JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.

CRIMINAL APPEAL NO. 149 OF 2015

REGIONAL DIRECTOR ANF RAWALPINDI DIVISION, RAWALPINDI.

VS

SYED MOHSNAIN SHAH ALIAS CHEENI.

Appellant by : Rana Zulfiqar Ali, Special Public Prosecutor, ANF.

Respondent by : Syed Hamid Ali Bukhari, Advocate for the Respondent.

Date of hearing : 25.02.2025

MUHAMMAD AZAM KHAN, J.

1. Through the instant Criminal Appeal, Regional Director ANF Rawalpindi Division, Rawalpindi **("Appellant")**, has assailed the Judgment dated 30.06.2015 **("Impugned Judgment")** passed by the learned Judge Special Court (CNS), Islamabad whereby the Respondent/Accused [Mohsnain Shah alias Cheeni Shah] was acquitted from charge in case FIR No. 58/2013 dated 04.12.2013 under Sections 6/9(c), Control of Narcotic Substances Act, 1997 **("CNSA")** registered with Police Station, ANF Rawalpindi **("Subject FIR")**.

2. The brief facts of the case in hand as per contents of FIR are that on 04.12.2013, Jawad Altaf Raja, Sub-Inspector/Complainant/Investigating Officer **("I.O")** was present in Police Station ANF-RD, Rawalpindi when spy came there and informed him that a notorious smuggler namely Mohsnain Shah alias Cheeni Shah (Respondent/Accused) has planned to deliver huge quantity of Charas to his customer at Old Bank Stop, Alipur Farash. On such information, at about 12:00 noon, a team of ANF comprising Abbas Ali, ASI, Muhammad Shabbir and Eid ur Rehman, Imran Abbas, Mudassir Nawaz Constables under the supervision of Muhammad Ayub, Assistant Director, on official vehicle bearing Registration No. RIG-1115 reached at the abovementioned place. At about 01:00 pm, a person holding a black color shopping bag in his right hand came there from the side of old bank stop, Alipur Farash, Lethrar Road Islamabad who was overpowered by the ANF Officials. The said person disclosed his name as Syed Mohsnain Shah son of Syed Saqlain Hussain Shah (Respondent/Accused). On search of black color shopper, five packets wrapped in *khaki* tape containing Charas Garda were

recovered. The weight of each recovered packet came out to be one kilogram, total weighing five kilograms. Ten/Ten (10/10) grams of Charas Garda was separated from the recovered packets of Charas Garda for chemical analysis. Five separate sealed parcels of the sample Charas Garda and one parcel of the remaining Charas Garda, sealed with the seal "RAJ ANF", were prepared and were taken into possession through recovery memo. The articles of personal search of the Respondent/Accused were also taken into possession through a separate recovery memo. Hence, the Subject FIR was registered against the Respondent/Accused.

3. After the registration of the Subject FIR, Challan under Section 173, Code of Criminal Procedure, 1898 **("Cr.P.C")** was submitted before the learned Trial Court on 17.02.2014 and on the same day, copies of relevant documents under Section 265-C, Cr.P.C were supplied to the Respondent/Accused. On 24.02.2014, charge was framed against the Respondent/Accused to which he pleaded not guilty and claimed trial. Thereafter, in support of their version, the prosecution produced five witnesses namely Muhammad Jawad Ali, ASI as PW-1, Muhammad Ilyas, Head Constable as PW-2, Eid ur Rehman, Constable as PW-3, Abbas Ali, ASI as PW-4 and Jawad Altaf Raja, Inspector/Complainant/I.O. as PW-5. On 06.05.2015, learned Special Public Prosecutor gave up PW Muhammad Bashir, Constable and closed the prosecution evidence. Statement of the Respondent/Accused under Section 342, Cr.P.C was recorded wherein in defense evidence, he produced certified copy of FIR No. 302/12 registered at Police Station Shahzad Town, Islamabad as Ex.D1, however, he did not opt to appear under Section 340(2) Cr.P.C to record his statement under oath. After hearing arguments of both sides, the learned Trial Court vide the Impugned Judgment acquitted the Respondent/Accused from the charge by giving benefit of doubt. Being aggrieved of the Impugned Judgment, the Appellant has filed the instant appeal.

