IN THE HIGH COURT OF SINDH AT KARACHI

Criminal Revision Application No.139 of 2025
Criminal Revision Application No.146 of 2025
Criminal Revision Application No.149 of 2025

Applicants	:	Zahir Shah & Naseebullah through Mr.Muhammad Sharif Dars, Advocate in Cr. R.A Nos.S-139 and 149 of 2025.
Complainant	:	Mst. Samina Shahab in person.
Respondent	:	The State, through Mr.Mohammad Mohsin Mangi, Asstt: P.G Sindh.
Date of Hearing	:	06.11.2025.
Date of Order	:	06.11.2025.

JUDGMENT

TASNEEM SULTANA, J.:- Through this common judgment, I propose to dispose of Criminal Revision Application Nos.139, 146 and 149 of 2025, as the same have been heard together, whereby the applicants call in question the legality, propriety and correctness of the judgment dated 02.06.2025, passed by the learned Additional Sessions Judge-II, Sujawal, in Criminal Appeal No.13 of 2025, whereby the conviction and sentence awarded to the applicants by the learned Trial Court/Civil Judge & Judicial Magistrate-II, Sujawal, vide judgment dated 20.05.2025, passed in Criminal Case No.10 of 2025, arising out of Crime No.158 of 2024, registered at Police Station Chuhar Jamali, under Sections 4, 5 & 8 of the Sindh Prohibition of Preparation, Manufacturing, Storage, Sale and Use of Ghutka & Mainpuri Act, 2019, was maintained. Vide the said judgment, the applicants were sentenced to undergo three (03) years' simple imprisonment with fine of Rs.200,000/- each, and in default thereof, to suffer four (04) months' simple imprisonment, which has been assailed through these revision applications.

2. Brief facts of the prosecution case are that on 15.12.2024 at about 1500 hours, the complainant SIP Ghulam Hyder Janwari, along with subordinate staff, was present near Moosa Abad main gate within the jurisdiction of Police Station Chuhar Jamali, where snap checking was carried out. During such checking, a white Karavan vehicle coming from Sujawal side was intercepted, in which two persons were found seated. Upon search of the said vehicle, two white plastic sacks were allegedly recovered from its rear seat, one containing 500 gutka sachets, while the

other contained 3000 sachets of Adab Gutka. The occupants disclosed their names as Naseebullah and Shoaib Hussain, who allegedly disclosed that the recovered consignment was meant to be delivered to Zahir Shah. It was further alleged that during their personal search, touch screen mobile phones and cash amounting to Rs.1000/- were recovered. PC Muhammad Khan and PC Khuda Bux were associated as mashirs. Thereafter, the accused persons along with the recovered case property were brought to the Police Station, where the FIR was lodged to the above effect.

3. After usual investigation, the police submitted charge-sheet against the applicants. Having been supplied the requisite documents as envisaged under Section 265-C, Cr.P.C., the learned trial Court framed a formal charge against the applicants, namely Naseebullah, Shoaib Hussain and Zahir Shah, to which they pleaded not guilty and claimed trial.

4. In order to establish the charge, the prosecution examined PW-1 SIP Ghulam Hyder Janwari (complainant) at Ex:05, who produced departure and arrival entries, memo of arrest and recovery and FIR as Ex. 5/A to 5/C. PW-02 PC Mohammad Khan (mashir) at Ex:06, who produced memo of site inspection as Ex. 06/A. PW-03 SIP Allah Rakhyo Bhand (investigation officer) at Ex:07, who produced Malkhana entry of register 19, entry for site inspection, permission letter for sending case property to Chemical Lab, departure and arrival entries for sending property to chemical lab, permission grant letter, receipt of property in chemical lab, chemical examination report and memo of arrest of accused Zahir Shah at Ex. 7/A to 7/H. Thereafter, the prosecution closed its side vide statement at Exh.08.

5. The statements of the applicants under Section 342, Cr.P.C. were recorded at Ex:09 to Ex:11, wherein they denied the allegations levelled against them and claimed to be innocent. They took the stance that they had been falsely implicated and that nothing incriminating was recovered from their possession. They neither examined themselves on oath as required under Section 340(2), Cr.P.C., nor produced any witness in their defence. Upon appraisal of the evidence brought on record, the learned Trial Court convicted and sentenced the applicants vide judgment dated 20.05.2025. The said conviction and sentence were assailed through Criminal Appeal No.13 of 2025; however, the learned Appellate Court, upon hearing the parties and reappraising the evidence, dismissed the appeal and maintained the conviction and sentence vide judgment dated 02.06.2025.

