

**JUDGMENT SHEET
IN THE LAHORE HIGH COURT, LAHORE.
JUDICIAL DEPARTMENT**

Crl. Appeal No.663 of 2018

Muhammad Hanif Abbasi. ...Vs... The State.

Crl. Appeal No.684 of 2018

Muhammad Asif Sheikhani. ...Vs... The State.

Crl. Appeal No.685 of 2018

Muhammad Zulfikar Shekhani. ...Vs... The State.

Crl. Appeal No.834 of 2018

Mst. Razia Zahid Bakhtawari. ...Vs... The State.

Crl. Appeal No.747 of 2018

Anti Narcotics Force. ...Vs... Nasir Khan, etc.

JUDGMENT

Date of hearing 17.10.2023.

Appellants by: M/s Tanveer Iqbal, Muhammad Ahsan Bhoon, Azam Nazir Tarrar, Hafeez-ur-Rehman Ch. and Ch. Shaharyar Tariq, Advocates
Appellant-Muhammad Hanif Abbasi in person.

State by: Mr. Zafar Iqbal Chohan, Special Prosecutor for ANF.

Aalia Neelum, J.- The appellant-Muhammad Hanif Abbasi, son of Muhammad Khalil Abbasi, resident of House No.56-E, Satellite Town, Rawalpindi, was involved in case F.I.R No.41 of 2012, dated 21.07.2012, offences under Section 9(c), 14 & 15 of the Control of Narcotic Substances Act, 1997, registered at Police Station ANF RD North, District Rawalpindi and was tried by the learned District & Sessions Judge/Judge Special Court (CNS), Rawalpindi. The learned trial court seized with the matter in terms of the

judgment dated 21.07.2018, convicted the appellant under Section 9(c) of the Control of Narcotic Substances Act, 1997, and sentenced him **to undergo imprisonment for life (R.I)** with the direction to pay Rs.10,00,000/- (rupees one million) as fine and in case of default in payment thereof, to undergo simple imprisonment for 02-years further. The appellant was also convicted under section 16 of the Control of Narcotic Substances Act, 1997, and sentenced **to undergo one year** with the direction to pay Rs.5,000/- as a fine and, in case of default in payment thereof, to undergo simple imprisonment for 01-month further. The benefit of section 382-B Cr.P.C. was also extended in favor of the appellant. Both the sentences awarded to the appellant would run concurrently.

2. Feeling aggrieved, the appellant has assailed his conviction by filing the instant appeal bearing **Crl. Appeal No.663 of 2018**. It would not be out of pretext to mention here that the trial court, in its judgment dated 21.07.2018, also gave observations in paragraphs No.46 & 60, against which the appellants-Muhammad Asif Shekhani, Muhammad Zulfiqar Shekhani, and Mst. Razia Zahid Bakhtawari filed separate appeals bearing **Crl. Appeal No.684 of 2018, Crl. Appeal No.685 of 2018 and Crl. Appeal No.834 of 2018**, respectively. It is pertinent to mention that the Anti-Narcotics Force filed a criminal appeal through its Regional Director, Force Commander, i.e., **Crl. Appeal No.747 of 2018** against the acquittal of co-accused Nasir Khan, Ghazanfar Ali, Rana Mohsin Khursheed, Siraj Ahmed Abbasi, Nazakat Khan, Basit Abbasi, and Ahmed Bilal. As all the matters arise from the same judgment of the learned trial court, these are being disposed of through consolidated judgment.

3. The prosecution story, as alleged in the F.I.R (Ex.PA/1) lodged on the complaint (Ex. PA) of Syed Imtiaz Hussain Shah, S.I/S.H.O, (PW-35), is that on 21.07.2012 at about 02:00 p.m, he (PW-35) along with Saifullah, Muhammad Naveed constables and Mehboob Hussain Shah constable (PW-3) was present in Police Station ANF, R.D, Rawalpindi, where Syed Mehboob Hussain Shah/H.C (PW-3) handed over a letter bearing

No.3(44)ANF/IR/LAW/2011 dated 20th July 2012 (Ex. PB) issued by Lieutenant Colonel Touqeer Abbas Zaidi, Joint Director ANF, R.D, Rawalpindi (given up PW), to him (PW-35). As per the letter above (Ex. PB), during the investigation of case FIR No.40/2011, it transpired that in the year 2010, the Ministry of Health, Islamabad, issued Ephedrine quota to some Pharmaceutical/Firms/Companies by bypassing the routine procedure and accorded excess of the prescribed limit to such companies who did not receive and utilized Ephedrine quota earlier. Ministry of Health collected records of 99 companies, including 28 Pharmaceutical companies, which previously did not obtain Ephedrine; neither they were allocated nor used the same. After that, the inquiry revealed that Grays Pharmaceutical, located at Industrial Area, Rawat, Islamabad, was allotted a 500-kilogram Ephedrine quota. After that, they did not use it legally nor prepare the required medicine; instead, only samples of medicine and forged sale record was prepared, *prima facie*, and the rest of the Ephedrine was sold out to narcotics smugglers and gained illegal money; the administration of the pharmaceutical company was required to use Ephedrine according to instructions of the Health Ministry and to keep a complete record of the sale and purchase of medicine. Still, the company administration failed to submit a satisfactory report. The administration of the pharmaceutical company and owner of the company, namely Muhammad Hanif Abbasi, Bakhtawari, etc., were found involved in the illegal use of Ephedrine. Based on the above-said letter (Ex. PB), Shahzad Ali Kawish A.D (not cited as a witness) directed Syed Imtiaz Hussain Shah, Inspector (PW-35), to register the case and to investigate the same. After that, a complaint (Ex. PA) was prepared, based on which formal FIR No.41 of 2012 (Ex. PA/1), dated 21.07.2012, under sections 9(c), 14 & 15 of CNSA, 1997 at Police Station ANF, R.D, North Rawalpindi was chalked out by Arshad Mehmood/H.C (PW-1). Copy of FIR (Ex. PA/1) was referred to ANF, R.D. through Muhammad Naveed/C.

4. After that investigation was conducted by Syed Imtiaz Hussain Shah, Inspector (PW-35), he (PW-35) took letter No.3(44)/ANF/IR/Law/2011

dated 20.07.2012 (Ex. PB) into possession through recovery memo (Ex. PC); after that, he (PW-35) recorded statements of PWs under section 161 of Cr.P.C.; on 21.07.2012.

On the same day i.e., 21.07.2012 Syed Imtiaz Hussain Shah, Inspector, (PW-35) joined Nadeem Anjum, U.D.C (PW-2) and Abid Zulfiqar, Joint Director (PW-33) (then Deputy Director ANF Rawalpindi) and recorded their statements under section 161 of Cr.P.C. During investigation Abid Zulfiqar Joint Director (PW-33) produced before Syed Imtiaz Hussain, Inspector, (PW-35) inquiry report (Ex. PD) along with the complete file of United Plastic Jars Supplier (Ex.PEE) consisting of 75 pages (P-1 to P-75), file of A.B Pharma Distributor (Ex.PFF) consisting of 58 pages (P-1 to P-58), invoices file A.B Pharma (Ex.GG) consisting of 09 pages (P-1 to P-9), marketing file alongwith statement of Hammas Pharma Distributor (Ex.PHH) consisting of 56 pages (P-1 to P-56), distribution file of Hammas Pharma Distributor (Ex.PII), consisting of 144 pages (P-1 to P-144), invoices file of Hammas Pharma (Ex.PJJ) consisting of 13 pages (P-1 to P-13), that of marketing file of Arfat Traders alongwith invoices issued by Grays Pharmaceutical (Ex. PKK) consisting of 17-pages (P-1 to P-17), statements of employees of Grays Pharma (Ex.PLL) consisting of 21 pages (P-1 to P-21), agreement file between Etihad cargo contractor and Pakistan Railway (Ex.PMM) consisting of 20-pages (P-1 to P-20), 24 Jars having a De-ASM tablets (P-1 to P-24), which he (PW-35) took into possession through recovery memo (Ex. PD), attested by the witnesses namely Abbas Ali ASI (given up PW) and constable Mehboob Hussain Shah (PW-3).

On 23.07.2012, Syed Imtiaz Hussain Shah, Inspector (PW-35), alongwith Dr. Fakhar-ud-Din Amir, (PW-13), Federal Inspector of Drugs, visited the Grays Pharmaceutical and joined Ghazanfar Ali (co-accused-since acquitted) Production Manager of Grays Pharmaceutical, who produced before him (PW-35), 19 Dyes (P-1 to P-19), 19-upper Punches with the PK mark (P-1 to P-19), 19 lower punches of ZP-19 rotary machine (which were used for manufacturing De-ASM tablets), which he (PW-35) took into possession

through recovery memo (Ex. PJ) attested by the witnesses namely, Dr. Fakhar-ur-Din Amir (PW-13) and Shakeel Ahmed Sub Inspector ANF/RD (PW-5).

On the same day, i.e., 23.07.2012, Dr. Fakhar ud Din Amir (PW-13), during the investigation, handed over the analyzing report of the recovered dyes and punches and a certificate (Ex.PK/1) to Syed Imtiaz Hussain Shah, Inspector, (PW-35)-the investigating officer, who took the same into possession through recovery memo (Ex. PK) attested by the witnesses namely, Dr. Fakhar-ur-Din Amir (PW-13) and Shakeel Ahmed Sub Inspector (PW-5).

After that, on 01.08.2012, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, recorded the statement of Asif Sheikhani (the appellant in Crl. Appeal No.684/2018), the proprietor of Arfat Traders and Distributor of Grays Pharmaceutical, under section 161 of Cr.P.C.

On 09.08.2012, during the investigation, Ghazanfar Ali (co-accused since acquitted), the production manager, produced the record of manufacturing of tablets De-ASM, consisting of 19 files of different batches of De-ASM tablets (each file consisting of 16 pages) along with the original inspection book/register (consisted of 100 pages) of Grays Pharmaceutical company having a license No.000518 before Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer. Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer obtained the signatures of Ghazanfar Ali (co-accused since acquitted). Nasir Khan (co-accused since acquitted), quality control Manager, on page number 63 of the inspection book/register and secured the above-said files and inspection book/register through recovery memo (Ex. PL) attested by Naheed Ahmed (PW-12) and Ahsan Ayub constable.

On 09.08.2012, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, recorded a statement of Mst. Razia Zahid Bakhtawary (the appellant in Crl. Appeal No.834/2018), who was a 50% shareholder of Grays Pharmaceutical company, under section 161 of Cr.P.C. in the presence of her husband Zahid Iqbal Bakhtawari and lady constable Shagufta.

On 10.08.2012, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, recorded the statement of Javaid Farooq, Commercial Superintendent Parcels Services Pakistan Railway, under section 161 of Cr.P.C.

On 11.08.2012, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, recorded the statement of Muhammad Hanif Abbasi (the appellant in Crl. Appeal No.663 of 2018), owner of Grays Pharmaceutical Company, under section 161 of Cr.P.C.

On the same day, i.e., 11.08.2012, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, secured a copy of the special power of attorney of Zahid Iqbal Bakhtawari executed on behalf of his wife Razia Zahid Bakhtawari, produced by the appellant-Muhammad Hanif Abbasi through recovery memo (Ex. PF) attested by the witnesses.

On 10.09.2012, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, along with Naseer Ahmad A.S.I and Abdul Waqar A.S.I (PW-10) along with other officials of ANF visited the Grays Pharmaceutical company and Rizwan Saddique employee of Grays Pharmaceutical Company handed over to him (PW-35) two jars of De-ASM containing 1000 tablets in each jar having a Batches No.X-073 & X-098; out of the above said two jars 25/25 tablets having a white colour with the mark PK were separated and made into two sealed parcels for chemical analysis; the remaining two Jars were also made into one sealed parcel and taken into possession vide recovery memo (Ex. PH) attested by Naseer Ahmad ASI and Abdul Waqar ASI (PW-10). He (PW-35), the investigating officer, handed over the above three parcels that contained De-ASM tablets to Moharrar Malkhana to keep them in safe custody and for their onward transmission to the office of NIH, Islamabad.

On the same day, i.e., 10.09.2012, the investigating officer (PW-35) took into possession 04-certificates issued by Dr. Fakhar-ud-Din Amir (PW-13), member licenses and quality control Islamabad, Sayyed Hussain (PW-14) Deputy Drug Controller Islamabad, Naveed Anwar, Provincial Inspector Drug

(PW-7) and Shoaib Akhtar, Provincial Inspector Drug (PW-8) through recovery memo (Ex. PE) attested by the witnesses.