4. The learned Special Public Prosecutor **("SPP")** appearing on behalf of the Appellant argued that the Impugned Judgment is against the law and facts borne on the record; that the learned Trial Court has totally overlooked the arguments raised by the SPP and passed the Impugned Judgment which is not sustainable in the eyes of law; that the Respondent/Accused is nominated in the F.I.R with specific role and the occurrence was witnessed by truthful witnesses which was sufficient to prove the guilt of the Respondent/Accused but the learned Trial Court ignored this very important fact while passing the Impugned Judgment of acquittal of the

Respondent/Accused; that even the minor discrepancies in the prosecution case are always ignored by the Courts while passing the judgments whereas in the instant case, there is no discrepancy and there is independent evidence available connecting the Respondent/Accused with the commission of offence but the learned Trial Court ignored this fact and acquitted the Respondent/Accused in a mechanical manner; that the Impugned Judgment has resulted into miscarriage of justice; that the learned Trial Court misread the evidence and erred in law, while acquitting the Respondent/Accused; that the Impugned Judgment is not maintainable from the evidence on record; that the Impugned Judgment is based on conjectures and surmises; that the prosecution has fully proved the case against the Respondent/Accused beyond any shadow of doubt; that the Respondent/Accused was apprehended at the scene, and the recovery was effected at spot; that the accused involved in such like cases are not entitled for any leniency and concession because in such like cases, the accused destroy the society especially young generation of the country. Lastly, the learned counsel requested that instant Appeal may kindly be accepted, the Impugned Judgment may be set-aside and the Respondent/Accused may be punished in accordance with the law and the applicable sentencing policy.

5. The learned counsel for the Respondent/Accused argued that the prosecution has badly failed to prove its case against the Respondent/Accused; that there are glaring and material contradictions in the statements of prosecution witnesses; that the Impugned Judgment is well reasoned and passed keeping in view the evidence available on the record; that there is no illegality or irregularity in the Impugned Judgment; and that the instant Appeal may kindly be dismissed.

6. I have heard the learned counsel for the parties and perused the record with their able assistance.

7. The prosecution produced Muhammad Jawad Ali, ASI **(PW-1)**, who chalked F.I.R in the instant case, upon receiving complaint Ex.PA sent by Jawad Altaf Raja, S.I/Complainant/I.O. through Khalid Mehmood, Driver. He made endorsement on the complaint Ex.PA. He handed over back the original complaint and copy of F.I.R to Khalid Mehmood, Driver, to take the same to Jawad Altaf Raja, S.I/Complainant/I.O.

8. Muhammad Ilyas, Head Constable **(PW-2)** who is Moharrar Maalkhana deposed that, on 04.12.2013, Jawad Altaf Raja, S.I/Complainant/I.O handed over to him, 05 sealed sample parcels and 01 sealed parcel of remaining case property said to contain Charas, sealed with seal "RAJ/ANF" and the articles of personal search of the Respondent/Accused which he kept in safe custody of *Maalkhana* after making entry in Register No.19. On 05.12.2013, he handed over five sealed sample parcels along with Road Certificate to Eid ur Rehman, Constable for chemical analysis.

9. Eid-ur-Rehman, Constable **(PW-3)** took the 05 sealed sample parcels along with Road Certificate on 05.12.2013 from Moharrar Maalkhana, on the instructions of Jawad Altaf Raja, S.I/Complainant/I.O, and went to Chemical laboratory, and handed over five sample parcels to Chemical Examiner.

10. Abbas Ali, ASI **(PW-4)** is the witness to the recovery memos vide which case property i.e. Charas and the personal search of the Respondent/Accused were taken in possession by the Investigating Officer on the spot.

