility to the prosecution version. The further statement of the complainant recorded under Section 162 Cr.P.C on 03.05.2024, after a delay of six days, cannot be used as substantive evidence. The delay in recording the further statement has not been satisfactorily explained, and the source of information regarding the involvement of Ali Gohar has not been disclosed.

33. The preparation of an imaginary arrest memo by the Investigating Officer is a serious irregularity and illegality. It establishes that the investigation

was not conducted in a fair and transparent manner and that the appellant Ali Gohar has been falsely implicated.

34. After a thorough and comprehensive re-appraisal of the entire evidence on record, and in light of the principles of law laid down by the Honourable Superior Courts, we are of the considered opinion that the prosecution has miserably failed to prove its case against both appellants beyond reasonable doubt. The case against appellant Mumtaz Hussain suffers from serious infirmities, contradictions, and omissions. The non-disclosure of the source of spy information, the violation of Section 103 Cr.P.C (in spirit, if not in letter), the material contradictions in the evidence of prosecution witnesses, the failure to establish the safe custody and safe transmission of the case property, and the establishment of civil enmity through credible documentary evidence, all cumulatively create serious doubt about the guilt of the appellant. The case against appellant Ali Gohar is even weaker. He was not named in the original FIR. His name was introduced through a belated supplementary statement recorded under Section 162 Cr.P.C after six days. No independent evidence has been produced to establish any connection between him and the alleged offence. The preparation of an imaginary arrest memo further exposes the hollowness of the prosecution case against him. The learned trial Court has committed a manifest error in convicting both appellants. The impugned judgment is perverse, illegal, and against the settled principles of criminal jurisprudence.

It is a cardinal principle of criminal law that it is better to acquit ten guilty persons than to convict one innocent person. When there is reasonable doubt about the guilt of an accused, the benefit of such doubt must be extended in his favour. As observed by the Honourable Supreme Court in numerous judgments, the benefit of doubt is not a concession; it is a matter of right. In view of the above discussion and analysis, we are constrained to hold that the

prosecution has failed to prove its case against both appellants beyond reasonable doubt. Both appellants are entitled to the benefit of doubt.

35. For the reasons discussed above, both these appeals succeed and are allowed. The impugned judgment dated 14.07.2025 passed by the learned Additional Sessions Judge-I/Model Criminal Trial Court/Special Judge for Control of Narcotic Substances, Khairpur, in Special Case No.151/2024, is hereby set aside. Both appellants, namely Mumtaz Hussain S/o Khuda Bux Baladi, and Ali Gohar S/o Ali Gul by caste Jamro are acquitted of the charge under Section 9(1)(d) of the Control of Narcotic Substances (Amendment) Act, 2022 and are extended the benefit of doubt. Both appellants, who are presently confined in Central Jail Khairpur, shall be released forthwith, if not required to be detained in any other case. The Superintendent, Central Jail Khairpur, is directed to release both appellants immediately upon receipt of this order. The case property, if any, lying in Malkhana shall be dealt with in accordance with law. A copy of this judgment shall be sent to the Superintendent, Central Jail Khairpur, and to the learned trial Court for information and compliance.

JUDGE

JUDGE