6. Learned counsel for the applicants argued that the applicants are innocent and have been falsely implicated; that the alleged recovery was shown to have been effected at a public place in broad daylight, yet no independent mashir was associated, thereby rendering the proceedings doubtful; that although the prosecution witnesses admitted that photographs were taken at the spot, the same were deliberately withheld and not produced before the learned trial Court; that only 20 sachets out of the alleged 3500 sachets were sent for chemical examination while the remaining bulk remained untested; that safe custody and chain of custody of the case property were not established through trustworthy evidence; and that the prosecution case, being founded upon official witnesses alone, suffers from contradictions and omissions which entitle the applicants to benefit of doubt; that the implication of applicant Zahir Shah is based merely upon alleged disclosure made by co-accused while in police custody; that such disclosure has no evidentiary value in view of Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984; that no recovery was effected at the instance of the said applicant; and that, therefore, the prosecution has failed to produce any admissible and reliable material connecting him with the alleged occurrence. Reliance was placed upon 2023 P.Cr.L.J Note 50 and 2022 MLD 1420.

7. Conversely, learned APG supported the impugned judgments; submitted that the applicants were apprehended at the spot; that a large quantity of prohibited substance was recovered from their possession; that the prosecution evidence is consistent on material particulars; that the report of the Chemical Examiner lends support to the prosecution case; and that the learned Courts below, after proper appreciation of evidence, recorded concurrent findings which do not call for interference in revisional jurisdiction.

8. Heard. Record perused.

9. Upon meticulous scrutiny of the evidence brought on record, it transpires that PW-1 SIP Ghulam Hyder, examined at Ex:5, while narrating the occurrence in line with the contents of FIR, deposed that on 15.12.2024 at about 1500 hours, he, along with PC Muhammad Khan and PC Khuda Bux, while on routine patrolling duty, intercepted a white Karavan vehicle coming from Sujawal side, which was allegedly being driven by two persons. According to him, upon search of the said vehicle, two sacks containing gutka purees and Adab Gutka packets were recovered. He further stated that upon enquiry the apprehended accused disclosed their names as Naseebullah Pathan and Shoaib Pathan and also disclosed that the consignment of contraband was meant to be

delivered to Zahir Shah. PW-1 further claimed that the recovered gutka was counted, whereby one sack was found containing 500 purees, whereas the other comprised 30 packets of Adab Gutka, each containing 100 purees, totaling 3000 purees. He added that 10 purees of Gutka and 10 purees of Adab Gutka were separated and sealed for chemical examination, while the remaining purported case property was sealed separately in the sack. He further deposed that due to non-availability of private witnesses, PC Muhammad Khan and PC Khuda Bux were associated as mashirs and the mashirnama was prepared under their signatures.

10. It further appears that PW-2 Khuda Bux, examined at Ex:6, generally reiterated the prosecution version in his examination-in-chief; however, during cross-examination he claimed that it was he who signalled the subject vehicle to stop, which is clearly inconsistent with the stance of PW-1, who asserted that he himself had signalled the vehicle to stop. Moreover, PW-1 Muhammad Khan stated that the mashirnama of arrest and recovery was prepared at the spot due to absence of private witnesses. Furthermore, PW-1 stated that the proceedings at the spot consumed about 45 minutes, whereas PW-2 did not support such duration, failed to provide a clear time frame, and the timings stated by PW-3 regarding departure and arrival also appear inconsistent with the version of PW-1.

11. Additionally, PW-1 admitted in cross-examination that the description of Adab Gutka, sealing articles, as well as the details of the white sack including any manufacturing markings, were not mentioned in the mashirnama. It also emerged that PW-1 did not state the exact timing or manner of dispatch of samples, while PW-3 admitted that the samples were dispatched after two days, without furnishing any plausible explanation. PW-1 further claimed that PC Khuda Bux drove the seized vehicle; however, PW-2 did not corroborate this assertion, and PW-3 did not clarify the custody and safe handling of the seized vehicle.