11. Jawad Altaf Raja, Inspector/Complainant/I.O **(PW-5)**, stated that on 04.12.2013, informer came to ANF Station and informed him that a notorious smuggler namely Mohsnain Shah, alias Cheeni Shah (Respondent/Accused) has planned to come at Old Bank Stop, Alipur Farash for making delivery to his specific customer. Upon this, a team of ANF was constituted comprising Abbas Ali, ASI and Muhammad Shabbir, Eid ur Rehman, Imran Abbasi, Mudassir Nawaz, Constables under the supervision of Muhammad Ayub, Assistant Director which along with informer boarded in official vehicle driven by Khalid Mehmood, Driver and proceeded towards the abovementioned place. At approximately 01:00 pm, an individual carrying a black shopping bag in his right hand arrived at the location and started waiting for someone. The said person was overpowered by ANF Officials. He disclosed his name as Syed Mohsnain Shah son of Syed Saqlain Hussain Shah resident of Dhoke Byen Syedan (Respondent/Accused). On checking the black shopping bag, 05 packets wrapped in *khaki* insulation tape were recovered. On opening each packet, Charas Garda was found and weight of each packet came out to be one kilogram. Samples of 10/10 grams of Charas Garda were separated from each recovered packet. The sample Charas Garda was made into 05 sample parcels and the remaining packets of Charas Garda were sealed in a

separate parcel, with a seal of "RAJ ANF" which he took into possession through recovery memo. He also prepared a personal search memo of the Respondent/Accused. He drafted *marasla* Ex.PA and sent the same to the ANF Station for registration of F.I.R through Khalid Mehmood, Driver. He then started investigation at the spot. He recorded the statements of witnesses under Section, 161 Cr.P.C and prepared site inspection plan, EX.P5. In the meanwhile, Khalid Mehmood, Driver came back to the spot from the ANF Station along with copy of F.I.R. He then left the spot and went to the ANF Station, where he handed over the case property to Moharrar Maalkhana. On next day, he sent the sample parcels for chemical analysis. He after completion of investigation, shifted the Respondent/Accused to judicial custody. The prosecution also produced following documentary evidence i.e. complaint as Ex.PA; FIR as Ex.PA/1; copy of entry in Register No. 19 as Ex.PW/2-A; recovery memo regarding recovery of Charas as Ex.P/4; recovery memo regarding personal search of the Respondent/Accused as Ex.P/4-A; un-scaled site plan as Ex.P/5; and report of Chemical Examiner as Ex.P/5-A.

12. The prosecution's case is that spy informer came to ANF Station and informed that on 04.12.2013 at about 12:30 pm, a notorious drug paddler namely Mohsnain Shah alias Cheeni Shah (Respondent/Accused) will come to Old Bank Stop, Alipur Farash, Lethrar Road, Islamabad for selling huge quantity of Charas to his specific customer, however, the prosecution has failed to make an effort for sending fake purchaser to the Respondent/Accused in order to confirm that actually the Respondent/Accused was selling narcotic. It is also important to mention here that despite so-called complaint against the Respondent/Accused of his involvement in selling narcotic/Charas, neither any such complaint was brought on the record, nor statement of a complainant or a witness from the general public was recorded to that effect; and, likewise, no test purchase was conducted in order to lend credence to the aforesaid version of the prosecution. No doubt, police officials are as good witnesses as any other witness may be but when evidence of the prosecution comprises only of police officials, and both marginal witnesses to the recovery memo, were police constables who were subordinates to the S.I/Complainant/I.O, then their testimony must be scrutinized with utmost care and caution for making the same basis for conviction of the accused.

13. The record shows that the Complainant personally conducted the investigation of the case. This, of course, could be seen as potentially prejudicing the Respondent/Accused, as all the witnesses involved were his subordinates. The role of the investigating officer is that of a neutral authority, with the primary objective of uncovering the truth. In this regard, reliance is placed on Rule 25.2(3) of the Police Rules, 1934 ("Police Rules"), which states as follows:

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

An officer who is also the complainant in the case cannot be expected to collect and preserve evidence that may be detrimental to his own case. Such an officer cannot effectively perform the duties of an independent and impartial investigating officer. Therefore, superior courts have consistently disapproved of the practice of complainant police officers acting as investigating officers. In the case of *State v. Bashir and others* reported in **PLD 1997 SC 408**, the Supreme Court held as follows:-

