

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

Special Case No. 5 of 2020  
Date of Institution: 21-09-2020  
Date of Decision: 19-10-2020

**State through Farooq Khan Inspector PP Stori Khel PS Lower Orakzai**  
.....(Complainant)

**VERSUS**

Anzar Gul s/o Gul Mar Jan r/o Tribe Qamber Khel, Khwadat Khel Bara District  
Khyber ..... (Accused/Petitioner Facing Trial)

**Represented by:**

Mr. Nisar Ahmad, APP for State

Mr. Hamid Sarfaraz Khan Advocate, counsel for accused

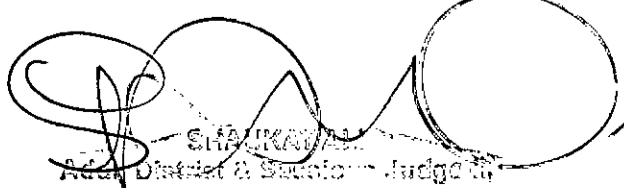
**Case FIR No. 68 Dated 29-06-2020 u/s 9(d) CNSA PS Lower Orakzai**

**ORDER**

**19.10.2020**

This order is intended to disposed of application u/s 265-K Cr.PC submitted by the accused/petitioner for his acquitted in case FIR No. 68 Dated 29-06-2020 u/s 9(d) CNSA PS Lower Orakzai.

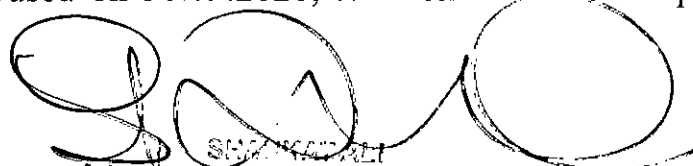
Brief facts of the case are that the complainant received information about the smuggling of narcotics and on that information he along with other police constables put barricades at Sultan Zai Shaga road, that in the meanwhile from Ibrahim Zai side a person on motorcycle on seeing the police party speed up the motor cycle who fell on the ground at some distance and was over powered, that the accused/petitioner was wearing waist coat wherein special pockets were designed for smuggling of narcotics and on search of the waist coat 2/2 packets chars total 08 packets were recovered from the four pockets of the waist coat which were wrapped in a yellow scotch tape, that on weighthment each packet was found 1200/1200 grams total

  
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9600 grams, that 10/10 grams was separated from each packets for the purpose of FSL analysis and sealed in parcels No.1 to 8 while rest of the chars was sealed into separate parcel. The waist coat was also sealed into separate parcel. The recovered chars, motorcycle and waist coat was taken into possession and the accused was arrested who disclosed his name Inzar Gul s/o Gul Marjan r/o Qambar Khel Khwaidad Khel, Bara District Khyber. The accused had sustained injuries on his right knee, his injury sheet was prepared and was referred to hospital for treatment. Murasila was drafted and sent to PS through constable Anwar for registration of the case, on the basis of which FIR was registered against the accused/petitioner.

After registration of the case, the case was investigated. During investigation, the investigation officer prepared the site plan Ex.PB at the instance of complainant. The IO interrogated the accused during investigation and produced accused before the court. The IO also dispatched the samples to the FSL for chemical examiner's report and received report of FSL in affirmative, which was placed on file. The I.O, during investigation, recorded the statements of PWs and accused u/s 161 Cr.P.C. After completion of investigation, the IO submitted the case file to the SHO for submission of complete challan who submitted complete challan against the accused for trial.