12. It is also pertinent to observe that the prosecution case itself reflects that photographs of the recovery as well as of the apprehended accused were taken at the spot, and the mashirnama also makes a reference to such photographs; however, despite the same being a material piece of corroborative evidence, no such photographs were produced before the learned trial Court. In the present era, where modern means of documentation and verification are readily available, photographs form an important link to corroborate the alleged recovery proceedings and to lend assurance to the prosecution version. The

deliberate withholding of such evidence, without any plausible explanation, gives rise to an adverse inference under Article 129(g) of the Qanun-e-Shahadat Order, 1984, that had such photographs been produced, they would not have supported the prosecution case. This omission, viewed in the backdrop of the contradictions and procedural lapses already pointed out hereinabove, substantially weakens the credibility of the alleged recovery proceedings and renders the prosecution story unsafe for sustaining conviction.

13. It further transpires from the record that out of the alleged recovery of 3500 sachets, only 20 sachets were separated, sealed and forwarded for chemical examination, whereas the remaining 3480 sachets were neither tested nor scientifically verified. There is nothing on record to establish that the said 20 sachets constituted a true, fair and representative sample of the entire bulk, particularly when each sachet was individually packed and could not, by itself, be presumed to be identical in nature and contents. In offences relating to contraband items, the prosecution is required to establish, through reliable and unimpeachable evidence, that the entire recovered material falls within the prohibited category; therefore, where the bulk of the alleged recovery remains unexamined, the prosecution version becomes doubtful, and the charge cannot be held to have been proved beyond reasonable doubt. In such circumstances, reliance solely upon the chemical report pertaining to a negligible portion of the recovery would not legally justify conviction and sentence for the entire bulk of the alleged contraband. Reliance is placed in the case of **Ameer Zeb v. The Sate (PLD 2012 SC 380),** wherein Honourable Supreme Court while dilating upon the issue of punishment depending upon the quantity of narcotics, inter alia, has held as under:-

> "…It is our considered opinion that a sample taken of a recovered substance must be a representative sample of the entire substance recovered and if no sample is taken from any particular packet/cake/slab or if different samples taken from different packets/cakes/slabs are not kept separately for their separate analysis by the Chemical Examiner then the sample would not be a representative sample and it would be unsafe to rely on the mere word of mouth of the prosecution witnesses regarding the substance of which no sample has been taken or tested being narcotic substance. It may be true that at least in some situations the Control of Narcotic Substances Act, 1997 stipulates disproportionately long and harsh sentences and, therefore, for the purposes of safe administration of criminal justice some minimum standards of safety are to be laid down so as to strike a balance between the prosecution and the defence and to obviate chances of miscarriage of justice on account of exaggeration by the investigating agency. Such minimum standards of safety are even otherwise necessary for safeguarding the Fundamental Rights of

> the citizens regarding life and liberty which cannot be left at the mercy of verbal assertions of police officers which assertions are not supported by independent evidence provided by a Chemical Examiner."

14. It is also significant to note that no independent witness was associated as mashir to attest the recovery proceedings, despite the admitted position that the alleged recovery was affected in broad daylight at about 3.00 p.m. from a public road where the presence and availability of private persons could not be ruled out. Although the testimony of police officials cannot be discarded merely on the ground of their official status, yet it is equally settled that where recovery is claimed to have been made at a public place, the omission to associate independent mashirs, without any plausible explanation, becomes a relevant circumstance while assessing the credibility of the prosecution version. In the present case, the mashirs as well as the witnesses of recovery belong to the same police force and were serving under the same command, therefore, the prosecution evidence, in the absence of independent corroboration, required closer scrutiny, particularly when the record already reflects contradictions, omissions and procedural lapses in the recovery proceedings. Reliance is placed on the case of **Faisal Shalzad v. The State (2022 SCMR 905)** wherein Hon'ble Supreme Court has held that testimony of police officials is as good as any private witness unless animus is proved, the complete absence of independent witnesses in a public place during daytime raises serious questions about the genuineness of the recovery.