> *"It could hardly be expected that a police officer, who is heading a raiding party and is a witness, also becomes the complainant and lodges an FIR against the accused, and then becoming an Investigating Officer of the same case, will comply with the aforesaid Police Rule. In the circumstances, the practice of seizing officer or the head of a police party who is also a witness to the crime becoming or being nominated as an Investigating Officer of the same case should be avoided and if any other competent officer is available in the police station, he may be nominated as the Investigating Officer rather than the head of the police party. As observed Investigating Officer is as important witness for the defence also and in case the head of the police party also becomes the Investigating Officer he may not be able to discharge his duties as required of him under the Police Rules.".*

14. The record transpires that the Investigating Officer produced Chemical Examiner's Report as Ex.P5/A, wherein the protocol has not been observed. In this regard, the Hon'ble Supreme Court in the matter *The State through Regional Director ANF versus Imam Bakhsh & others* reported as **2018 SCMR 2039** has discussed the importance of such reports without protocol, relevant paragraph of which is reproduced here under:-

> *"15. Rule 6 on the other hand stands on a different statutory footing. It provides that the Report of the Government Analyst, after the test*

and analysis, is to furnish the result together with full protocols of the test applied. The accuracy of test and analysis and the correct application of the full protocols alone can determine if the recovered substance is a narcotic drug or a psychotropic or controlled substance. "Protocol" means an explicit, detailed plan of an experiment, procedure or test or a precise step-by-step description of a test, including the listing of all necessary reagents and all criteria and procedures for the evaluation of the test data. Rule 6 requires that full protocols of the test applied be part of the Report of the Government Analyst. Every test has its protocols, which are internationally recognized and a test without the observance of its protocols has no sanctity. "Full Protocols" include a description of each and every step employed by the Government Analyst through the course of conducting a test. Hence, the Report under Rule 6 must specify every test applied for the determination of the seized substances with the full protocols adopted to conduct such tests.

16. Non-compliance of Rule 6 can frustrate the purpose and object of the Act, i.e. control of production, processing and trafficking of narcotic drugs and psychotropic substances, as conviction cannot be sustained on a Report that is inconclusive or unreliable. The evidentiary assumption attached to a Report of the Government Analyst under section 36(2) of the Act underlines the statutory significance of the Report, therefore details of the test and analysis in the shape of the protocols applied for the test become fundamental and go to the root of the statutory scheme. Rule 6 is, therefore, in the public interest and safeguards the rights of the parties. Any Report (Form-II) failing to give details of the full protocols of the test applied will be inconclusive, unreliable, suspicious and untrustworthy and will not meet the evidentiary assumption attached to a Report of the Government Analyst under section 36(2). Resultantly, it will hopelessly fail to support conviction of the accused. This Court has already emphasized the importance of protocols in Ikramullah's case (supra)".

15. Abbas Ali, ASI (PW-4) during cross-examination admitted that articles (P-3 & P-4), did not mark by any separate seal, signature or stamp of Investigating Officer. Jawad Altaf Raja, Inspector/Complainant/I.O. (PW-5) during his cross-examination stated that the alleged recovered Charas Garda was found in solid form. He further admitted it correct that from each packet of alleged Charas Garda, a piece was taken from one corner. However, in the report of the Chemical Examiner Ex.P/5-A, regarding physical appearance it is mentioned that the consistency of sample material was granular powder. Moreover, Abbas Ali, ASI (PW-4) during cross-examination admitted it correct that when article P-3 was de-sealed in the learned Trial Court, slab shape material was found there and no powder shape material was found. This admission of the PW-4 and report of the Chemical Examiner negate the version of prosecution contained in F.I.R that the Charas Garda was recovered from the Respondent/Accused.

16. In light of the above discussion, we are of the considered view that the prosecution has failed to prove the charge against the Respondent/Accused beyond any shadow of doubt. There are several circumstances that create doubt in the prosecution's case. It is well-settled law that it is not necessary for there to be multiple circumstances creating doubt and if even a single circumstance raises a reasonable doubt in a prudent mind about the guilt of the accused, then the accused is entitled to the benefit of that doubt, not as a matter of grace or concession, but as a matter of right.

17. For the foregoing reasons, the instant Appeal, being devoid of any merits is hereby **dismissed**.

(ARBAB MUHAMMAD TAHIR)
JUDGE

(MUHAMMAD AZAM KHAN)
JUDGE

Announced in open court on this _____day of March, 2025.

JUDGE

JUDGE

Sajid/--