On 23.09.2020, complete challan was received by this Court for the trial of accused. The accused, being in custody, was summoned through zamima bay who was produced before the court and after compliance of provision of 265-C Cr.P.C, charge was framed against the accused on 30.09.2020, to which the accused pleaded not guilty

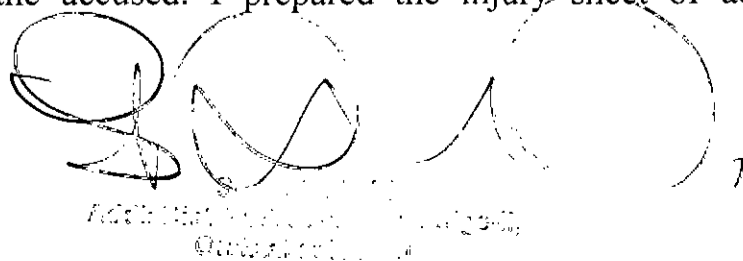
  
SHO QAMBAR KHEL  
Addl. District & Sessions Judge-II,  
Orakzai at Kangu

and claimed trial, therefore, the prosecution was allowed to produce its evidence. During the trial of the case, the prosecution examined 03 PWs.

The gist of the prosecution evidence is as under:

**PW-1** is the statement of Ain Ullah Muharrir who stated that "On 29-06-2020 I was present in the PS when I received Murasila, recovery memo and card of arrest of accused through constable Anwar. I registered case FIR No. 67 dated 29-06-2020 u/s 9-d CNSA. After registration of FIR I handed over the Murasila, copy of FIR, recovery memo and card of arrest to the IO for investigation. When Farooq Khan Inspector returned to the PS, he handed over to me the case property chars and motorcycle I after incorporating the case property in the register 19 of the PS kept the chars in the Maal Khana whereas the motorcycle was parked in the PS. My statement was recorded by the IO u/s 161 Cr.PC."

**PW-2** is the statement of Farooq Khan Inspector who stated that "I received information during my gasht that chars shall be smuggling through a person on motorcycle. On that information we laid barricade at Shaga Sultan Zai. In meanwhile the accused came on motorcycle who seen the police party speed up the motorcycle and felled on the ground at some distance and got injured. I arrested the accused and chars 08 packets were recovered from his possession which was weighed on digital scale. 10/10 grams were separated from each packet for FSL. I prepared the recovery memo and card of arrest of the accused. I prepared the injury sheet of accused who was



Investigating Officer  
29-06-2020

referred to hospital for medical treatment in the escort of Countable Shahid. I drafted the Murasila and handed over the same to Irfan Ullah constable for the PS for registration of FIR. The IO prepared the site plan in my instance. From the spot I took the case property to the PD in my vehicle and handed over the same to the Muharrir. The Murasila is Ex.PA, the recovery memo is Ex.PW-2/1 and the card of arrest is Ex/PW-3/2 and the injury sheet Ex.PW-2/3. The case property chars in parcel No 9 to 16 are Ex.P-1 to Ex.P-8. Today I have seen the above documents which correctly bears my signature.”

**PW-3** is the statement of Irfan Ullah Constable who stated that “I was present along with Farooq Khan on gasht and at Sultan Zai we laid barricade. From Ibrahim Zai side a person was riding on motorcycle towards Sulan Zai Shaga. The accused on seeing the police party trying to return and fell on the ground from the motorcycle. The accused was over powered and on search a waistcoat was wearing by the accused. The Inspector removed the waistcoat from the body of accused and from the pockets packets of chars were recovered. Each packet was weighed and after weighment from each packet were separated for FSL. The waistcoat were sealed in a separate parcel whereas the other case property was also sealed. The inspector Farooq Khan prepared the Murasila which was handed over to me which I took to the PS and handed over to Muharrir for registration of FIR. I signed the Murasila which was prepared by the inspector Farooq Khan. I also signed two other white paper which was handed over to me by Muharrir of the PS. My statement was not recorded u/s 161 Cr.PC by the IO.”

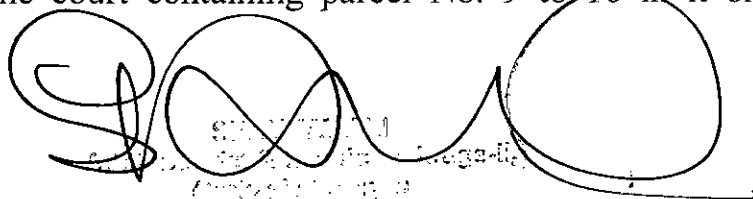


Irfan Ullah  
Constable  
Police Station  
Sultan Zai

During the trial on 12-10-2020 learned counsel for the accused/petitioner submitted application u/s 265-K Cr.PC for the acquittal of accused which was noticed to the prosecution and the application was fixed for arguments.