On 14.09.2012, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, took into possession a photocopy of a cancellation certificate of special power of attorney produced by Razia Zahid Bakhtawary (PW-19).

On 18.09.2012, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, dispatched 02-sealed sample parcels to the office of NIH, Islamabad through Jahan Kamal constable (PW-11), and recorded statements of Naveed Ahmed Tunio, Moharrar (PW-9) and Jahan Kamal constable (PW-11) under sections 161 of Cr.P.C.

On the same day, i.e., 18.09.2012, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, recorded the statement of Rizwan Saleem, owner of Zero Tolerance dye maker company (PW-17) under sections 161 of Cr.P.C.

On 15.10.2012, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, received the report from NIH Islamabad (Ex.PR/1-2).

On 01.11.2012, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, secured into possession one letter issued by Lieutenant Colonel Ashar Rizwan, Joint Director ANF Karachi, along with the list of 17 shopkeepers, and their statements, produced by Nadeem Anjum, U.D.C (PW-2) and Abid Zulfiqar, Joint Director (PW-33) (then Deputy Director ANF Rawalpindi) vide recovery memo (Ex. PBB) attested by the witnesses Abbas Ali ASI and Mehboob Hussain Shah constable (PW-3).

After that, on 13.11.2012, Muhammad Arif Mathani (PW-16) produced a certificate regarding the De-ASM tablets and a list of sales of distributor Arfat Traders, before Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, and he (PW-35) took the same into his possession.

On 14.11.2012, Syed Muzaffar Ali Jaffari PID (PW-18), who remained posted as an area Drug Inspector during the year 2010-11 in the area of Denso Hall Medicines Market Marriot Road, Karachi, handed over a certificate dated 14.11.2012, to Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer and he (PW-35) took the same into his possession through a recovery memo (Ex. PCC) attested by witnesses.

On the same day, Idrees Sheikh (PW-22), Arif Mathani (PW-16), and Syed Muzafar Ali Jafari (PW-18) issued a joint certificate, which was taken into possession by Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer vide recovery memo (Ex. PDD).

During the investigation, he (PW-35)-the investigating officer, also recorded statements of different shop keepers/PWs, i.e., Muhammad Ashraf (PW-20), Shahab ud Din (PW-24), Abdul Qadir (PW-25), Rehan Hassan (PW-26), Sajid Khan (PW-27), Farooq Murad (PW-28), Qayyum Ali (PW-29), Abdul Jabbar (PW-31) and Abdul Habib Daud (PW-32).

On 16.11.2012 at about 14:10 hours, Jahan Kamal Naib Moharrar (PW-11) handed over letter No.2474/2012 dated 15.11.2012 of Sayyed Hussain, Deputy Drug Controller to Syed Imtiaz Hussain Shah, Inspector, (PW-35)-the investigating officer, and he (PW-35) took the same into his possession vide recovery memo (Ex. PR), attested by the witnesses.

On 27.11.2012, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, obtained warrants of arrest for Ghazanfar Ali, Nasir Khan, Rana Mohsin Khurshid, Siraj Ahmed Abbasi, Asif Sheikhani and Zulfiqar Sheikhani;

On 17.12.2012, the investigation of the case was entrusted to Muhammad Zubair S.I. (PW-34). Muhammad Zubair, Inspector (PW-34), joined in the investigation the employees of the Grays Pharmaceutical factory, namely

Siraj Ahmed Abbasi, Ghazanfar Ali, Rana Mohsin Khursheed, Nazakat Ali, and Nasir Khan.

After that, on 27.12.2012, Muhammad Zubair S.I. (PW-34)-the investigating officer, received statements/monthly activities reports of Provincial Drug Inspector Syed Muzaffar Ali Jaffary containing pages 1-156 (Ex.PW-34/A/1-156) and of Provincial Drug Inspector, Arif Mathani consisting of 205 pages as 1-205 (Ex.PW-34/B/1-205) including the letter of Qaisar Mehmood Secretary Provincial Quality Control Board, Karachi, dated 18.10.2012, which Muhammad Zubair S.I. (PW-34)-the investigating officer took into possession through recovery memo (Ex.PS), attested by Jehan Kamal (PW-110)and Usman Aslam constables.

On 21.01.2013, Muhammad Zubair S.I. (PW-34)-the investigating officer, secured letter No.2(22)/ANF/ENQ/2013 dated 18.01.2013, consisting of 82 pages (Ex.PW-34/C/1-82) sent by Colonel Ashir Rizwan, Joint Director, ANF RD Karachi, through recovery memo (Ex. PV), attested by Naheed Ahmed (PW-12) and Usman Aslam constables.

On 12.02.2013, the investigation was again entrusted to Syed Imtiaz Hussain Shah, S.I (PW-35). The investigation of the case remained with Syed Imtiaz Hussain Shah, S.I (PW-35), from 27.03.2013 to 31.03.2013.

On 11.06.2013, Asif Sheikhani was arrested at Karachi Airport, and Syed Imtiaz Hussain Shah, S.I (PW-35)-the investigation officer, visited Karachi and obtained transit remand of Asif Sheikhani. After that, Syed Imtiaz Hussain Shah, S.I (PW-35)-the investigation officer, produced Asif Sheikhani-accused before the learned Area Magistrate and obtained his physical remand till 19.06.2013. On 20.06.2013, Asif Sheikhani-accused was sent to the judicial lockup.

On 19.06.2013, Zulfiqar Sheikhani-accused joined the investigation after obtaining interim bail. On the same day, Syed Imtiaz Hussain Shah, S.I

(PW-35)-the investigation officer, produced him before the Special Judicial Magistrate and recorded his statement under section 164 of Cr.P.C.

On 24.06.2013, Asif Sheikhani was admitted to post-arrest bail. On 26.06.2013, Asif Sheikhani recorded his statement u/s 164 Cr.P.C. before the learned Special Judicial Magistrate.

On 12.09.2013, Mst. Razia Zahid Bakhtawari recorded her statement under section 164 of Cr.P.C. before the learned Special Judicial Magistrate.

On 19.09.2013, Syed Imtiaz Hussain Shah, S.I (PW-35)-the investigation officer, arrested Muhammad Basit Abbasi (since acquitted) and Ahmed Bilal Aadil (since acquitted), on dismissal of their pre-arrest bail from the Lahore High Court, Rawalpindi Bench and obtained their physical remand. Afterward, on 25.09.2013, Ahmed Bilal Aadil and Basit Abbasi were sent to the judicial lockup. On 14.10.2013, Syed Imtiaz Hussain Shah, S.I (PW-35)-the investigation officer, submitted the incomplete challan against the accused persons.

Syed Imtiaz Hussain Shah, S.I (PW-35)-the investigation officer joined the shopkeepers in the investigation to verify the invoices allegedly issued by AB Pharma, Distributor, to them on 30.09.2010, 02.10.2010, 05.10.2010, 07.10.2010 and 09.10.2010.

During the commencement of the trial, Hanif Abbasi (the appellant) submitted an application before the Court for verification of the stock lying in the factory allegedly returned from the distributors to Grays Pharmaceutical company being expired, and by the orders of the Court, Syed Imtiaz Hussain Shah, S.I (PW-35)-the investigation officer, visited the store built in the factory and found 5100 Jars of De-ASM Tablets lying in the store. Syed Imtiaz Hussain Shah, S.I (PW-35)-the investigation officer compared the above-said 5100 Jars with the stock returned certificate dated 18.10.2012 and found against the invoices issued by the Grays Pharmaceutical Company to Arfat Traders. As per

the prosecution, the accused persons were involved in the smuggling and misusing of Ephedrine, and in this way, they took the law into their hands. Syed Imtiaz Hussain Shah, S.I (PW-35)-the investigation officer submitted the final report under Section 173 of Cr.P.C. against the appellant and his co-accused.

After that, on 23.06.2017, Sayyed Hussain, Deputy Drug Controller (PW-14), registration section DRA, Islamabad, handed over a verified and attested photocopy of the dossier issued by the Health Ministry to Syed Imtiaz Hussain Shah, S.I (PW-35)-the investigation officer and same was secured by Syed Imtiaz Hussain Shah, S.I (PW-35)-the investigation officer vide recovery memo (Ex.PS/1-80) attested by Ghulam Shabbir HC (PW-36) and Muhammad Waseem constable.

After that, on 30.06.2017, Syed Imtiaz Hussain Shah, S.I (PW-35)-the investigation officer, submitted a supplementary challan against the appellant and his co-accused.

5. The learned trial court formally charge-sheeted the appellant-Muhammad Hanif Abbasi, and his co-accused, Ghazanfar Ali (since acquitted), Rana Mohsan Khursheed (since acquitted), Nasir Khan (since acquitted), Nazakat Khan (since acquitted), Basit Abbasi (since acquitted), Ahmed Bilal Aadil (since acquitted) and Siraj Ahmad Abbasi (since acquitted), on 29.10.2014, to which he pleaded not guilty and claimed trial. The charge was framed in two heads, which are as follows: -

“That for the year of 2010 you accused Muhammad Hanif Abbasi proprietor of Gray’s Pharmaceutical Industrial Area Rawat, available 500 Kilograms Ephedrine, a controlled substance quota, for your firm Gray’s Pharmaceutical, Industrial Area Rawat. You did not possess and used it for industrial purposes in the manner specified under Control of Narcotic Substances (Regulation of Drugs of Abuse, Controlled Chemicals, Equipment and Materials) Rules 2001, rather you sold, distributed, delivered, transported and smuggled that ephedrine. Hence you contravened the provision of section

6 of the Control of Narcotic Substances Act 1997 and committed offence punishable under section 9 (c) of the Control of Narcotic Substances Act 1997.

That you accused Ghazanfar Ali, Rana Mohsan Nasir Khan, Nazakat Khan, Basit Abbasi, Ahmed Bilal Aadil and Siraj Ahmad Abbasi participated in, associated, abetted, facilitated your co-accused Muhammad Hanif Abbasi in misuse, smuggling and non-compliance of Control of Narcotic Substances (Regulation of Drugs of Abuse, Controlled Chemicals Equipment and Materials) Rules 2001. Hence you all accused also committed offences punishable under section 9 (c) and section 16 of the Control of Narcotic Substances Act 1997. The offences are within the cognizance of this Court and I hereby direct all of you be tried by this Court for the above said offences.”

6. To advance its case, the prosecution produced as many as thirty-six (36) witnesses. Learned SPP gave up PWs-Dr. Abdul Rasheed, Lieutenant Colonel Syed Touqeer Abbas Zaidi, Nisar Ahmed, Security Guard Mehran Clinic Sindhi Muslim Society Karachi, and Muhammad Waseem constable as being unnecessary and closed the prosecution evidence.

7. The appellant was also examined under Section 342 Cr.P.C., wherein he neither opted to appear as his own witness in terms of Section 340(2) Cr.P.C. nor opted to produce any defence evidence. While replying to a particular question that why the PWs had deposed against him, the appellant, Muhammad Hanif Abbasi, made the following deposition: -

“I am a well-reputed & seasoned politician of Rawalpindi Division and have twice been elected as Member National Assembly. In 2003’s Bi-Election of NA-56, I was elected as Member National Assembly by defeating candidate of the ruling party of that regime i.e., the real nephew of Sheikh Rashid Ahmed, the then Federal Minister. Thereafter, in General Elections of 2008, I was also returned as Member National Assembly after defeating Sheikh Rashid Ahmed, candidate of PML(Q). My political rivals never reconciled with these defeats & bent backwards and by using their political influence with the connivance of ANF, they designed a plan to drag me in some false

cases to damage my reputation & political career, thereafter they hired the services of ANF as a tool and managed to get registered the instant false case against me, employees of Gray's Pharmaceutical & its authorized distributors. Besides that it is also clear from record that ANF has absolutely no jurisdiction to take cognizance in a matter which does not fall within the ambit of CNSA, 1997 and this fact is further proved on record that they Ministry of Narcotics Control issued SRO 282(1)/2012 dated 21.03.2012 and further clarified the position by issuing Notifications/Letters No.F.No.11-4/95-Policy-I dated 28th March, 2012 & No.MNC U.O. No.9-9/10-Policy-I dated 3rd April, 2012 Ex-DN, Ex-DO & Ex.DP respectively. This was the reason that earlier this Honourable Court in two other cases of similar nature i.e. case FIR No.45/2012 & No.53/2012, acquitted the accused persons on 15.05.2014 while exercising power u/s 265-K Cr.P.C. Attested copies of the applications & judgments dated 15.05.2014 are produced as Ex.DJ & DK. In addition to that, it is also proved on record that allocation of quota of Ephedrine to Gray's Pharmaceutical was duly utilized and the company in different batches manufactures 1 crore, 65 lac, 86 thousand De-Asm tablets having 30 mg Ephedrine HCI each tablet (total 16586 jars containing 1000 tablets each) and supplied the same to its three Authorized Distributors, detail of which was also proved as:

**Above 11000 jars to Arafat Traders Karachi, whereas
3000 jars to Hammas Pharma Rawalpindi and
2000 jars to AB Pharma Rawalpindi.**

The authorized dealers further sold medicine with the following breakup:

**Above 6000 jars were sold by Arafat Traders, whereas
4876 jars were returned to Company.**

**2882 jars were sold by Hammas Pharma, whereas
118 jars were returned to company.**

**1909 jars were sold by AB Pharma, whereas
91 jars were returned to Company**

It is also established on record that the competent authority i.e. Ministry of Health qua matters related to controlled chemicals is neither complainant of the instant case nor any official of Ministry is witness or accused in the case. In fact, the instant case is a textbook example of colorable exercise of jurisdiction on the part of ANF with connivance of my political rivals. I am innocent and have been dragged in a false & frivolous case purely on political considerations.”

