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**IN THE COURT OF ADDITIONAL SESSIONS JUDGE-II/ JUDGE
SPECIAL COURT ORAKZAI AT BABAR MELA**

Sessions Case No.....03 of 2019

Date of Original Institution.....24.09.2018

Date of Present Institution. 01.04.2019

Date of decision.....26.06.2019

State.....(Complainant)

Vs

1. Saleeb Shah s/o Mir Ullah Khan,
2. Naimat Khan s/o Niaz Bahadar,
3. Ijaz Ahmad s/o Noor Jamal r/o Feroz Khel District Lower Orakzai..... (Accused)

ORDER
26.06.2019

Accused on bail with their counsel Mr. Abid Ali Advocate present.
Syed Amir Shah APP for the state present.

This order is intended to dispose of application submitted by the prosecution for the discharge of the accused Saleeb Shah s/o Mir Ullah Khan, Naimat Khan s/o Niaz Bahadar and Ijaz Ahmad s/o Noor Jamal r/o Feroz Khel District Lower Orakzai u/s 4-c (ii) of the Khyber Pakhtunkhwa Prosecution Act 2005 read with section 494 Cr.P.C in case vide information No. 1980/AC/L dated 14/09/2018 charge for recovery of 19.5 KG Chars by 232 Wing Orakzai Scouts at FC Check Post KK base area District Orakzai.

The accused after their arrest by the 232 Wing Orakzai Scouts at FC Check Post KK base area was handed over to the then Political Administration Orakzai for their trial under the CNSA 1997. After the merger of FATA with Khyber Pakhtunkhwa the cases were transferred to District Courts Orakzai. The instant case file was entrusted to this Court for trial which was received by this Court on 1/04/2019. The accused was summoned and after compliance of 265-C Cr.P.C charge was framed against the accused on 29/04/2019 to which the accused pleaded not guilty and claimed trial. During the trial of the case, the accused submitted an

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application u/s 265-K Cr.P.C on 15/04/2019 for their acquittal in the instant case which was noticed to the prosecution. Today APP for the state also submitted an application u/s 4-c (ii) of the Khyber Pakhtunkhwa Prosecution Act 2005 read with section 494 Cr.P.C for the charge of accused in the instant case.

Arguments of counsel for the accused and APP for the state on the said application heard and record perused.

The record shows that the accused is charged for the recovery of Chars, however the mode and manner of the recovery and the place of alleged recovery is nowhere mentioned in the record nor the same is reduced into writing in the form of report. The person/complainant who recovered the Chars is nowhere mention nor any eye witness of the alleged recovery has been cited in the case file to support the case against the accused. Furthermore, the statement of the complainant and eye witness are also not recorded nor the same is available on file. In the absence of material witness and their statement the prosecution could not be able to bring home charge against the accused. Furthermore, the case property is also not available nor there is anything on record that the same had been taken in possession or samples had been separated from the case property for the purpose of FSL report. It is essential that in cases of recovery of contraband samples are to be separated from the recovered contraband for the FSL report and the remaining case property is to be separately sealed. Under Rule 4 of the CNSA (Govt. Analysts) Rules 2001 reasonable quantity of narcotics was required to be dispatch to the nearest testing laboratory by which analysis may be carried out that recovered contraband was narcotics, however in the present case no such exercise has been carried out, therefore in the absence of preparation of samples for FSL and FSL report it could not be established that any Chars was recovered from the accused. The where about of the case property is not available on record and the accused was received by the then Political Administration Orakzai without any case property, therefore in the absence of case property the allegation of recovery of contraband could not be believe against the accused. The place of recovery and the time of recovery is also not known which was required to

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be mentioned or shown on record to prevent false implication of the accused. The place of recovery is neither mentioned in the shape of the site plane nor the same is identified in any other form. Similarly, the date and time of recovery is also not mentioned hence it could not be proved that when and where the alleged recovery has been affected of the accused.

The prosecution in its application has also submitted that the instant case is weak on evidentiary point of view and there is no chance of the conviction of the accused. The prosecution further submitted in their application that the trail of the instant case would be futile exercise and requested for the discharge of the accused due to lack of evidence. The application of the prosecution is genuine and after perusal of the record, it can safely be held that the case against the accused is of no evidence and as such to proceed with the trail of the case against the accused would be futile exercise as the ultimate result would be the acquittal of accused. There is no material evidence against the accused to connect them with the commission of the offence, therefore there is no possibility of the conviction of accused.

In view of the above discussion the application u/s 4-c (ii) of the Khyber Pakhtunkhwa Prosecution Act 2005 read with section 494 Cr.P.C submitted by the prosecution for the charge of accused is accepted and the accused ^{is} hereby discharged from the charges leveled against them. The accused are on bail; their sureties are discharged from liability of bail bonds. Case property if any be dealt with in accordance with law.

File be consigned to District Record Room Hangu after its necessary completion and compilation.

Announced
26.06.2019

(SHAUKAT ALI)
Additional Sessions Judge-II/
Judge Special Court, Orakzai
at Babar Mela

SHAUKAT ALI
Addl: District & Sessions Judge-II,
Orakzai at Hangu