15. It is also of significance that the alleged recovery was affected on 15.12.2024, whereas the samples were received by the Chemical Examiner on 17.12.2024. However, the prosecution has failed to establish, through reliable evidence, the safe custody and safe transmission of the recovered material during the intervening period. Neither the Incharge Malkhana nor the official who allegedly carried and deposited the samples before the Chemical Examiner was examined, nor was any cogent evidence produced to demonstrate that the sealed samples and the bulk case property remained intact, untampered and in safe custody throughout. In the absence of such evidence, the chain of custody remains broken and doubtful, thereby making the prosecution version unsafe. It is settled principle that where the prosecution fails to prove an unimpeachable chain of custody, the Chemical Examiner's report cannot be safely relied upon for sustaining conviction. Thus, by failing to prove safe custody and safe transmission, the recovered contraband cannot be used against the applicants. In this regard,

reliance is placed upon the case of Mst. **Sakina Ramzan v. The State (2021 SCMR 451)** wherein it has been observed that: -

> "...chain of custody must be safe and secure. This is because, the Report of the Chemical Examiner enjoys critical importance under CNSA and the chain of custody ensures that the correct representative samples reach the office of the Chemical Examiner. Any break or gap in the chain of custody i.e., in the safe custody or safe transmission of the narcotic drug or its representative samples make the Report of the Chemical Examiner unsafe and unreliable for justifying conviction of the accused. The prosecution, therefore, has to establish that the chain of custody has been unbroken and is safe, secure and indisputable in order to be able to place reliance on the Report of the Chemical Examiner. The facts of the present case reveal that the chain of custody has been compromised and is no more safe and secure, therefore, reliance cannot be placed on the Report of the Chemical Examiner to support conviction of the appellant. See Imam Bakhsh1 and Ikramullah. For the above reasons we allow this appeal and set aside the conviction and sentence of the appellant. The appellant is directed to be released forthwith, if not required in any other case."

16. The implication of applicant Zahir Shah has been based primarily upon the alleged disclosure made by the co-accused while in police custody, which has no evidentiary value in view of Articles 38 and 39 of the Qanun-e-Shahadat Order, 1984, and in any case remains unsupported by any independent corroborative material such as recovery at his instance or any other connecting circumstance. The alleged recovery of only Rs.1000/- each from the applicants also does not appear consistent with the prosecution story of commercial transportation and delivery of such a large consignment. Furthermore, the record does not reflect that the vehicle allegedly used for transportation of the contraband was subjected to any forensic or independent examination, nor has any cogent evidence been produced to establish its ownership, possession or control in a manner that could safely fasten criminal liability upon the applicants.

17. The sequence and timing of events as narrated by the prosecution also does not inspire confidence. The prosecution version suggests that within a short span of time the police party intercepted the vehicle, conducted search, allegedly recovered the contraband, counted a large number of sachets, prepared mashirnama, completed formalities, transported the accused and case property to the police station and lodged the FIR. Such narration appears unnatural and creates doubt about the manner in which the proceedings were carried out. The inconsistencies in the departure and arrival timings, delay in dispatch of samples, and non-production of photographs further aggravate the doubts already noticed. In such circumstances, the evidence requires

cautious appraisal, and the possibility of false implication cannot be ruled out.

18. It is well settled that the principle of benefit of doubt is not a matter of concession, but a right flowing from the cardinal principle that the prosecution must prove its case beyond reasonable doubt. Even a single circumstance creating doubt in the prosecution case is sufficient to extend benefit thereof to the accused. In this regard, reliance is placed upon the cases of Faizan Ali v. The State (2019 SCMR 1649) and Kamran Shah v. The State (2019 SCMR 1217). The Hon'ble Apex Court in the case of TARIQ PERVEZ v. THE STATE (1995 SCMR 1345) has also observed that even if there is a single infirmity in the prosecution case creating sufficient doubt, the benefit of the same would go to the appellant

19. In view of the above, it is evident that the prosecution evidence suffers from material contradictions, omissions and procedural infirmities, which go to the root of the alleged recovery and substantially impair the credibility of the prosecution case, thereby rendering the conviction unsafe to sustain on such doubtful and inconsistent evidence.

20. For the foregoing reasons, I find that the prosecution has failed to establish its case beyond reasonable doubt. Both the Courts below appear to have misread and ignored material aspects of evidence. Consequently, these Criminal Revision Applications are allowed. The impugned judgment dated 02.06.2025 passed by the learned Additional Sessions Judge-II, Sujawal in Criminal Appeal No.13 of 2025 and the judgment dated 20.05.2025 passed by the learned Civil Judge & Judicial Magistrate-II, Sujawal in Criminal Case No.10 of 2025 is set aside. The applicants/accused Naseebullah, Shoaib Hussain, and Zahir Shah are acquitted of the charge under Sections 4, 5 & 8 of the Sindh Ghutka & Mainpuri Act, 2019, by extending them benefit of doubt. They shall be released forthwith if not required in any other case. These are the reasons of my short order dated 06.11.2025.

JUDGE