8. After hearing the arguments advanced by the learned counsel for the appellant as well as the learned SPP, the learned trial court, while evaluating the evidence available on record, found the version of the prosecution as correct beyond any shadow of doubt, which resulted into the conviction of the appellant-Muhammad Hanif Abbasi in the above-stated terms.

9. We have heard the arguments advanced by the learned counsel for the appellants and the learned Special Prosecutor for ANF and have minutely perused the record.

10. As per the prosecution case, on 21.07.2012, at 02:00 p.m., Syed Imtiaz Hussain Shah, S.I/S.H.O, (PW-35)-the complainant-investigating officer based on a letter bearing No.3(44)ANF/IR/LAW/2011 dated 20th July 2012 (Ex. PB) issued by Lieutenant Colonel Touqeer Abbas Zaidi, Joint Director ANF, R.D, Rawalpindi (given up PW) prepared complaint (Ex. PA), to which formal FIR No.41/2012 (Ex.PA/1), was registered on 21.07.2012 under sections 9(c), 14 & 15 of CNSA, 1997 at Police Station ANF, R.D, North Rawalpindi. Before we proceed to discuss the prosecution evidence, it would be appropriate to mention here that the prosecution started against the appellant-Muhammad Hanif Abbasi, and his co-accused after an inquiry conducted by Abid Zulfiqar, Joint Director (PW-33) (then Deputy Director ANF Rawalpindi). The inquiry proceedings were initiated against the appellant-Muhammad Hanif Abbasi, and his co-accused without complaint. This fact has been admitted by Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, during cross-examination and he (PW-35) deposed that: -

“No complaint was ever sent by the Ministry of narcotic control and ANF to the Ministry of Health regarding alleged misuse of quota of Ephedrine by Grays Pharmaceutical Company. Again, said it is not in my knowledge; however, an inquiry was convened.”

Abid Zulfiqar, JD (PW-33), deposed during his examination-in-chief that he, handed over the record of Grays Pharmaceutical company to Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating office. The following documents were handed over by Abid Zulfiqar, JD (PW-33), to Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer:

- 1. The inquiry report (Ex. PBB) along with the complete file consisting of 75 pages (P-1 to P-75) of United Plastic Jars Supplier (Ex. P-EE); that of the file consisting of 58 pages (P-1 to P-58) of A.B Pharma Distributor (Ex. P-FF);**
- 2. That of the invoices file consisting of 09 pages (P-1 to P-9) A.B Pharma (Ex. P-GG) along with the statement consisting of 56 pages (P-1 to P-56) of Hammas Pharma Distributor (Ex. P-HH);**
- 3. That of the distribution file consisting of 144 pages (P-1 to P-144) of Hammas Pharma Distributor (Ex. P-II) and invoices file consisting of 13 pages (P-1 to P-13) of Hammas Pharma (Ex. P-JJ);**
- 4. That of the marketing file of Arfat Traders along with invoices consisting of 17 pages (P-1 to P-17) issued by Grays Pharma (Ex. P-KK) and statements of employees comprised of 21 pages (P-1 to P-21) of Grays Pharma (Ex. P-LL); and**
- 5. That of the agreement file consisting of 20 pages (P-1 to P-20) between Etihad cargo contractor and Pakistan Railway (Ex. P-MM), 24 Jars having a De-ASM tablet (P-1 to P-24) produced by Messer Arfat Treaders Karachi.**

Undisputedly, the complaint (Ex. PA) was prepared based on an inquiry conducted by Abid Zulfiqar, Joint Director, ANF (PW-33) (then Deputy Director ANF Rawalpindi). Abid Zulfiqar, Joint Director, ANF (PW-33), deposed that on 20.07.2012, he conducted an inquiry about the illegal use of Ephedrine. He summoned records, sale/purchase records, distribution records, and procurement records of Grays Pharmaceutical Company. Abid Zulfiqar (PW-33) admitted during cross-examination that: -

"I have not mentioned about any direction of superior officer or any reference number or any date, in pursuance of which I carried out inquiry Ex-PBB. Volunteer that it was verbal direction of Lieutenant Colonel Touqeer Abbas Zaidi and Force Commander Brigadier Faheem. ----- I have not mentioned about any verbal direction in my inquiry proceedings. I have not mentioned about any report and date on the basis of which, I have initiated inquiry proceedings Ex-PBB. I have not mentioned any date of start of inquiry in inquiry report Ex-PBB, except date of preparation 20-07-2012. Ex-PB and Ex-PBB are of same date i.e. 20-07-2012. There is no report or order of any superior officer prior to 20-07-2012 on whole file, through which it was directed to initiate any inquiry or proceedings against Grays Pharmaceutical."

Abid Zulfiqar, Joint Director (PW-33) initiated the inquiry based on verbal directions, a reference of which was not given in the inquiry report (Ex. PD). Learned counsel for the appellant-Muhammad Hanif Abbasi, categorically submitted that there is no concept of conducting an inquiry on receiving information disclosing cognizable offence before registration of the criminal case under Section 154 Criminal Procedure Code, 1898 (for short Cr.P.C.), and the documents handed over by Abid Zulfiqar, Joint Director (PW-33) to Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer were not got verified by the investigating officer (PW-35) so these documents lost their evidentiary value.

11. At this stage, we are concerned with interpreting the procedural law, particularly relating to the investigation and the effect of crime. Needless to say, the registration of the “First Information Report” (for short, “FIR”), investigation, and adjudication process of offences are the main dimension of the administration of the criminal justice delivery system. The criminal procedure is supplemental to substantive criminal law. Its failure would seriously affect the substantive criminal law, substantially affecting the protection it gives society. The criminal procedure provided that if any information disclosing a cognizable offence is laid before an officer-in-charge of a police station satisfying the requirements of Section 154 of Cr.P.C., the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case based on such information. By its very definition, a cognizable offence would be a serious offence. A cognizable offence would be where the Investigating Officer can arrest the accused without a warrant. Section 154 of Cr.P.C. specifies that when a person commits any cognizable offense could be arrested without an order from the Magistrate and without a warrant. Section 157 of Cr.P.C. has significance in the Criminal Procedure Code. The officer in charge of a police station is statutorily obliged to register a case and then to proceed with the investigation if he has reason to suspect the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157 of Cr.P.C. The only condition precedent for putting the machinery of investigation in motion under Section 154 of Cr.P.C. is information of a cognizable offence and registration of a criminal case for the offence alleged to have been committed, which is cognizable. The investigation includes all proceedings under the Code of Criminal Procedure, 1898, for collecting evidence by a police officer. There is no specific provision where pre-investigative inquiry is either expressly permitted. Except under Section 174 Cr.P.C. as regards unnatural deaths and other cases reported to the police. The officer-in-charge of a police station is legally bound to register a first information report in terms of Section 154 of Cr.P.C. if the allegations made therein give rise to an offence that can be

investigated without obtaining any permission from the magistrate concerned. Thus, the investigating officer would investigate the offence relating to committing a cognizable offence. If the offence is non-cognizable, the investigating officer has no jurisdiction to take any further steps regarding the investigation without the leave of the Court by the provisions of Section 155 (2) of the Code. It is only in cases where the cognizable offence is not disclosed or the authenticity of which ex-facie is highly doubtful. There is a need to conduct a further inquiry to ascertain whether the cognizable offence is made out or not, the police officer can conduct a preliminary inquiry and not in all cases but only upon making the entry in the Daily Diary/Roznamacha instantaneously with reasons and the need for adopting such a course of action. Such inquiry should be completed expeditiously and, in any case, not later than one day. After that, the FIR should be recorded in the prescribed register, and the officer should take any other recourse permissible to him strictly by the provisions of the Criminal Procedure Code under which he is empowered to investigate.

12. The registration of the FIR initiates every criminal trial. But in the instant case before the registration of FIR, the inquiry was conducted by Abid Zulfiqar, Joint Director (PW-33), before registration of FIR. During the inquiry process, Abid Zulfiqar, Joint Director (PW-33), collected the records of Grays Pharmaceutical Company, Arfat Traders, A.B. Pharmaceutical, and Hammas Pharmaceutical companies. Abid Zulfiqar, Joint Director (PW-33), instructed different officials to collect the documents, prepare samples, and refer the same to the testing laboratories without authority. He (PW-33) admitted during cross-examination that: -

“Collection of evidence is exclusive prerogative of investigating officer during investigation. I never remained investigation officer of case FIR No.41 (instant case) from 21-07-2012 onwards. I was investigating officer of case FIR No.40 dated 10-10-2011. I have collected evidence in said case being investigating officer. Case FIR No.40 of 2011 was registered in PS ANF Committee Chowk Rawalpindi

and case FIR No.41 of 2012 (instant case) was registered in PS ANF RD Rawalpindi. My status in this case is of a prosecution witness.”

Per the prosecution case, the ephedrine quota was sanctioned against the prescribed limit and procedure. Whereas, Abid Zulfiqar, Joint Director (PW-33), admitted during cross-examination that: -

“During investigation of case FIR No.40 of 2011, it came in my knowledge that legal quota of allotment of Ephedrine is 500 kgs, volunteer that as per rules of Ministry of Health maximum limit of allotment of quota of Ephedrine is 500 kgs per annum. ----- It is correct that the 500 kgs quota of Ephedrine allotted to Grays Pharmaceutical Company was strictly in accordance with rules and regulations of Ministry of Health.”

The admission of Abid Zulfiqar, Joint Director (PW-33), reveals that the quota of Ephedrine allotted to Grays Pharmaceutical Company was strictly by the rules and regulations of the Ministry of Health and appellant-Muhammad Hanif Abbasi had not used his position for sanction of the quota of Ephedrine. Abid Zulfiqar, Joint Director (PW-33), further admitted during cross-examination that: -

“I have seen letter of permission for purchase of Ephedrine to Grays Pharmaceutical Company dated 30-06-2010 issued by Ministry of Health. ANF department performs its jobs under Ministry of Narcotics Control. It is correct that as per serial No-2, copy of this letter is sent to DG ANF Rawalpindi and at serial No-3 to section officer (Policy) Ministry of Narcotics Control Islamabad. Volunteer that initially there is an allocation of quota and then permission is granted to purchase Ephedrine, copy of which is sent for information to ANF.”

Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer deposed during cross-examination that: -

“It is correct that no specific limit of Ephedrine quota was demanded by the applicant, however the

competent authority allotted the quota of Ephedrine on a separate application of Grays Pharmaceutical Company only keeping in view the specification of De-ASM tablet without any specific demand. It is correct that the standard quota of Ephedrine is 500 Kgs. It is correct that the quota of Ephedrine was allocated with permission to purchase the same by Ministry of Health through same order dated 30-06-2010. It is correct that the Ephedrine was purchased by the Grays Pharmaceutical Company from Alpha Chemical in different 11 phases during the period of 06 months.”

