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STATE VS AMEEN ULLAH ETC.
FIR No. 09 | Dated: 07.03.2022 | U/S: 9 (d) & 11-A of the
Khyber Pakhtunkhwa CNSA, 2019 |
Police Station: Mishti Mela

IN THE COURT OF SHAUKAT AHMAD KHAN
SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI
(AT BABER MELA)

SPECIAL CASE NO. : 8/3 OF 2023
DATE OF ORIGINAL INSTITUTION : 08.06.2022
DATE OF TRANSFER-IN : 08.03.2023
DATE OF DECISION : 17.04.2023

STATE THROUGH AKHTAR MUNIR ASHO, POLICE STATION
MISHTI MELA

.....(COMPLAINANT)

-VERSUS-

1. AMEEN ULLAH S/O QASIM KHAN, R/O CASTE MISHTI,
VILLAGE KAAD MELA, DISTRICT ORAKZAI
2. ABDUL SATTAR S/O RIAYAT KHAN, R/O CASTE MISHTI,
VILLAGE TAGHA SAM, DISTRICT ORAKZAI
3. MUHAMMAD SAEED S/O SYED AHMAD, R/O CASTE
SHALOBAR, BAR MUHAMMAD KHEL, BARA, DISTRICT
KHYBER

..... (ACCUSED FACING TRIAL)

Present: Umar Niaz, District Public Prosecutor for State.
: Sana Ullah Khan Advocate for accused facing trial.

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Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019
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JUDGEMENT
17.04.2023

The above-named accused faced trial for the offence
u/s 9 (d) & 11-A of the Khyber Pakhtunkhwa CNSA, 2019
vide FIR no. 09, dated 07.03.2022 of Police Station Mishti
Mela.

- (2). The case of the prosecution as per Murasila based FIR
is; that on 07.03.2022, the complainant, Akhtar Munir ASHO
along with Constables Abdul Saif, Murad Gul and
Muhammad Umar during routine patrolling in an official
vehicle, acting on information, laid a picket at Tagha Sam in
supervision of SDPO Lower Orakzai, where at about 1500

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hours three persons on way from Dabori side, one of them was having a bag on his shoulder while the other two were having plastic shoppers in their hands, were stopped who disclosed their names as Ameen Ullah s/o Qasim Khan, Abdul Sattar s/o Riayat Khan and Muhammad Saeed s/o Said Ahmad. The complainant recovered 04 packets of chars, each weighing 1000 grams, making a total of 4000 grams, wrapped with yellow colour scotch tape from the plastic shopper holding by accused Ameen Ullah. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 4 whereas the remaining quantity of chars weighing 3960 grams along with the empty shopper were sealed in parcel no. 5. Similarly, the search of the plastic shopper holding by accused Abdul Sattar led the complainant to the recovery of 04 packets of chars, each weighing 1000 grams, making a total of 4000 grams, wrapped with yellow colour scotch tape. He separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 5 to 9 whereas the remaining quantity of chars weighing 3960 grams along with the empty shopper were sealed in parcel no. 10. Likewise, the complainant also recovered 09 packets of chars, each weighing 1000 grams, making a total of 9000 grams of chars, wrapped with yellow colour scotch tape, from the plastic bag holding by accused Muhammad Saeed. The complainant

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separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 11 to 19 whereas the remaining quantity of chars weighing 8910 grams along with the empty bag were sealed in parcel no. 20. The body search of accused Muhammad Saeed also led the complainant to the recovery of 09 grams of ice from his side pocket, out of the total quantity 01 grams was extracted for FSL by sealing it into parcel no. 21 while remaining quantity was sealed into parcel no. 22. All the parcels were affixed with monogram of 'AR' by the complainant. The complainant took into possession the recovered chars and ice vide recovery memo. Murasilā was drafted and sent to Police Station through constable Murad Gul which was converted into FIR by Muhammad Fayyaz MHC.

- (3). After registration of FIR, it was handed over to Muhammad Riaz SI for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan Ex. PB on the pointation of the complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 10.03.2022, the IO sent the samples of chars and sample of ice for chemical analysis to FSL vide application Ex. PW 4/2 through constable Asif Hussain and road permit certificate Ex. PW 4/3, the result whereof Ex. PK was received and placed on file by him. After completion of investigation, he handed over the case file to


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SHO who submitted complete challan against the accused facing trial.