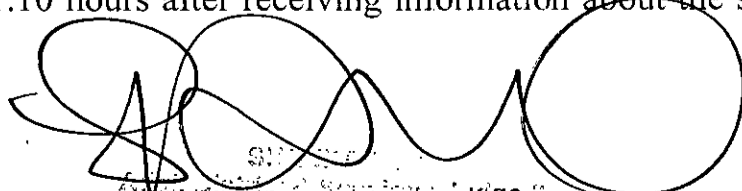
Arguments of the learned counsel for the accused/petitioner and learned APP for the state heard and record perused.

The prosecution in the case against the accused examined material witnesses Farooq Khan Inspector (PW-02) who is the complainant of the case and Irfan Ullah Constable (PW-03); the witness to the recovery memo Ex.PW-2/1. The complainant Farooq Khan is the seizing officer, drafted Murasila Ex.PA wherein he mentioned that he separated samples from each packets and sealed into parcel No. 1 to 8 whereas the remaining chars was sealed into parcels No. 9 to 16 and the waistcoat was sealed into parcel No.17. The complainant made contradictory statement regarding the parcels in his deposition before the court. During cross examination the complainant stated that he prepared parcels No. 1 to 8 and all the parcel No. 1 to 8 again sealed in one parcel No.9. He further stated that the remaining chars were sealed into parcel No. 9 to 16 and that parcel No. 9 to 16 were again sealed into parcel No. 17 by affixing seals on it. When the case property produced before the court and the complainant was confronted with the case property there was no parcel bearing No. 17 and the sack in which the parcels were produced bears neither the parcel No. nor the signature of the complainant nor any seals. No such parcel No. 17 was produced before the court containing parcel No. 9 to 16 in it on which the



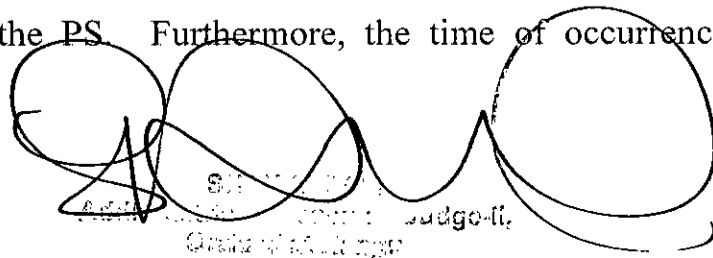
complainant affixed seals as stated by him. Furthermore there is no such parcel No. 9 in which parcel No. 1 to 8 were again sealed however parcel No. 9 is a separate single parcel containing chars, hence the statement of complainant in respect of parcels is contradictory which negates the recovery of contraband from the possession of accused as alleged by the complainant in the Murasila. Furthermore Irfan Ullah (PW-03) who is the witness to the recovery memo stated in his cross examination that before the drafting of Murasila by Farooq Khan Inspector no proceedings were carried out in my presence which further negates the spot proceedings by the complainant and preparing of parcels on the spot as narrated by him in the Murasila.

The complainant stated that on receiving information during gasht he laid barricades at Shaga Sultan Zai where the accused was arrested and chars was recovered from his possession. The fact that whether the complainant along with police officials were on gasht and the recovery was effected as alleged by the complainant, the cross examination of complainant and Constable Irfan Ullah (PW-03) is worth perusal. The complainant stated in his cross examination that he left for gasht in official vehicle at 11:10 hours whereas Constable Irfan Ullah that they left for gasht with Farooq Khan at 10:11 AM and reached to the place of occurrence at 11:10 AM. PW-03 further stated in his cross examination that he signed the recovery memo Ex.PW-2/1 at 10:20 hours in the PS which is a time before the time of occurrence and negates the statement of complainant that he left for gasht at 11:10 hours after receiving information about the smuggling of chars

  
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by the accused. Furthermore the complainant stated that after drafting the Murasila it was handed over to Irfan Ullah constable for taking the same to the PS for registration of FIR however the Murasila Ex. PA and statement of Ain Ullah Muharrir shows that the Murasila was taken by constable Anwar which further create doubts in the spot proceedings by the complainant as per contents of Murasila.