The deposition of Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, reveals that the standard quota of Ephedrine is 500 Kgs. Abid Zulfiqar, Joint Director (PW-33), further admitted during cross-examination that: -

“It is correct that 500 Kgs quota of Ephedrine allotted to Grays Pharmaceutical Company was strictly in accordance with rules and regulation of Ministry of Health.”

Abid Zulfiqar, Joint Director (PW-33) deposed during cross-examination that: -

“There is no direction of any court including August Supreme Court of Pakistan with regard to registration of case against Grays Pharmaceutical and Muhammad Haneef Abbasi.”

From the depositions of Abid Zulfiqar, Joint Director (PW-33), and Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, it reveals that the quota of Ephedrine 500 Kgs was lawfully allotted to the appellant-Muhammad Hanif Abbasi. The prosecution failed to bring on the record any material evidence showing that the appellant-Muhammad Hanif Abbasi got Ephedrine over the prescribed limit.

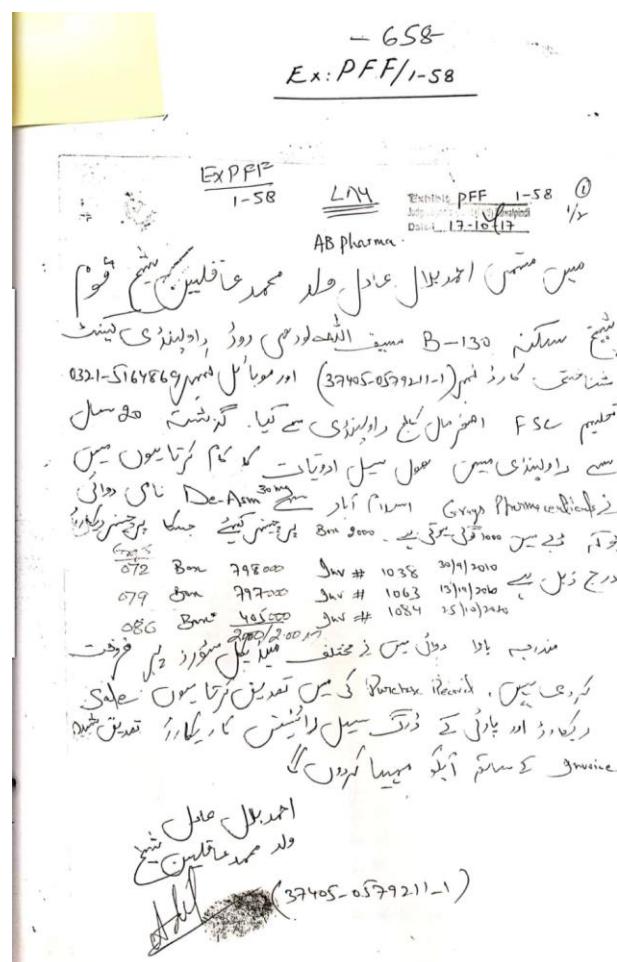
13. As per the prosecution case, preparing the fake and fabricated invoices of the De-Asm tablets is concerned. The prosecution evidence reveals that during inquiry proceedings, records of Grays Pharmaceutical Company,

Arfat Traders, A.B. Pharmaceutical, and Hammas Pharmaceutical companies were summoned, and the records were received by Abid Zulfiqar, Joint Director (PW-33). As per the prosecution evidence, Abid Zulfiqar, Joint Director (PW-33), handed over these documents to Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer. Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer deposed during cross-examination that: -

“On 19-09-2013 I affected the arrest of Muhammad Basit Abbasi and Ahmed Bilal Aadil on rejection of their bail from the Hon’able Lahore High Court Lahore, Rawalpindi Bench. I obtained the accused on physical remand. During the course of investigation, I interrogated about recording the invoices issued by the Grays Pharma company in the name of AB Pharma Distributor College Road, Rawalpindi; I joined the shopkeepers in the investigation to verify the invoices allegedly issued by the AB Pharma Distributor to them on 30.09.2010, 02.10.2010, 05.10.2010, 07.10.2010 and 09.10.2010.

Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer had concealed the facts from the court. The testimony of Abid Zulfiqar, Joint Director (PW-33), reveals that he produced documents/records of Grays Pharmaceutical Company, Arfat Traders, A.B. Pharmaceutical, and Hammas Pharmaceutical companies before Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, i.e., a file consisting of 58 pages of A.B Pharma Distributor (Ex. PFF/P-1 to P-58), that of invoices file consisting of 09 pages A.B Pharma (Ex. PGG/P-1 to P-9), that of marketing file consisting of 56 pages along with the statement of Hammas Pharma Distributor (Ex. PHH/P-1 to P-56), that of distribution file consisting of 144 pages of Hammas Pharma Distributor (Ex. PII/ P-1 to P-144), that of invoices file consisting of 13 pages of Hammas Pharma (Ex. PJJ/ P-1 to P-13), that of the marketing file of Arfat Traders along with invoices consisting of 17-pages issued by Grays Pharma (Ex. PKK/ P-1 to P-17), that of statements of employees of Grays Pharma consisting of 21 pages (Ex. PLL/P-1 to P-21), which were secured by him (PW-35). The prosecution failed to prove in whose presence and when the above-said documents were

summoned by him and in whose presence, when, and where he secured the same. From the testimony of Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, it reveals that constable Mehboob Hussain Shah (PW-3) was the witness to the effect that Abid Zulfiqar, Joint Director (PW-33), handed over the documents mentioned above to Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer. The prosecution must establish by convincing evidence that the abovementioned record was kept in safe custody and not tampered with. All these circumstances taken together only deepen the shadows of doubt cast upon the case of prosecution. The Statement of Ahmad Bilal Adil (Ex. PFF/1/58) reveals that said statement was tempered with and Batch Nos. were later written with different pen/ink/and writing. A scanned copy of the statements of Ahmad Bilal Adil (Ex. PFF/1/58) and Nisar Ahmad Qureshi (Ex. PHH/1/30) are being pasted hereunder for ready reference: -



In the above-said statement (Ex. PFF/1/1-58), under the head, “Grays” in batch numbers are mentioned with different handwriting and ink. The statement of Nisar Ahmad Qureshi (Ex. PHH/1/30) reveals that at the end of the statement and before the signature of Nisar Ahmad Qureshi, one line was added with different handwriting and pen. A scanned copy of the statement of Nisar Ahmad Qureshi is being pasted hereunder for ready reference.

Similarly, in the statements of Muhammad Ishaq (Ex. PHH/1/43) and Muhammad Mazher Kayyani (Ex. PHH/1/47), Batch Nos. were added. We also conclude that in the statements of Ahmad Bilal Adil (Ex. PFF/1/58), Nisar Ahmad Qureshi (Ex. PHH/1/30), Muhammad Ishaq (Ex. PHH/1/43), and Muhammad Mazher Kayyani (Ex. PHH/1/47), there is interpolation/overwriting. We are of the considered view that the discrepancies/overwriting/interpolations, as observed by us, cast serious doubt on the genuineness of the statements of Ahmad Bilal Adil (Ex. PFF/1/58), Nisar Ahmad Qureshi (Ex. PHH/1/30),

Muhammad Ishaq (Ex. PHH/1/43) and Muhammad Mazher Kayyani (Ex. PHH/1/47). Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer deposed during examination-in-chief that: -

I verified the batch manufacturing record i.e., Batch No.X-086 which was found fake and fabricated as the medicine was manufactured on 16.10.2010 according to Batch manufacturing record whereas, the sale was shown with effect from 30.09.2010 to 09.10.2010, which proved that all the record was fictitiously maneuvered.

We observed that the statement of Ahmad Bilal Adil (Ex. PFF/1/58) had been interpolated regarding Batch Nos. of De-ASM. If interpolation/overwriting is excluded from the rest of the statement, the statement of Ahmad Bilal Adil (Ex. PFF/1/58) nowhere speaks of the invoices being related to Batch No. X086 is to be a case of fake preparation of documents holding the appellant-Muhammad Hanif Abbasi, liable under the Control of Narcotic Substances Act, 1997, and the same cast serious doubt on the genuineness of the prosecution case.

14. The invoices (Ex.PHH/1/4, Ex.PHH/1/5, Ex.PHH/1/7, Ex.PHH/1/8, Ex.PHH/1/9) were not signed or stamped by anyone on behalf of Gray's Pharmaceuticals except one invoice dated 13.10.2010 (Ex. PHH/ 1/6). From the perusal of Gray's Pharmaceuticals Quality Control Department, the finished product analysis report (Ex. PJQ 1/11) reveals that Batch No. X086 was manufactured on 10.10.10, and its expiry was 10/10/2012. Admittedly, the invoices produced by Abid Zulfiqar, Joint Director (PW-33), before the investigating officer (PW-35) were not verified. Without verification of the invoices, he (PW-35) stated that said documents were forged and fictitious. In this regard, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer deposed during cross-examination that: -

"I took into possession the Batch manufacturing record provided by the Grays Pharmaceutical

Company but did not got verified from any Government Laboratory.”

It is necessary to add here that defence put objections on all these documents in the testimony of Abid Zulfiqar, Joint Director (PW-33), and Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer. The appellant-Muhammad Hanif Abbasi, has taken up the objections at the trial, and the trial court has not answered the objections raised. Whereas, on perusal of prosecution evidence, it reveals that Ex. PFF/1/58 (statement of Ahmad Bilal Adil) and Ex. PFF/1/2 (statement of Muhammad Ali) and invoices (Ex. PFF/1/18 to Ex. PFF/1/21, Ex. PFF/1/25 to Ex. PFF/1/31, Ex. PFF/1/39 to Ex. PFF/1/42, Ex. PFF/1/54 to Ex. PFF/1/57 relating to A.B. Pharma, Ex. PHH/1/4 to Ex. PHH/1/9 relating to Gray's Pharmaceuticals, Ex. PHH/1/57 to Ex. PHH/1/63 relating to Hammas Pharma and Ex. PJJ/1/2 to Ex. PJJ/1/13 relating to Gray's Pharmaceuticals) were not put to the accused. On the closure of prosecution evidence, the statement of the accused under section 342 Cr.P.C. was recorded. We have noted that the questions put to the accused in the examination under section 342 of Cr.P.C. did not focus on the evidence on record, and appellant Muhammad Hanif Abbasi, Ahmad Bilal Adil (co-accused since acquitted), and Siraj Ahmad Abbasi (co-accused since acquitted) were, therefore, the prejudiced, and mere reference to fake and fabricated records was given, and exhibited documents were not brought to their notice. Question No.5 put to appellant Muhammad Hanif Abbasi reads as follows: -

Question No.5

It is in the prosecution evidence that you supplied De-Asm tablets to AB Pharma & Hammas Pharma, College Road Rawalpindi as per your claim whereas bogus and fabricated record of such sale was provided by you and the said distributors.

Questions No.2 and 4 put to Ahmad Bilal Adil read as under: -

Question No.2

It is in the prosecution evidence that you being distributor of Grays Pharma prepared and produced fake purchase record of De-Asm tablets in shape of purchase record without having sale record?

Question No.4

It is in the prosecution evidence that you facilitated, abetted and conspired with accused Muhammad Hanif Abbasi and others in preparation of fake bogus and fabricated record of De-Asm tablets?

Similar question No. 3 was put to Siraj Ahmad Abbasi, which reads as under: -

Question No.3

It is in the prosecution evidence that you facilitated, abetted and conspired with accused Muhammad Hanif Abbasi and others in preparation of fake, bogus and fabricated record of manufacturing and distribution of De-Asm tablets.

Whereas Section 342 of the Criminal Procedure Code is as follows: -

“342. Power to examine the accused.