(4). Upon receipt of case file for the purpose of trial, the accused were summoned, copies of the record were provided to them in line with section 265-C CrPC and formal charge was framed against them to which they pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned and examined. The gist of the evidence is as follow;

I. Muhammad Fayyaz MHC is PW-1. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He has also received the case property from the complainant duly packed and sealed which he had kept in mal khana in safe custody. The witness further deposed that he has recorded entry of the case property in Register No. 19 Ex. PW 1/1 and handed over the samples of the case property to the IO for sending the same to FSL on 10.03.2022.

II. Constable Muhammad Asif is PW-2. He has taken the samples of recovered chars in parcels no. 1 to 4, 6 to 9 and 11 to 19 and the sample of recovered ice in parcel no. 21 to the FSL for chemical analysis on 10.03.2022 and after submission of the same, he has handed over the receipt of the parcels to the IO.

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III. Muhammad Naseeb Khan SHO as PW-3 stated that he has submitted complete challan Ex. PW 3/1 against the accused facing trial.

IV. Investigating Officer Muhammad Riaz SI was examined as PW-4 who in his evidence deposed in respect of the investigation carried out by him in the instant case. He has prepared the site plan Ex. PB on the pointation of complainant, recorded the statements of witnesses on the spot, produced the accused along with the case property before the court of Judicial Magistrate vide his application Ex. PW 4/1, sent the representative samples to FSL along with application addressed to the incharge FSL Ex. PW 4/2 and road permit certificate Ex. PW 4/3 and result of the same Ex. PZ was placed on file by him, placed on file copy of Register No. 19 Ex. PW 1/1 and copies of daily diaries Ex. PW 4/4 and Ex. PW 4/5 and submitted the case file to SHO for its onward submission

V. Akhtar Munir ASHO is the complainant of the case. He appeared in the witness box as PW-5. In his statement he repeated the story narrated in the FIR.


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VI. Constable Abdul Saif is PW-6. He besides being eyewitness of occurrence is marginal witness of recovery memo Ex. PC as well vide which the complainant has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement.

VII. Lastly, Constable Murad Khan, who has transmitted the Murasila and other documents to police station, is PW-7. He besides being transmitting the Murasila and other documents to police station is the eyewitness of occurrence.

(5). Prosecution closed its evidence whereafter statements of the accused were recorded u/s 342 Cr.P.C but the accused neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of learned DPP for the State and counsel for the accused facing trial heard and case file perused.


(6). Learned DPP for the State submitted that the accused facing trial are directly nominated in the FIR, huge quantity of chars has been recovered from possession of the accused facing trial, the recovered chars are sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, the samples for chemical analysis, though have not been transmitted to the FSL within the prescribed period but the same have been found positive for chars vide report of FSL

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Ex. PZ. The complainant, the witnesses of the recovery, the official transmitted the samples to the FSL and the IO have been produced by the prosecution as witnesses, whom have fully supported the case of the prosecution and their statements have been lengthy cross examined but nothing contradictory could be extracted from the mouth of any of the witness of the prosecution and that the prosecution has proved its case beyond shadow of any doubt.

- (7). Learned counsel for the defence argued that though the accused facing trial are directly nominated in the FIR, the alleged chars have been shown recovered from their possession and the report of FSL supports the case of prosecution; however, the accused facing trial are falsely implicated in the instant case and nothing has been recovered from their possession. He argued that the prosecution has failed to prove the mode and manner of recovery and the mode and manner of investigation allegedly conducted by the IO on the spot, as detailed by the prosecution on the case file. That the representative samples have been sent to FSL with a delay of about 04 days. He concluded that there are various dents in the case of prosecution leading to its failure to bring home the charge against the accused facing trial.

(8). In the light of arguments advanced by learned DPP for the State, arguments of learned counsel for the defence and the


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available record, following are the points for determination of charge against the accused facing trial:


- (i). Whether the occurrence has taken place in the mode and manner as alleged by the prosecution?
 - (ii). Whether the investigation has been carried out in the mode and manner as alleged by the prosecution?
 - (iii). Whether the recovered substance is proved through report of FSL as chars?
- (9). The case of prosecution, as per contents of Murasila Ex. PA/1, court statements of Akhtar Munir ASHO as PW-5, HC Abdul Saif as PW-6 and constable Murad Khan as PW-7, is, that the complainant, Akhtar Munir ASHO/PW-5 along with HC Abdul Saif/PW-6, Constables Murad Khan/PW-7 and Muhammad Umar during routine patrolling in an official vehicle, acting on information, laid a picket at Tagha Sam in supervision of SDPO Lower Orakzai, where at about 1500 hours three persons on way from Dabori side; one of them was having a bag on his shoulder while the other two were having plastic shoppers in their hands, were stopped who disclosed their names as Ameen Ullah s/o Qasim Khan, Abdul Sattar s/o Riayat Khan and Muhammad Saeed s/o Said Ahmad. The complainant recovered 04 packets of chars, each weighing 1000 grams, making a total of 4000 grams, wrapped with yellow colour scotch tape from the plastic shopper holding by accused Ameen Ullah. The complainant/PW-5 has shown

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himself separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 4 whereas the remaining quantity of chars weighing 3960 grams along with the empty shopper were sealed in parcel no. 5. Similarly, the search of the plastic shopper holding by accused Abdul Sattar led the complainant/PW-5 to the recovery of 04 packets of chars, each weighing 1000 grams, making a total of 4000 grams, wrapped with yellow colour scotch tape. PW-5 has also shown himself separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 5 to 9 whereas the remaining quantity of chars weighing 3960 grams along with the empty shopper were sealed in parcel no. 10. Likewise, the complainant/PW-5 also recovered 09 packets of chars, each weighing 1000 grams, making a total of 9000 grams of chars, wrapped with yellow colour scotch tape, from the plastic bag holding by accused Muhammad Saeed. The complainant/PW-5 has also shown himself separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 11 to 19 whereas the remaining quantity of chars weighing 8910 grams along with the empty bag were sealed in parcel no. 20. The body search of accused Muhammad Saeed also led the complainant/PW-5 to the recovery of 09 grams of ice from his side pocket, out of the total quantity 01 grams was extracted for FSL by sealing it into


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parcel no. 21 while remaining quantity was sealed into parcel no. 22. The complainant/PW-5 on the spot has shown himself affixing monograms of 'AR' on all the parcels. The accused have been shown arrested on the spot by issuing his card of arrest Ex. PW 5/1.

As per contents of Murasila Ex. PA/1, the complainant along with constables named therein was also accompanied by SDPO at the time of occurrence and being senior police officer present on the spot, he must have been associated with the proceedings but neither he has been shown in the site plan nor his statement has been recoded. With respect to weighing, packing and sealing of the alleged recovered chars, as per contents of Murasila and court statement of the complainant as PW-5, the process was made by him but when the complainant/PW-5 was cross examined in this respect he stated that in the process of preparation of parcels he was helped by the police constables accompanying him and the police constables accompanying the SDPO; however, this fact is nowhere mentioned by the complainant on file. Similarly, when he was asked regarding the names of the police officials accompanying the SDPO, he was found unaware. Most


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Importantly, in this context, the complainant at the same time also admitted correct that as per his court statement the process of sampling, packing and sealing was carried out by him. This fact when put to PW-6, the eyewitness, he stated that the

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complainant was helped by him and the other three police officials accompanying them i.e., Murad Gul, Muhammad Umar and Munir but he did not mention the factum of any help by the police constables accompanying the SDPO. With respect to the police officials accompanying the complainant at the time of occurrence, as per contents of Murasila and court statement of PW-5, the complainant was accompanied by constables Abdul Saif Khan, Murad Gul and Muhammad Umar. However, as mentioned above, when the eyewitness, Abdul Saif Khan was cross examined regarding the factum of process of packing and sealing he stated that the complainant was helped by constables Murad Gul, Muhammad Umar and Munir and him but the name of Munir is nowhere mentioned to be present on the spot. Similarly, as per site plan besides the three constables named in the Murasila, the driver Sami Ul Haq has also been shown present at point 'B' whose name has been overwritten in the site plan. The complainant as well as the IO are unanimous on the point that the complainant was accompanied by driver Sami Ul Haq but the eyewitness PW-6 is not sure that whether the driver was Sami Ul Haq or Mikael. Similarly, in the site plan at point 'A' driver Irshad has been shown but the name of the said Irshad is nowhere mentioned in the Murasila or in any other document prepared by the complainant/PW-5.


