MODEL CRIMINAL TRIAL COURT
IN THE COURT OF ADDL. DISTRICT & SESSIONS JUDGE-I
KARACHI EAST

BEFORE: [redacted]
Session Case No: [redacted]

Date: 12.11.2021 JUDGMENT WITH SIGNATURE OF JUDGE

The State
Versus
[redacted]ed.....Accused

[redacted], Karachi.

Mr. Amjad Ali, learned counsel for the accused.
Mr. Abdul Salam Dahri, learned ADPP for the State.

1. Accused [redacted] was sent by police of PS Jamshed Quarter to stand trial in the above case.

2. Precisely stated, prosecution story as contained in FIR that on 22.02.2020 at about 2100 hours, ASI Azhar Hussain of PS Jamshed Quarter was on patrolling duty with the subordinate staff. During patrolling received spy information that at near Lasbella Chowk, meat street Nishtar Road, Karachi one person was selling chars. On such information at about 0100 hours reached at pointed place and found one person in suspicious condition and apprehended him and inquired his name to which he disclosed his name as [redacted]. During personal search of accused [redacted] one yellow color plastic shopper was found in which chars weighing 1100 grams was recovered.

Further personal search of accused cash of Rs. 200/- and one mobile were recovered. Thereafter, the complainant brought the accused and recovered property to Police Station where he lodged FIR of the incident.

3. The case was assigned to SIP Muhammad Ashraf Tanoli for investigation who proceeded to place of incident, prepared such memo recorded statements of witnesses, dispatched property to chemical examiner, obtained remand of the accused and after completion of all codal formalities he submitted challan against the accused before the court of Magistrate for taking cognizance and sending the same to trial court.

4. The learned Magistrate took cognizance of the offence after completion of necessary formalities he sent up case to the Court of Honorable District & Sessions Judge from where the case was transferred to this Court for trial according to law.

5. Copies were supplied in compliance of s. 265-C Cr.P.C and requisite acknowledgement obtained thereon as Ex.1. Formal charge was drawn against the accused as Ex. 2 and the same was read over to him to which he pleaded not guilty and claimed trial and his plea was separately recorded as Ex. 2/A.

6. In order to prove its case against the accused, the prosecution examined PW-1, ASI Muhammad Idrees as complainant as Ex.03, who produced departure entry as Ex.04, memo of arrest and recovery as Ex.05, FIR as Ex.06, arrival entry as Ex.07 and memo of site inspection as Ex.08; PW-2 SIP Muhammad Ashraf Tanoli as

IO as Ex. 09, who produced request letter to chemical examiner as Ex.10; report of chemical examiner on Ex.11; departure and arrival entries as Ex.12 and PW-3 PC Shabbir Khan as mashir as Ex.13. Learned DDPP for the state filed statement on Ex.14 for closing the side of prosecution.

7. After completion of prosecution evidence the statement of accused was recorded under s. 342 Cr.P.C as Ex.17, wherein the accused denied the allegations, professed be innocent and prayed for justice. The accused neither examined him on oath nor did he lead any defence evidence.

8. In the light of above facts and circumstances and evidence brought on record and after hearing the prosecutor and the counsel for the accused, I frame following the points for determination: -

POINT NO. 01 Whether chars weighing 1100 grams was recovered from the accused?

POINT NO. 02 What offence, if any, the accused has committed?

I have heard the learned DDPP for the State, counsel for the accused and perused the record. My findings to above points for determination with reasons are as under: -

F I N D I N G S

POINT NO: 01 :- Doubtful.
POINT NO: 02 :- Accused is acquitted.

R E A S O N S

POINT NO. 01

9. The complainant deposed that on the day of incident he was on patrolling duty with other subordinate staff. In order to prove such fact, the complainant produced roznamcha departure entry. Perusal of the entry reveals that the same is neither original nor does it bear signature of complainant nor of any other police officials as to treated certified true copy thereof. The complainant was required to produce admissible roznamcha entry to prove movement of police party at the relevant time. Since the complainant has produced unsigned document which is nor admissible evidence therefore, he failed to prove that on the day of incident he was on patrolling with his subordinate staff at the relevant time. In case of *Abdul Sattar vs The State* (2002 P Cr. LJ 51). It was held that non-production of roznamcha entry cuts very roots of the case.