- (1) **For purpose of enabling the accused to explain any circumstances appearing in the evidence against him, the Court may, at any stage of any inquiry or trial without previously warning the accused, put such questions to him as the Court considers necessary, and shall, for the purpose aforesaid, question him generally on the case after the witness for the prosecution have been examined and before he is called on for his defence.**
- (2) **The accused shall not render himself liable to punishment by refusing to answer such questions, or by giving false answers to them, but the Court may draw such inference from such refusal or answers as it thinks just.**

- (3) **The answers given by the accused may be taken into consideration in such inquiry or trial, and put in evidence for or against him in any other inquiry into, or trial for, any other offence which such answers may tend to show he has committed.**
- (4) **Except as provided by sub-section (2) of section 340, no oath shall be administered to the accused.**

It is a consistent view of the Apex Court that any circumstance in respect of which an accused was not examined under section 342 of Cr.P.C. cannot be used against him/them. Non-indication of inculpatory material in its relevant facets by the trial court to the accused adds to the vulnerability of the prosecution case. The trial court was bound to ask such questions from an accused under section 342 of the Criminal Procedure Code, 1898, which relates to the root of prosecution evidence based on his/their conviction. Thus, there is no evidence to prove that the invoices (Ex. PFF/1/18 to Ex. PFF/1/21, Ex. PFF/1/25 to Ex. PFF/1/31, Ex. PFF/1/39 to Ex. PFF/1/42, Ex. PFF/1/54 to Ex. PFF/1/57 relating to A.B. Pharma, Ex. PHH/1/4 to Ex. PHH/1/9 relating to Gray's Pharmaceuticals, Ex. PHH/1/57 to Ex. PHH/1/63 relating to Hammas Pharma and Ex. PJJ/1/2 to Ex. PJJ/1/13 relating to Gray's Pharmaceuticals) was fake and fabricated, produced by Ahmad Bilal Adil (since acquitted) and Siraj Ahmad Abbasi (since acquitted) to facilitate appellant Muhammad Hanif Abbasi before Abid Zulfiqar, Joint Director (PW-33). During the investigation, A.B. Pharmaceutical and Hammas Pharmaceutical companies claimed that they, being authorized distributors of Grays Pharmaceutical Company, sold the De-ASM tablets to different shop-keepers and names of the same were produced during the investigation before the investigating officer and the said shopkeepers verified during the investigation that they received the medicine from A.B. Pharmaceutical and Hammas Pharmaceutical companies and they sold the same. The appellant's stance is that he sold 3000 jars to A.B. Pharmaceutical and 2000 jars to Hammas Pharmaceutical. That fact was verified during the investigation

by Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer. He (PW-35)-the investigating officer, admitted during cross-examination that: -

"It is correct that during the investigation, the name of Shop Keepers told by Hammas Pharma and AB Pharma were joined in the investigation who told and gave statements to the fact that AB Pharma and Hammas Pharma supplied De-ASM Tablets to them which were sold by them.-----It is correct that during investigation AB Pharma and Hammas Pharma provided invoices of purchase and sale of De-ASM Tablets Manufactured by Grays Pharmaceutical Company and its supplied to different shop keepers. I did not get verified all the said invoices from any government laboratory/FSL."

The deposition of Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer suggests, that shopkeepers admitted the receiving De-ASM tablets from Hammas Pharma and AB Pharma and selling the same in the wholesale market. During cross-examination, Naveed Ahmad, Deputy Drug Controller (PW-7), admitted to taking De-ASM tablet samples from Trade Channel Bohar Bazaar Rawalpindi. Naveed Ahmad, Deputy Drug Controller (PW-7), deposed during cross-examination that: -

"یہ درست ہے کہ 12/8 کو میں بوجہ بازار راولپنڈی گیا اور D-ASM گولیاں لیکر ڈگ نیشنگ لیپارٹری لاہور کو بھیجن۔ اسکا ر Zahl آیا کہ معیاری ہیں۔"

The stock returned by Hammas Pharma and AB Pharma reveals that Hammas Pharma sold 2882 jars, whereas 118 jars were returned to Grays Pharmaceutical Company. Similarly, AB Pharma sold 1909 jars, whereas 91 jars were returned to Grays Pharmaceutical Company. Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer verified the return of jars to Grays Pharmaceutical Company (Ex.DF/1/7). During the examination-in-chief, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer deposed that: -

"During the commencement of trial, accused Hanif Abbasi submitted an application before the Court for verification of the stock lying in the factory allegedly

returned from the distributor being expired. By order of the Court I visited the store built in the factory and found 5100 Jars of De-ASM Tablets lying in the store.”

Whereas, during cross-examination, Syed Imtiaz Hussain Shah, Inspector, (PW-35)-the investigating officer, submitted that:-

“It is correct that I found 5100 jars of De-ASM tablets (each for contains 1000 tablets) were lying in return and recall store of Grays Pharmaceutical Company. I have not submitted any separate to this respect, volunteered said that it is submitted with the report u/s 173 of Cr.P.C. It is incorrect to suggest that my volunteered portion is based on malafides. Neither the samples were taken from the said Jars, nor transmitted the same to NIH Islamabad/FSL Punjab for analysis. The above said jars were not taken into possession.”

Syed Imtiaz Hussain Shah, Inspector, (PW-35)-the investigating officer, admitted during his testimony that at the court's direction, he visited the store built in the factory of Grays Pharmaceutical Company and found 5100 jars. However, he has not prepared any report nor exhibited the same in the evidence. He also admitted that he only found 5100 jars of De-ASM tablets present there. Although Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, deposed that he prepared a separate report about the presence of 5100 jars in the store built in the factory of Grays Pharmaceutical Company, the same was not exhibited in evidence. As per the prosecution case, tablets De-ASM had not been manufactured by Grays Pharmaceutical Company by the dossier submitted by Grays Pharmaceutical Company to the Ministry of Health, and only samples were prepared. After completing the investigation, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer- concluded that the accused were involved in the smuggling and misusing of Ephedrine, and this way, they took the law into their own hands. Contrary to the same, Syed Imtiaz Hussain Shah, Inspector, (PW-35)-the investigating officer, admitted during cross-examination that:-

"It is correct that as per record and investigation no Ephedrine in raw form was ever recovered. It is also correct that during the investigation, no person came forward and alleged that Ephedrine in raw form was ever sold in open market or purchased by any person."

Besides, Abid Zulfiqar, Joint Director ANF (PW-33), who conducted an inquiry before the registration of FIR, admitted during cross-examination that: -

"In my inquiry report Ex-PBB, there is nowhere mentioned that any witness appeared before me, who stated that Ephedrine was sold or available in raw forms in open market. It is not mentioned in inquiry report Ex-PBB, that any quantity of Ephedrine was recovered from open market in raw form. I have not qualified Pharmacist."

So, the prosecution failed to establish that the appellant had sold the ephedrine to any smugglers and obtained illegal gain. As regards the charge of being involved in the smuggling of Ephedrine, it could not be established.

15. As far as the allegation that ephedrine was not used for the manufacturing of medicine, as per the dossier of the Ministry of Health is concerned, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer deposed during examination in chief that: -

"On 11.08.2012, I joined Muhammad Hanif Abbasi, owner of Grays Pharmaceutical Company in the investigation and recorded his statement. It reflected from his statement under section 161 of Cr.P.C., that he got permission to establish Psychotropic Section in March 2009 and also got registered De-ASM tablets (for medicine Asthma disease) with Ministry of Health Islamabad. In month June, 2010, he applied for a quota of Ephedrine in a Ministry of Health, which was duly sanctioned from Ministry in month of July 2010. He further stated in his statement that company purchased 500-kgs Ephedrine from Alpha Chemical Lahore in the period from July 2010 to Dec 2010. He further stated that his company

manufactured De-ASM tablets with the mark of PK.
He further stated that there are 03 distributors of
Grays Pharmaceutical Company namely Hammas
Pharma College Road Rawalpindi, AB Pharma
College Road, Rawalpindi and Arfat Traders.”

16. Admittedly, during the investigation, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, has not collected any material revealing that the appellant-Muhammad Hanif Abbasi, misused the ephedrine quota. Even he (PW-35) admitted during cross-examination that he conducted surprise raids on 27.07.2012 and 10.09.2012 at Grays Pharmaceutical Company and took into possession dyes and punches of De-ASM tablets and two jars of De-ASM vide recovery memo (Ex. PH). There is no material on record to show that the raw Ephedrine was found in possession of appellant Muhammad Hanif Abbasi or that the same was recovered from the premises of Grays Pharmaceutical Company. So, the prosecution failed to establish that the appellant-Muhammad Hanif Abbasi, misused the ephedrine quota or illegally used the same in producing any psychotropic substance.

17. The deposition of Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, reveals that Grays Pharmaceutical Company was registered to manufacture medicine on 24.06.2003. Grays Pharmaceutical Company got permission to establish a psychotropic section in March 2009 and registered De-ASM tablets (cure for Asthma disease) with the Ministry of Health on 02.06.2010. The Ministry of Health, after observing all formalities, sanctioned a quota of 500 kilograms of ephedrine to Grays Pharmaceutical Company vide notification/letter No.F.13-3/2009-Reg-II-(M-218) dated 02.06.2018 (Ex.DD/1-2) for manufacturing De-ASM tablets. According to the notification, 30 mg ephedrine HCL will be used for each De-ASM tablet. After that, Grays Pharmaceutical Company purchased 500 kg ephedrine from Alpha Chemical Lahore, and the same was delivered in different quantities in six months from 02.07.2010 to 01.02.2011. Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer deposed during cross-examination that: -

"As per record of Grays Pharmaceutical Company, the period of batch manufacturing of De-ASM tables started from Sep, 2010 till Feb 2011. It is correct that for manufacturing tablets, a set of dies and punches are required, which were recovered with PK mark. None else claimed ownership and manufacturing of De-ASM tablet except Grays Pharmaceutical Company during the course of investigation. No other company except Grays Pharmaceutical Company got registered its medicine with the brand name of De-ASM tablet with its specific formula in the Ministry of Health. It is correct that no other dyes or purchase were taken into possession by me from any other company except that set of dyes and purchases having PK mark taken into possession by me from Grays Pharmaceutical Company, during the course of investigation-----Neither recovered dyes and punches were sent to NIH as well as FSL for comparison nor any report was obtained from the above said offices-----The Dyes and De-ASM tables were not sent by me to any authorized laboratory for comparison. Volunteered, said that De-ASM tables were sent to NIH for analysis. It is correct that the De-ASM tablet was sent to the office of NIH for qualitative analysis. During course of investigation, it came to my notices that for preparation of plastic jars/packing material and labeling, material were ordered by Grays Pharmaceutical Company. Plastic Jars were got prepared from United Pharmaceutical Company and consignment was delivered through Noroz Goods. The bank statement of United Plastic Company and its invoices were taken into custody by me to verify the transaction made by Grays Pharmaceutical Company to United Plastic Company. It also came into my notice during course of investigation that order was placed to Printek printers Islamabad for printing to labels of De-ASM tablets with its formula. As per the record produced by Grays Pharmaceutical Company of different batches, 16586 Jars (each jar contained 1000 tables of DE-ASM) were manufactures by Grays Pharmaceutical Company. I have given the details of the documents annexed with the police file underneath of the report u/s 173 of Cr.P.C. I have highlighted the recovery memos consist of 16 pages in the said report. I have shown and annexed 13

chemical reports of Drugs Testing Laboratory Karachi along with letter with my report u/s 173 of Cr.P.C. these report along with letters of RD ANF Karachi consist of 32 pages were taken into possession vide recovery memo Ex.PT. It is correct that except the recovery memo Ex.PT, I produced/exhibited all the remaining recovery memos in my examination in Chief along with all the documents which I taken into custody through those recovery memos. It is correct that these documents pertaining to reports dated 13.08.2012, 04.09.2012 and 06.09.2012 issued by Provincial Government Analyst/Director Drugs Testing Laboratory Karachi these were not got exhibited in my statement inadvertently being photocopies. These reports are Ex.PT/1-13. It is correct that these reports were obtained under the direction and instruction of Colonel Asher Joint Director RD ANF Karachi. Volunteered said that these reports were not required not summoned by me, during the course of the investigation. ----- It is correct that these reports were taken into custody by me through Ex. PT. -----It is true that the samples were taken by Arif Mathani, Provincial Drug Inspector, under the direction and instruction of ANF Karachi, and it is correct that Arif Mithani is cited as witness of the instant case and appeared in a witness box as PW-16. It is not in my knowledge that Abid Zulfiqar Deputy Director ANF Rawalpindi joined the Arif Mithani in the inquiry proceedings and also took into custody Ex.PT/1-13. It is incorrect to suggest that I am intentionally suppressing this fact. Abid Zulfiqar is the witness of the instant case and was examined as PW-33.”

Muhammad Arif Mithani, (retired) Drug Inspector (PW-17), deposed during cross-examination that: -

“My post was Provincial Drug Inspector. At the moment of my inspection of Arfat Trader 4000 jars were available there. It is correct that to maintain record of onward sale by the agent is responsibility of authorized agent and not of manufacturer. Arfat Traders categorically admitted that they have purchased this drug from Gray's Pharma. Letters were sent by me on the address of factory situated in

1-9 area. Third letter was received to me from Gray's Pharma that they have shifted to Rawat industrial estate. Result of all the samples was that all are of standard quality, containing Ephedrine HCL. HCL is a component of Ephedrine. Storage condition of Arfat Trader was up to standard."