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With respect to preparation of documents as per court statement of PW-5, the Murasila, card of arrest and recovery memo are prepared by the complainant/PW-5; however, when he was confronted with the handwriting of site plan besides Murasila, card of arrest and recovery memo he admitted that the handwriting of all the four documents are same.

With respect to process of the investigation conducted by the IO/PW-4 on the spot, in cross examination he was confronted with the copy of a site plan duly attested by the SHO of Police Station Misthi Mela provided to the accused u/s 265-C CrPC which was denied to be either the copy of site plan Ex. PB or bears his signature. He also denied the same to be drafted in his handwriting. The said copy was placed on file for comparison. During the course of arguments, both were compared which clearly shows that the same is the copy of site plan Ex. PB except the name of driver Mikael at point 'B' where the name of Sami Ul Haq has been overwritten.

In view of what is discussed above, it can be easily concluded that the prosecution failed to prove the mode and manner of occurrence, the mode and manner of proceedings conducted by the complainant on the spot and the mode and manner of investigation conducted on the spot.

With respect to transmission of the case property from the spot to the Police Station and sending of the representative samples to the FSL, the case of prosecution is, that after

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sampling and sealing of case property in parcels on the spot, these were brought by the complainant/PW-5 to the Police Station and handed over the same to MHC Muhammad Fayyaz/PW-1, who deposited the same in Mal khana. The representative samples were handed over by Moharrir of the Police Station to the IO on 10.03.2022 who transmitted the same to FSL through constable Muhammad Asif/PW-2 vide road permit certificate.


In order to prove its case, the prosecution produced Muhammad Fayyaz MHC as PW-1, constable Muhammad Asif as PW-2 and OII Muhammad Riaz SI as PW-4. PW-2, though in his examination in chief stated that he had received case property from the complainant, made entry of the same in register no. 19, handed over representative parcels to the IO and a copy of the same as Ex. PW 1/1 has been placed on file but the original register no. 19 has not been produced before the court. The case property on 07.03.2022 as alleged to have been received by Muhammad Fayyaz MHC/PW-1 who has made the entry of the same in register no. 19 but it does not bear the signature of the said PW rather it bears the signature of one, Muhammad Ayyub AMHC in the last column on 10.03.2022. However, neither the statement of said Moharrir has been recorded nor he has been produced before the court as witness. Application to the FSL Ex. PW 4/2 and road permit certificate Ex. PW 4/3 are not drawn by the IO rather by the


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complainant/PW-5 but the complainant in his examination in chief as PW-5 has not spoken a single word in this respect. In cross examination too, he stated that besides recovery memo, card of arrest and Murasila he has not drafted any other document. Similarly, the occurrence has taken place on 07.03.2022 while as per report of the FSL Ex. PZ the representative samples have been transmitted to FSL on 10.03.2022 with a delay of 04 days which has not been explained.

Hence, in view of what is discussed above, though the representative samples, as per report of FSL Ex. PZ, have been found as chars but keeping in view the failure of the prosecution to prove the safe custody of the case property, its transmission to the Police Station and transmission of the representative samples to the FSL, it is held that the report of FSL cannot be relied for recording conviction.

- (10). In the light of aforementioned discussion, it is held that the prosecution has failed to prove the alleged recovery of chars from possession of the accused facing trial. Similarly, the prosecution has also failed to prove the mode and manner of the occurrence and the mode and manner of the investigation conducted on the spot. The prosecution also failed to prove the safe custody of case property and transmission of the representative samples to FSL. All these facts lead to the failure of prosecution to prove the case against

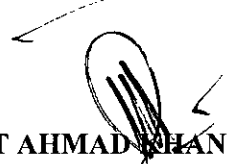

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the accused beyond shadow of doubt. Therefore, the accused namely, **Ameen Ullah, Abdul Sattar and Muhammad Saeed** are acquitted of the charge levelled against them by extending them the benefit of doubt. Accused Ameen Ullah and Abdul Sattar are on bail. Their bail bonds stand cancelled and their sureties are released of the liabilities of bail bonds. Accused Muhammad Saeed is in custody, he be released forthwith, if not required in any other case. The case property i.e., chargs be destroyed after the expiry of period provided for appeal/revision in accordance with law. Consign.

Pronounced
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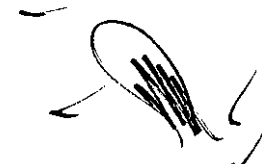



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CERTIFICATE

Certified that this judgement consists of fifteen (15) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 17.04.2023


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