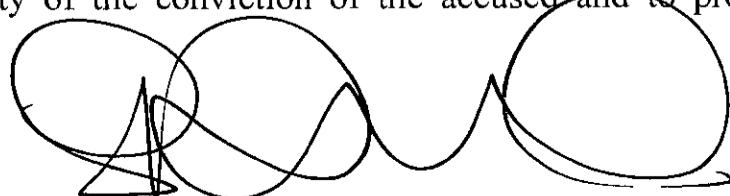
The statement of Irfan Ullah Constable (PW-03) who is the material witness being witness of the recovery memo Ex.PW-2/1 fully negated the recovery of contraband from the possession of accused during his statement before the court. PW-03 even stated in his chief examination that he also signed two white papers which were handed over to him by the Muharrir of the PS. PW-03 during cross examination stated that before drafting of Murasila by Farooq Khan Inspector no proceedings were carried out in his presence and when they reached to the place of occurrence Farooq Khan Inspector (Complainant) ordered him to stand there on the barricaded and he did nothing else. PW-03 further stated in his cross examination that Muharrir handed over to him two white papers and asked him to sign it and he signed the same which was already written. When PW-03 was confronted with the recovery memo Ex.PW-2/1, he stated that recovery memo Ex.PW-2/1 is the same paper that he signed in the PS which was given to him by the Muharrir of PS for signing. The statement of PW-03 shows that no recovery had been effected by the complainant from the possession of accused in the mode and manner as alleged by the complainant and the whole proceedings were carried out in the PS. Furthermore, the time of occurrence given in the

  
Irfan Ullah Constable (PW-03)  
Qadizul Huda

Murasila is 11:30 hours and time of report is 12:00 hours whereas PW-03 stated in his cross examination that he signed recovery memo Ex.PW-2/1 at 10:20 hours in the PS which is a time before the occurrence that further negates the occurrence at the alleged time and place and creates serious doubts about the recovery of contraband from the possession of accused.

The alleged chars as evident from the contents of Mursilla EX.PA was chars *Garda* which is always in soft form and the samples sealed in parcels No.01 to 8 sent to the FSL vide application and road certificate dated 02-07-2020 also shows chars *Garda*. Farooq Khan (PW-02) *also* stated in his cross examination that it was chars *garda*. The report of the FSL Peshawar shows that it was chars the physical appearance of which was brown solid. The FSL report did not specifically mention that the chars was *Garda*, but brown solid, therefore the FSL report does not support the recovery of contraband from the possession of accused.

The start witnesses of the prosecution who recorded their statement before the court do not support the recovery of contraband from the possession of accused. There is no probability of the conviction of accused even if the statements of remaining prosecution witnesses are recorded. The accused can be acquitted at any stage of the case u/s 265-K Cr.PC when there is no probability of the accused being convicted of any offence. From the statement of PWs who recorded their statement before the court, it is evident that there is no possibility of the conviction of the accused and to proceed further





with the case of accused, it would be a futile exercise and the ultimate result would be the acquittal of accused.

In view of the above discussion the application submitted by the accused for his acquittal u/s 265-K Cr.PC is accepted and the accused is acquitted from the charges levelled against him. The accused is in custody, he be released forthwith if not required in any other case. Case property be dealt with in accordance with law after the expiry of period of appeal of revision.

File of this court be consigned to record room after its necessary completion and compilation.

**Announced**  
**19.10.2020**



**(SHAUKAT ALI)**  
Additional Sessions Judge-II,  
Orakzai at Babar Mela