Syed Muzafar Ali Jaffery, Provincial Drug Inspector (PW-18), deposed during examination-in-chief that: -

"Stated that on 14.11.2012, I was posted as provincial drug inspector Karachi-IV (Korangi). I.O of the case Imtiaz Shah came in the office of Divisional Drug inspector Karachi Division. I met him there and inquired from me that in the year 2010-2011 where I was posted. I replied that during that period I was posted in Karachi-II, (Denso Katchhi Gali). He further inquired from me about Grays Pharma and DSM tablets about availability and sale purchase of said Tablets. I replied that there was no such issue and complaint at that time. This is my statement."

It is the prosecution case that the complaint (Ex. PA) was registered on the basis of the letter bearing No.3(44)/ANF/IR/Law/2011 dated 20.07.2012 (Ex. PB) issued by Lieutenant Colonel Touqeer Abbas Zaidi, Joint Director (given up PW), which was based on the inquiry conducted by Abid Zulfiqar, Joint Director, ANF (PW-33). He (PW-33) admitted during cross-examination that: -

"It is correct that at the time of my visit at Karachi, I met with Arif Mathani, Provincial Drug Inspector, who told me that he has collected on 19-07-2012, samples/Jars of 14 batches of De-ASM Tablets from Arfat Traders, which were sent to Drug Testing Laboratory Sindh. Volunteer that Secretary Quality Control Government of Sindh, wrote letter to Chief Inspector of Drug Sindh that he has not mentioned this fact in his monthly activity reports. It is incorrect to suggest that my volunteer portion is false and after-thought. During those days Colonel Asshar Rizwan was Joint Director of RD Karachi. It is incorrect that procedure of collection of samples by Arif Mathani, Provincial Drug Inspector, Government of Sindh was

carried out on instruction of Joint Director Assher Rizwan of ANF RD Karachi. Above said Joint Director Assher Rizwan of ANF RD Karachi sent intimation of above facts to DG ANF Rawalpindi through a letter. Volunteer that it was sent very late. It is incorrect to suggest that my volunteer portion is false and after-thought. This fact of sending samples on the instruction of ANF Karachi by Arif Mathani of De-ASM Tablets on 19-07-2012 was not in our knowledge and prior from receipt of result, due to this reason we registered said FIR. Again said fact of collection of samples and sending of the same on instruction of ANF Karachi, was not in the knowledge of ANF RD Rawalpindi. Concerned Drug Testing Laboratory Government of Sindh Karachi issued reports of analysis of above referred samples. Above referred reports were sent to Headquarters ANF RD Rawalpindi by RD ANF Karachi, which are present on file. Volunteer that some were received after registration of case. Said reports were taken into possession through a recovery memo dated 18.10.2012. Said reports are 13 in number of different batches. Photocopies of said reports along with photocopy of covering letter dated 18-10-2012, issued by Lieutenant Colonel Muhammad Ishtiaq Ahmed on behalf of, (for) DG ANF are attached with recovery memo dated 18-10-2012.”

Muhammad Arif Mithani (PW-16) deposed during examination in chief that: -

“Stated that in the year 2012, I was posted as drug inspector of Katchi Gali and surrounding area medicine market. Divisional drug Inspector directed me to inquire into the matter of De-Asm Tab of Arfat Traders and find out facts and figures. I visited Arfat Traders and found Mr. Zulfiqar Sheikhani was Incharge of sales of Arfat Traders. I inquired from him about De-Asm tabs, he informed me that they purchased 11000 Jars which contain 1000 tablets in each jar from Gray's Pharma and they have sold 6000 Jars in the market. I reported about this fact to my senior. Then after couple of days I received another instruction that remaining 4000 jars need to be tested by Drug testing laboratory Sindh. I again visited Arfat Traders and collected 04 sample of each batch from total of 14 batches. I sent 01 sample of each

batch according to rules to drug testing laboratory, other sample of the batch to quality control board Sindh, 01 sample to the manufacturer i.e. Gray's Pharma and 01 sample to Arfat Traders from where I collected samples. After some time I received reports from laboratory and submitted to my office. and 01 copy to Arfat Rader and 01 copy to provincial quality control and sent 01 copy to RD ANF Karachi."

During cross-examination, Muhammad Arif Mithani (PW-16) deposed that: -

"My post was Provincial Drug Inspector. At the moment of my inspection of Arfat Trader 4000 jars were available there. It is correct that to maintain record of onward sale by the agent is responsibility of authorized agent and not of manufacturer. Arfat Traders categorically admitted that they have purchased this drug from Gray's Pharma. Letters were sent by me on the address of factory situated in 1-9 area. Third letter was received to me from Gray's Pharma that they have shifted to Rawat industrial estate. Result of all the samples was that all are of standard quality, containing Ephedrine HCL. HCL is a component of Ephedrine. Storage condition of Arfat Trader was up to standard."

Given the statement made by Muhammad Arif Mithani (PW-16), he witnessed 4000 jars available at the inspection of Arfat Trader. Similarly, at the cost of repetition, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, deposed that he visited Grays Pharmaceutical Company on the direction passed by the trial court during the trial and found 5100 jars containing 1000 tablets in each jar, lying in the store of the factory. Admittedly, as per the record, 4000 jars were returned to Grays Pharmaceutical Company from Arfat Trader, included in the above-stated 5100 jars. Muhammad Idrees Sheikh (PW-22) deposed during cross-examination that: -

"In response to direction dated 22nd June 2012 of Chief Drug Inspector I had submitted a detailed report with reference to De-Asm Tablets from M/s Arfat Traders Karachi vide my letter number DCA/DDI/KHI/318/20 dated 09 July 2012 to him. I sent copies of the above-referred letter to Lt Col

Asher Rizwan as well as to Arif Mithani area Drug Inspector. Photocopy which has been shown to me is the correct photocopy of the same which contain my signatures, same is mark-DB. It is correct that it is mentioned in above letter that in compliance of direction of Chief Drug Inspector under my supervision Arif Mithani area drug inspector visited Arfat Trader on 25.06.2012 and 28.06.2012 was for purposes of investigation. Above said investigation was not for the purpose to ascertain sale, purchase and availability of De-Asm Tables, rather it was for verification of availability of De-Asm tablets. It is correct that in letter mentioned above written by me it is mentioned that purpose of visit/verification dated 25.06.2012 and 28.06.2012 for investigation regarding legal aspect of sale and purchase of tablets De-Asm of different batches manufactured by Grays Pharmaceutical Islamabad. It is correct that it is mentioned in above letter regarding facts and figures that total 11106 Jars/Packs were purchase by Arfat Traders out of which 4454 Jars/Packs are available in stock, whereas 6652 jars/packs have been sold by M/s Arfat Traders. It is mentioned in letter number DCA/DDI dated 09.07.2012 that invoices of 11106 jars/packs purchased from Grays Pharma by M/s Arfat Trader were also produced. I have not brought original record of above referred letters with me. In response to letter number DCA/DIDK/333/334 dated 18 July 2012 was written by me to Joint Director ANF Karachi. I directed Drug Inspector Arif Mithani to submit the report of Provincial Government Analyst to ANF Karachi. I do not know whether he has sent said report or not. It is incorrect to suggest that I am intentionally suppressing the factum of sending of analysis reports to ANF.”

Given the above prosecution evidence brought on the record, it reveals that Abid Zulfiqar, Joint Director ANF (PW-33), admitted during cross-examination that before registration of the instant criminal case, the fact of sending of samples) of De-ASM tablets on instructions of ANF Karachi by Arif Mathani (PW-16) was not in his knowledge. Before receipt of the result, they registered the FIR due to the said reason. He (PW-33) also admitted that due to this fact, FIR was registered.

18. Abid Zulfiqar, Joint Director, ANF (PW-33), also admitted during cross-examination that the fact of sending samples of De-Asm tablets (secured from Arfat traders) on instructions of ANF Karachi by Arif Mathani (PW-16) on 19.07.2012 and its result was not in their knowledge. Due to this reason, they registered the instant FIR. So, if during inquiry proceedings, Abid Zulfiqar, Joint Director, ANF (PW-33), received the information that Arif Mathani (PW-16) collected samples of De-Asm tablets (secured from Arfat traders) on instructions of ANF Karachi and sent to the testing laboratory and after that received its report, the FIR should not have been registered. The malafide on the part of the prosecution was also revealed from the fact that Abid Zulfiqar, Deputy Director, ANF (PW-33), admitted during cross-examination that -

**“A dispute in between ANF RD Karachi and
ANF RD Rawalpindi took place with regard to
the inquiry of ANF Karachi.”**

19. From the above-discussed evidence of the prosecution, it has been established on record that the appellant's pharmaceutical company was allocated a quota of 500 Kg Ephedrine by the rules and regulations of the Ministry of Health. Now the question arises as to whether the same was utilized in the manner as specified under the Control of Narcotic Substances (Regulation of Drugs of Abuse, Controlled Chemicals, Equipment, and Materials) Rules, 2001, or the same was misused, sold, distributed, delivered or transported illegally as alleged by the prosecution. The answer to this pivotal question is also in the prosecution evidence, as admitted by Muhammad Idrees Sheikh (PW-22). It is a matter of record that the appellant's company manufactured De-Asm tablets in different batches. It is also not a denying fact that the appellant's company has three authorized distributors, namely Arafat Traders Karachi, AB Pharma Rawalpindi, and Hammas Pharma Rawalpindi, and it supplied the tablets to the said distributors in the following manner: -

Sr. No.	Name of Distributors	Total Jars Supplied	Sold	Returned
1.	Arafat Traders	11106 Jars	6652	4454
2.	Hammas Pharma	3000 Jars	2882	118
3.	A.B Pharma	2000 Jars	1909	91

The Investigating Officer (PW-35) conceded that at the time of the inspection, 5100 jars of De-ASM tablets of different Batches, including Batch No. 086, were available in the appellant's company. It reveals that the returned jars and others of De-ASM tablets, are included therein. It becomes almost the same number if we calculate returned jars by the distributors and others available in the appellant's company. We can, therefore, safely conclude that the prosecution, by its evidence, has proved that the appellant's company has manufactured the De-ASM tablets and utilized the Ephedrine quota legally allotted to him. The learned law officer pointed out that the appellant's company had not used 3.7 kg of Ephedrine, and the same was misused, having no answer by the defence. This stance of the law officer has no legs to stand on. According to prosecution evidence, the appellant's company utilized all the Ephedrine quota, whereas the minor quantity could have been wasted during manufacturing. It is known to everyone that during the manufacturing process of every item, some of the raw material is to be wasted. Abid Zulfiqar, Joint Director, ANF (PW-33), while appearing in the dock in the Courtroom, deposed as under: -

“ Ghazanfar Ali, Quality Control Manager of Grays Pharma, stated before me that during manufacturing process of medicine, there is 1% of wastage (Under objection by learned defence counsel), whereas, as per production record of Grays Pharma wastage is 0.29% (Under Objection by learned defence counsel), whereas, as per British Pharma Copiah and US Pharma-LED, wastage from 3% to 5% occurred(under objection of learned defence counsel).”

From the testimony of this witness, we can safely conclude that no hard and fast rule can be applied for calculating the percentage of wastage. However, the witness above, during cross-examination, conceded that neither the prosecution has any witness who can claim that the Ephedrine was sold or available in raw form in the open market nor the same was recovered from the possession of anyone. Therefore, we have no hesitation in believing the version of the defence that the rest of the Ephedrine, i.e., 3.7 kg, has been wasted while manufacturing the tablets. The prosecution has miserably failed to bring on record any iota of material from which it could be proved that the quota of Ephedrine allotted to the appellant's company was misused, sold, distributed, delivered, transported, or smuggled in violation of the above rules.