10. Moreover, during trial signature of the mashir was obtained on evidence sheet and was compared with his signature allegedly made on memo of arrest and recovery. After comparison both signatures were found to be different which means that it was not signed by one and same person and the whole proceedings were managed to strengthen the prosecution case. Since it does not prove that the signature on the mashirnama was made by the mashir therefore, his presence at the scene of incident is doubtful.

11. The complainant deposed that after arrival at PS he handed over the case property to IO. The IO in his evidence stated that he received the case property duly sealed, however, he further stated that he dispatched the case property to chemical examiner on

02.12.2019. In his cross examination IO admitted that he did not make any entry in register No. 19 maintained at Mallkhana under Police Rules for keeping the case property in sage custody. Nor did he examine Incharge of Mallkhana as witness in this case prove that the property was safely delivered to him and it was kept at *Malkhana* under the watch of incharge Malkhana under Register with proper entry. Failure to examine the *Incharge* Malkhana violated the safe custody *Rule. Under* these circumstances the chemical report lost its sanctity for the reason that the prosecution could not produce safe custody and transmission of the case property from PS to chemical examiner. Reliance is placed on case of *Amjad Ali Vs the State* (2012 SCMR 577).

12. The case property was allegedly recovered from accused on 29.11.2019, while it was dispatched to chemical examiner on 02.12.2019. IO did not explained reason for dispatching the case property with inordinate delay of 03 days. Such delay in sending the case property is fatal to the prosecution case. Reliance is place on case of *Hussain Bux @Kabacha Channa Vs the State* (2012 P Cr. LJ 501).

13. The learned counsel for the accused drawn attention of the Court that there is inconsistency between the report of chemical examiner and letter to chemical examiner. Chemical report contains sample No. C-5494/19 whereas letter to chemical examiner reveals the sample NO. C-5503/19. From this anomaly it can be safely inferred that sample delivered to chemical examiner

was not same which was received. Therefore, existence of case property whether it was same is doubtful.

14. It is settled principal of law that evidence of the police officials is as good as any other witness. However, in order to prevent any chance of false implication at the hands of police, the evidence of police officials is to be minutely examined and carefully scrutinized. In case of any anomaly, inconsistency and contradiction on any material fact the benefit of the same is to be extended to the accused not as a matter of grace but as matter of right being favorite child of law.

15. All these infirmities, inconsistencies and anomalies, discussed hereinabove, renders whole prosecution case highly doubtful. It is settled law that for extending benefit of doubt, it is not necessary that there should be many circumstances creating doubt but if single circumstance which creates reasonable doubt in a prudent mind about the guilt of the accused then the accused is entitled to benefit of doubt not as a matter of grace but as a matter of right. Reliance is placed on case of *Tariq Rahim Vs The State (1995 SCMR 1345)*. Point no: 1 is answered as doubtful.

POINT NO. 02.

16. For the reasons discussed hereinabove the prosecution has failed to prove guilt of the accused beyond reasonable doubt. As a result, thereof the accused is extended the benefit of doubt. The accused is hereby acquitted. Accused is present on bail his bail

bond stand cancelled and surety discharged. Office is directed to consign the R&Ps to record room.

ANNOUNCED IN OPEN COURT.
Given under my hand and seal of the court, this 12th day of November, 2021.

[redacted]

PROPERTY ORDER.

The case property i.e. chars weighing 1100 grams be destroyed in according to law after the expiry of appeal period.

[redacted]

Date of Application 15-11-21
Date of Estimation 17-11-21
Date of Deposit 17-11-21
Copy Ready on 17-11-21
Copy Certified on 18/11/2021
Copy Delivered on 18/11/2021
Stamp 18/11/2021
Copying Charges
Comparing Charges
Paper Charges

Prepared by
certified to be true copy

SERISHTEDAR
1st. Addl. District & Sessions Judge
Karachi East