20. It prima facie appears from the material available on record that there is no connecting link that the appellant-Muhammad Hanif Abbasi, had sold out Ephedrine to anyone, including smugglers, and no misuse of Ephedrine has been brought on the record by the prosecution. There is no material on record to show that co-accused Ghazanfar Ali, Rana Mohsan Khursheed, Nasir Khan, Nazakat Khan, Basit Abbasi, Ahmed Bilal Aadil and Siraj Ahmed Abbasi abetted and facilitated the appellant-Muhammad Hanif Abbasi in non-compliance of Control of Narcotic Substances (Regulation of Drugs of Abuse, Controlled Chemicals, Equipment and Materials) Rules 2001. So, after considering the facts and circumstances of the case and the points discussed above, we conclude that the prosecution has not been able to prove the charge leveled against the appellant, Muhammad Hanif Abbasi. Since there was inherent illegality in the matter, the conviction cannot be upheld, and findings in this regard are required to be set aside, and the same are set aside and as a consequence of which Crl. Appeal No.663 of 2018 is allowed, and Muhammad Hanif Abbasi, the appellant, is ordered to be acquitted of the charge in case FIR No.41, dated 21.07.2012, registered under sections 9(c), 14 & 15 of the Control

of Narcotic Substances Act, 1997, at Police Station ANF-R.D, Rawalpindi. The appellant is on bail. His surety stands discharged.

21. So far as **Crl. Appeal No.684 of 2018 (Muhammad Asif Sheikhani Vs. The State, etc.), Crl. Appeal No.685 of 2018 (Muhammad Zulfikar Shekhani Vs. The State, etc.) and Crl. Appeal No.834 of 2018 (Mst. Razia Zahid Bakhtawari Vs. The State etc.)** are concerned, learned counsel for the appellants argued that the findings of the investigating agency in respect of the involvement of the appellants and declaration of status of prosecution witnesses to the appellants was legal, lawful and was in the line of fair trial guaranteed under the constitution; that grant of permission by the Magistrate for recording of statements of the appellants under section 164 of Cr.P.C was an agreement with the investigating agency regarding innocence of the appellants and they were rightly declared prosecution witnesses; that the charge sheet was submitted before the learned trial court, in which all the facts were narrated and charge was framed based on charge sheet without taking any option for clearance of the legal position of the persons named as prosecution witnesses. Lastly, they prayed for setting aside the orders passed in paragraphs Nos.46 and 60 of the impugned judgment dated 21.07.2018.

22. The plea raised by the learned counsel for the appellants in Crl. Appeal No.684 of 2018, Crl. Appeal No.685 of 2018 and Crl. Appeal No.834 of 2018 has been taken into consideration along with depositions of appellants Razia Zahid, Muhammad Asif Sheikhani, and Muhammad Zulfiqar Sheikhani, recorded by the learned trial court as PW-19, PW-21, and PW-23, respectively, as well as of Syed Imtiaz Hussain Shah, Inspector, (PW-35)-the investigating officer and Ahmad Hassan Ranjha, Special Magistrate (PW-30) and all documentary evidence. Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer admitted during cross-examination that: -

"It is correct that Asif Sheikhani was arrested on 10.06.2013 from Jinnah International Airport Karachi and after transit custody, I obtained his physical remand on different occasion till 20.06.2013. It is correct that after obtaining non bailable warrants of Asif Sheikhani and Zulfiqar Sheikhani I got declared them proclaimed offender from the concerned court. Volunteered that they were not joining the investigation this was the reason, I adopted the said procedure. It is incorrect to suggest that my volunteered portion is incorrect, false and afterthought. It is correct that Asif Sheikhani and Zulfiqar Sheikhani filed writ petition No.2508/2013 (Ex.DC) before Hon'able Sindh High Court, Karachi, against me by name and Federation of Pakistan. Volunteered that neither I appeared in said writ petition nor any order was passed in the same. It is incorrect to suggest that my volunteered portion is based on mala fide. It is incorrect to suggest that Asif Sheikhani and Zulfiqar Sheikhani appeared before this Hon'able Court and gave their statements on oath that they had provided complete details/record of supplied of De-ASM tablets by Grays Pharmaceutical Company and the details of information through different letter with dates. It is also incorrect to suggest that these facts were also disclosed by them in their writ petition. Ex.DC and affidavits annexed with the writ petition. It is incorrect to suggest that Asif Sheikhani and Zulfiqar Sheikhani provided complete details of supplied of different shop keepers to ANF. It is correct that the alleged statement u/s 164 of Cr.P.C of Zulfiqar Sheikhani was got recorded by me, during the period when his brother Asif Sheikhani was in my custody under physical remand. It is incorrect to suggest that I deliberately did not produce the complete record before the concerned learned Magistrate at the time of recording of alleged statement u/s 164 of Cr.P.C qua issuance of warrants of Asif Sheikhani and Zulfiqar Sheikhani as the accused persons. Volunteered, that I produced the complete police file along with application before the Special Judicial Magistrate. It is incorrect to suggest that my volunteered portion is false, afterthought and runs contrary to the record. It is correct that on 20.06.2013, I submitted discharge report of Asif

Sheikhani before concerned learned Magistrate but the court disagreed. It is correct that on 24.06.2013 Asif Sheikhani was released on bail by this Hon'able Court on the basis of conceding statement of Special Prosecutor ANF. Volunteered that Asif Sheikhani was declared innocent. It is incorrect to suggest that my volunteered portion is based on mala fide. It is correct that on 26.06.2013, I got recorded the alleged statement of Asif Sheikhani u/s 164 Cr.P.C after his release. It is not in my knowledge that Special Judicial Magistrate who recorded the alleged statement u/s 164 Cr.P.C, when appeared before this Hon'able Court as PW-30, he categorically stated on oath that the Investigating Officer if produced the entire record qua status and warrants of Asif Sheikhani and Zulfiqar Sheikhani, I could not recorded their statements u/s 164 Cr.P.C. I did not obtain any order from the court of competent jurisdiction to transpose Asif Sheikhani and Zulfiqar Sheikhani from the status of accused into witnesses. It is correct that as per FIR there were two nominated accused namely Muhammad Haneef Abbasi and Razia Zahid Bakhtawary in the case. Neither, I obtained any discharge order from the court of competent jurisdiction qua Razia Zahid Bakhtawary, nor regarding her transposition from status of an accused person to a witness. Volunteered that I have mentioned this fact in my report u/s 173 Cr.P.C. It is incorrect to suggest that my volunteered portion is based on mala fide. It is correct to suggest that my volunteered portion is not based on any order of the court of competent jurisdiction. Volunteered that my volunteered portion is merely based on my investigation as partnership deed because suspicious in 2009.”

Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer also admitted during examination-in-chief that: -

“On 11-06-2013 Asif Sheikhani was arrested at Karachi Airport and after intimation, I visited Karachi and obtained him on transit remand. I produced the accused before the learned Ilqa Magistrate and obtained him on physical remand till 19.06.2013. On 20.06.2013, I got sent the accused in judicial lockup.

On 19.06.2013, Zulfiqar Sheikhani joined me investigation on interim bail and got recorded his statement. On the same day, I produced him before the Special Judicial Illaqa Magistrate, wherein his statement was recorded u/s 164 of Cr.P.C. **On 24.06.2013 Asif Sheikhani was admitted on a post-arrest bail.** On 26.06.2013, he voluntarily appeared before a learned Special Judicial Magistrate and got recorded his statement u/s 164 Cr.P.C.”

(Bold and underline for emphasis).

Muhammad Asif Sheikhani (PW-21) admitted during cross-examination that: -

“I was arrested in this case and subsequently, I was admitted to bail by this court.”

Muhammad Zulfiqar Sheikhani (PW-23) also admitted during cross-examination that: -

“It is correct that my brother Muhammad Asif Sheikhan was arrested on 10-06-2013 from Jinnah International Airport Karachi by ANF. He remained in custody of ANF Rawalpindi on physical remand from 10-06-2013 to 20-06-2013. He was admitted to bail by this Court (CNS Court) Rawalpindi in this case on 24-06-2013. I obtained protective bail for 15 days from Karachi when I came to Rawalpindi for the cancellation of my warrants and subsequent proceedings. I did not obtain bail from this court or any other court subsequently in this case. On 19-06-2013 when my statement u/s 161 of Cr.P.C was recorded by ANF in this case, my real brother Muhammad Asif Sheikhani was in physical custody of ANF Rawalpindi. It is correct that warrants of arrest issued against me were not got cancelled from any court, nor withdrawn till the date of recording of my statement u/s 161 of Cr.P.C. it is correct that I have not mentioned in writ petition Ex-DC and application for cancellation of warrants regarding the facts which I deposed in court today.”

Ahmad Hassan Ranjha, Special Magistrate (PW-30), recorded statements under section 164 of Cr.P.C. of the appellants, Muhammad Asif Sheikhani, Muhammad Zulfiqar Sheikhani, and Mst. Razia Zahid Bakhtawari

specifically stated during examination-in-chief that Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, moved an application (Ex. PX) before him for recording the statement of Muhammad Zulfiqar Sheikhani (the appellant in Crl. Appeal No.685/2018) on 19.06.2013. He (PW-30) further stated that on 26.06.2013, Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, moved an application (Ex. PZ) for recording the statement of Muhammad Asif Sheikhani (the appellant in Crl. Appeal No.684/2018) and on 12.09.2013 submitted application (Ex. PAA) for recording statement of Mst. Razia Zahid Bakhtawari (the appellant in Crl. Appeal No.834 of 2018). Based on the applications above, he (PW-30) recorded the statements of the appellants, Muhammad Asif Sheikhani, Muhammad Zulfiqar Sheikhani, and Mst. Razia Zahid Bakhtawari, under section 164 of Cr.P.C. From the deposition of Ahmad Hassan Ranjha, Special Magistrate (PW-30), and Syed Imtiaz Hussain Shah, Inspector, (PW-35)-the investigating officer, it reveals that Muhammad Asif Sheikhani (the appellant in Crl. Appeal No.684 of 2018) was under arrest. He was released on post-arrest bail by the learned trial court on 24.06.2013. During the physical remand of Asif Sheikhani, on 19.06.2013, Zulfiqar Sheikhani was produced before Ahmad Hassan Ranjha, Special Magistrate (PW-30), and his statement under Section 164 Cr.P.C. was recorded by Ahmad Hassan Ranjha, Special Magistrate (PW-30). The application (Ex. PZ) was made by Syed Imtiaz Hussain Shah, Inspector (PW-35)-the investigating officer, for recording the statement of Muhammad Asif Sheikhani; after that, his statement was recorded. Admittedly, Muhammad Asif Sheikhani was on physical remand, and Muhammad Zulfiqar Sheikhani was on pre-arrest bail during the proceedings of recording of statement under section 164 of Cr.P.C. of Muhammad Zulfiqar Sheikhani. It is admitted that post-arrest bail was never granted to any prosecution witness until and unless they were named as an accused for committing the cognizable offence. The prosecution deliberately withheld the truth. As per the procedure laid down under section 494 of Cr.P.C. for withdrawal of the prosecution, the Public Prosecutor may, with the court's consent before the judgment is pronounced, withdraw from the prosecution of

any person either generally or in respect of any one or more of the offences for which he is tried. For convenience, an extract of section 494 of Cr.P.C. is reproduced hereunder: -

“Section.494. Effect of withdrawal from prosecution.
—Any Public Prosecutor may, with the consent of the Court, before the judgment is pronounced, withdraw from the prosecution of any person either generally or in respect of any one or more of the offences for which he is tried-----.”

Admittedly, the Special Prosecutor for ANF has not approached the court to withdraw prosecution against the appellants, Muhammad Asif Sheikhani, Muhammad Zulfiqar Sheikhani, and Mst. Razia Zahid Bakhtawari. The principle for tendering pardon to an accomplice or its revocation is contained in sections 337 to 339 of the Code of Criminal Procedure, 1898, under Chapter XXIV. The principles of tendering a pardon to an accomplice in section 337 of Cr.P.C. have already been explained. The purpose of tendering pardon to an accomplice is mainly to un-reveal the truth in a grave offence so that the guilt of other accused persons concerned in committing a crime could be brought home. The object of section 337 of Cr.P.C. is to allow pardon in cases where a heinous offence is alleged to have been committed by several persons so that with the aid of the evidence of the person granted pardon, the evidence may be brought home to the rest. Section 337 of Cr.P.C. empowers a Magistrate or the trial court to tender a pardon to a person supposed to have been directly or indirectly concerned in, or privy to an offence, to which this section applies at any stage of the investigation or inquiry or trial of the crime on condition of their making a full and true disclosure of the whole of the circumstances within his knowledge relative to the offence. The Magistrate of 1st Class is also empowered to tender pardon to an accomplice during the trial but not at the stage of investigation on condition of his making full and true disclosure of entire circumstances within his knowledge relative to the crime. Section 338 of Cr.P.C. vests the court to which the commitment is made with the power to tender pardon to an accomplice. An accomplice who has been given a pardon

under sections 337 and 338 of Cr.P.C. gets protection from the prosecution when they are called as a witness for the prosecution. They must comply with the condition of their making a full and true disclosure of the whole circumstances within their knowledge relating to evidence under his knowledge and in the knowledge of any other person, whether as principal or abettor, in the commission thereof and if they possess any material within their knowledge, concerning the commission of a crime or to refuse to comply with the condition on which tender was given to them, the public prosecutor shall give a notice under section 338 of Cr.P.C. to that effect, and the protection given to them is lifted.

23. Admittedly, the prosecution has not adopted the procedure under section 337 of Cr.P.C. for recording the accomplice's statement. If the process provided for the withdrawal of the prosecution and tendering of pardon to the accomplice was adopted, the immunity extended to the accused, and the accused is made an approver; they stand discharged, and after that, he ceases to be an accused and would be examined as a witness unless said privy is revoked on violation of the condition to disclosing the complete truth. The facts reveal that none of the ingredients necessary for exercising the powers under Section 337 Cr.P.C. stood fulfilled or satisfied. The prosecution, by way of concealment of facts, has cheated Ahmad Hassan Ranjha, Special Magistrate (PW-30), and got recorded statements under Section 164 of the Criminal Procedure Code of appellants, i.e., Muhammad Asif Sheikhani, Muhammad Zulfiqar Sheikhani, and Mst. Razia Zahid Bakhtawari and the same were rightly not relied upon by the Learned trial Judge and revoked the pardon granted to these appellants. But so far as calling upon SHO Police Station ANF RD North Rawalpindi to submit the fresh report as required under Section 173 of the Criminal Procedure Code against the appellants, i.e., Muhammad Asif Sheikhani, Muhammad Zulfiqar Sheikhani, and Mst. Razia Zahid Bakhtawari, the record's perusal reveals that the above-said appellants, i.e., Muhammad Asif Sheikhani, Muhammad Zulfiqar Sheikhani, and Mst. Razia Zahid Bakhtawari being prosecution witnesses, i.e.,

Razia Zahid (PW-19), Muhammad Asif Sheikhani (PW-21), Muhammad Zulfiqar Sheikhani (PW-23), and Syed Imtiaz Hussain Shah, Inspector (PW-35)- the investigating officer suppressed the real facts from the court while appearing as prosecution witnesses in their examination-in-chief regarding the status of the appellants, i.e., Muhammad Asif Sheikhani, Muhammad Zulfiqar Sheikhani, and Mst. Razia Zahid Bakhtawari. Muhammad Zulfiqar Sheikhani (PW-23) (in Crl. Appeal No.685/2018) deposed in his examination-in-chief that: -

“During the months of June-July 2012 Arif Mithani drug area Inspector as per routine checkup came on our shop and inquired about De-Asm Tablets. On demand of samples of De-Asm by him, out of 100 jars placed by Grays Pharma at our shop, he obtained 56 jars for sampling. On inquiry of remaining stock of jars Muhammad Arif Mithani was shown De-Asm Tablets of Safe Pharma which were placed in cartoons as 4400 jars and he was got satisfied and he became assured that these jars are of Grays Pharma whereas infect tablets of De-Asm of Grays Pharma never came on our shop, nor were sold to anyone, neither any record of said tablets is available.”

Whereas, during cross-examination, Muhammad Zulfiqar Sheikhani (PW-23) admitted that:-

“ANF Rawalpindi obtained warrants of arrest of myself and my brother Muhammad Asif Sheikhani on 27.11.2012. it is correct that on 05.04.2013 ANF got declared me and my brother Muhammad Asif Sheikhani as Absconders in this particular case. On 18.4.2013 I and my brother Muhammad Asif Shekhani moved application before Magistrate for cancellation of our warrants of arrest. On 07.06.2013 I and my brother Muhammad Asif Shekhani filed writ petition No.2508 of 2013 dated 07.06.2013 before Sindh High Court with regard to issuance of non-bailable warrants of arrest and action subsequent to it against us dated 27.11.2012. Writ petition No.2508 of 2013 Ex-DC contains my signatures as Ex-DC/4. I have mentioned in para-4 of the said petition that on 04.06.2012, 12.06.2012, 19.06.2012, and 17.07.2012 we appeared before ANF Rawalpindi and provided

required documents and detail regarding purchase, sale, and supply of medicine manufactured by Grays Pharma. It is correct that in Para-5 of Ex-DC it is mentioned by us that, after lodging of FIR, petitioners were again called at Rawalpindi for giving of detail of tablets made by M/s Grays Pharma Islamabad on 01.08.2012 and 06.09.2012, where the record earlier submitted by the petitioners was verified up-to the satisfaction of ANF Rawalpindi. It is correct that in Para No.6 it is mentioned that during inquiry the ANF had referred the record/stock of the petitioners M/s. Arfat Traders to drug authorities in Sindh who had collected samples and checked the stock in the premises of M/s. Arfat Traders Karachi and also collected the sale record of the medicine. The samples of the same were dispatched as per drug rules and sent to Rawalpindi Regional Directorate ANF for their official record. The data collected by the drug authorities states that about 11000 Jars of 1000 De-Asm tablets received from the M/s Grays Pharma by M/s. Arfat Traders, 6000 Jars were sold out in the open market but the record of the sale is not available and 5000 Jars were sent back to the company due to non-sale and expiry of the medicines. The record submitted by the petitioner regarding De-Asm tablet were submitted before the Hon'ble Supreme Court of Pakistan by the ANF which is now a matter of record. It is correct that Arif Mithani drug inspector Karachi collected samples from 14 batches for analysis and report of the same came with positive result. At the time of visit of Arif Mithani drug inspector Karachi, I made statement before him that Arfat Traders purchased 11000 Jars of De-Asm Tablets from Grays Pharma and out of the same sold out 6000 Jars and due to expiry date returned back 4000 Jars to Grays Pharma.”

Muhammad Asif Sheikhani (PW-21)-the appellant (in Crl. Appeal No.684 of 2018) deposed during cross-examination that: -

“It is correct that I Muhammad Asif Sheikhani and my brother Muhammad Zulfiqar Sheikhani have filed writ petition No.2508/13 on 08.06.2013 before the Hon'ble Sindh High Court, Karachi. It is correct that certified copy of writ petition Ex.DC is the copy of

same writ petition containing my signatures as the same as Ex.DC/1. It is correct that in para-No.02 of Ex-DC, it is mentioned that we both brothers are running business of finish medicine as whole sellers/traders in the name and style of Arfat Traders Karachi at medicine market at Kachi Gali No.2, Karachi since 1992. Volunteers that I am partner of Safe Pharma and Arfat Traders is my distributer also. It is correct that Asmat Ullah Khan, Deputy Director, ANF RD, Karachi wrote a letter dated 28.05.2012 Mark-DA to Arfat Traders and sought detail of sale of medicine in which Ephedrine has been used as a content. We have mentioned in Para No.03 of Writ petition Ex-DC that in the month of May 2012ANF summoned detail of sale of medicine regarding grant of quota of Ephedrine and its utilization as the whole sale trader of Messer Gray's Pharma in Karachi in form of De-Asm. We have mentioned in Para 04 of writ petition Ex-DC that in response of above referred letter and inquiry of ANF, we have submitted detail vide letters dated 04.06.2012, 12.06.2012, 19.06.2012 and 17.07.2012. Letter dated 04.06.2012, Ex-DD is signed by me, but I do not remember what is the detail of the same. I do not remember whether detail mentioned in said letter was correct. It is correct that as per above letter, it is mentioned therein that 4200 Jars of De-Asm tablets are lying in the stock of Arfat Traders, whereas Arfat Traders has sold out 6906 Jars of De-Asm tablets to different customers. It is correct that my detailed affidavit Ex-DC/2 is annexed with writ petition No.2508/13which contains my signatures as Ex-DC/3. It is correct that in Para No.6 of the writ petition Ex-DC, detail of supply of De-Asm tablets to Arfat Traders by Gray's Pharma coupled with record of sold out tablets and remaining stock of tablets is mentioned. It is also mentioned in this Para that ANF also collected samples from the stock of De-Asm tablets for analysis. It is correct that alongwith writ petition No.2508/13 on its pages, 19, 20 and 21 letter dated 03.10.2012 of provincial inspector drug Karachi to Chief Drug Inspector Sindh is attached containing the detail of purchase, sale, and stock of the De-Asm tablet is provided volunteers that it is on behalf of Arfat Traders. Arfat Traders is trader/agent of Grays Pharma. It is correct that ANF Rawalpindi issued

warrants of arrest for my appearance before ANF and I have filed application before Magistrate at Rawalpindi on 18.04.2013 for withdrawal of warrants and copy of said application was also attached with writ petition at its pages No.71 to 77 mentioning whole the detail in said application, volunteers that as I was being summoned as a witness and due to my non coming and seeking time my warrants were issued. I do not know whether reports of samples taken as mentioned above were delivered to Arfat Traders. I do not remember whether letter dated 11.05.2012 on behalf of Arfat Traders, is signed by me, again said, said letter contains my signatures, again I do not remember this fact. I can recognize my signatures. Signatures present on Ex-DC are mine.”

Admittedly, Muhammad Asif Sheikhani (PW-21) and Muhammad Zulfikar Sheikhani (PW-22) (appellants in Crl. Appeal No.684 of 2018 and Crl. Appeal No.685 of 2018, respectively) admitted the facts which favor them, but at the same time, they tried to twist them to save their skins and shift the responsibilities on the principal accused, i.e., Muhammad Hanif Abbasi.

24. Given above, **Crl. Appeal No.684 of 2018 (Muhammad Asif Sheikhani. Vs. The State), Crl. Appeal No.685 of 2018 (Muhammad Zulfikar Shekhani. vs. the State) and Crl. Appeal No.834 of 2018 (Mst. Razia Zahid Bakhtawari. Vs. The State)** are concerned, the findings given by the learned trial court in paragraph No.46 are well reasoned, and the same are upheld. However, the judgment dated 21.07.2018 passed by the learned trial court has been set aside by this Court in main **Crl. Appeal No.663 of 2018**, therefore, findings of the learned trial court in paragraph No.60 have lost their relevance. With these modifications, **Crl. Appeal No.684 of 2018 (Muhammad Asif Sheikhani Vs. The State.), Crl. Appeal No.685 of 2018 (Muhammad Zulfikar Shekhani Vs. The State.) and Crl. Appeal No.834 of 2018 (Mst. Razia Zahid Bakhtawari Vs. The State)** stands disposed of.

25. So far as **Crl. Appeal No.747 of 2018** filed by Anti Narcotics Force against the acquittal of co-accused Nasir Khan, Ghazanfar Ali, Rana

Mohsin Khurasheed, Siraj Ahmad Abbas, Nazakat Khan, Basit Abbasi, and Ahmad Bilal is concerned, they have been assigned the role of abetting, associating and aiding the principal accused but none of the prosecution witnesses while appearing in the dock in the Courtroom uttered even a single word in what manner the said accused persons abetted, associated or aided the principal accused. One of the acquitted co-accused, namely Muhammad Basit Abbasi, was the real brother of the principal accused, while the rest of the accused persons were stated to be the employees of Gray Pharmaceutical Company, owned by the principal accused. Therefore, the possibility cannot be ruled out that they were booked in this case to tighten the noose of the principal accused. Moreover, the principal accused has also been acquitted of the charge for the reasons enumerated hereinabove. Therefore, this ground alone is sufficient to decline interference in the acquittal order of the co-accused. Even otherwise, it is a settled principle of law that after acquittal, an accused earns a double presumption of innocence, which can only be repelled/overturned if the acquittal order/judgment appears perverse, arbitrary, capricious, or patently illegal. Reliance is placed on cases reported as “MUHAMMAD AZAM and others Versus. THE STATE (2009 SCMR 1232)” and “Haji AMANULLAH vs. MUNIR AHMED and others (2010 SCMR 222)”. The impugned judgment qua acquittal of co-accused does not fall under any of the above parameters; as such, we are not inclined to intervene with the same. Resultantly, **Crl. Appeal No.747 of 2018** stands dismissed.

**(Asjad Javaid Ghural)
Judge**

**(Aalia Neelum)
Judge**

Announced in open Court on 18.10.2023.

Judge

Judge

Approved for reporting