

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

SPECIAL CASE NO. : 16/3 OF 2023  
DATE OF INSTITUTION : 16.05.2022  
DATE OF TRANSFER IN : 15.03.2023  
DATE OF DECISION : 16.05.2023

STATE THROUGH UMAR KHAN ASI/NET, POLICE STATION  
DABORI

.....(COMPLAINANT)

-VERSUS-

1. JAN WALI S/O KHIAL AFZAL, AGED ABOUT 32 YEARS, R/O  
CASTE ZAKHA KHEL, DISTRICT KHYBER
2. WASIR KHAN S/O FAZAL HAKEEM, AGED ABOUT 33 YEARS,  
R/O CASTE ZAKHA KHEL, DISTRICT KHYBER

..... (ACCUSED FACING TRIAL ON BAIL)

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

**FIR No. 01**                      **Dated: 19.01.2022**      **U/S: 9 (d) of the Khyber**  
**Pakhtunkhwa Control of Narcotic Substances Act, 2019**  
**Police Station: Dabori**

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**JUDGEMENT**  
**16.05.2023**

The accused named above faced trial for the offence u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 vide case FIR no. 01, dated 19.01.2022 of Police Station Dabori.

- (2).                      The case of the prosecution as per Murasila based FIR is; that on 19.01.2022 the complainant, Umar Khan SI along with constables Muhammad Arif, Haji Rehman, Abdul Haq and other police officials having laid a picket, were present on the spot where at about 1130 hours, two persons walking on foot from Arhanga towards the picket having white colour

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plastic bags in their right hands were stopped by the police party on the basis of suspicion. The bag holding by the person who disclosed his name Jan Wali s/o Khial Afzal was searched which led the complainant to the recovery of 2000 grams of chars, from which the complainant separated 10 grams for chemical analysis through FSL, sealed the same into parcel no. 1 whereas the remaining quantity of chars weighing 1990 grams along with the bag were sealed in parcel no. 2. Similarly, the bag in possession of the person disclosing his name as Wazir Khan s/o Fazal Hakeem, was also searched by the complainant wherefrom 3000 grams of chars were recovered, from which the complainant also separated 10 grams for chemical analysis through FSL, sealed the same in parcel no. 3 whereas the remaining quantity of chars weighing 2990 grams along with the bag were sealed in parcel no. 4. All the parcels were affixed with monogram of 'DB'. Both the accused were accordingly arrested by issuing their joint card of arrest. The complainant took into possession the recovered chars vide recovery memo. Murasila was drafted and sent to Police Station through constable Haji Rehman which was converted into FIR by Abdullah AMHC.

After registration of FIR, it was handed over to Muhammad Ishaq SI/PW-3 for investigation. Accordingly, after receipt of FIR, he reached on the spot, prepared site

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plan Ex. PB on the pointation of complainant, sent the representative samples for chemical analysis through FSL vide his application Ex. PW 3/3 and road permit certificate Ex. PW 3/4 through constable Kaleem Ullah/PW-1, whereof the result Ex. PZ was received and placed on file by him. After completion of investigation, he handed over the case file to 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 u/s 265-C Cr.P.C 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 of prosecution is as follow;

I. Constable Kaleem Ullah is PW-1. He has taken the samples of recovered chars in parcels no. 1 and 3 to the FSL along with application Ex. PW 3/3 and road permit certificate Ex. PW 3/4 for chemical analysis on 20.01.2022 and after submission of the same, he was given the receipt of the parcels which he handed over to the Moharrir upon his return.

II. Abdullah AMHC is PW-2. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex.

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PA. He has received the case property in parcels no. 1 to 4 which was put by him in mal khana of the Police Station while the accused was put by him behind the lock-up. He further deposed that on 20.01.2022 he has handed over parcels no. 1 and 3 to the IO for its onward transmission to the FSL.

III. Investigating Officer Muhammad Riaz SI was examined as PW-3 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, sent the representative of samples to the FSL and result of the same as Ex. PZ was placed on file by him, produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 3/2 & Ex. PW 3/5, placed on file copy of register 19 Ex. PW 2/1 and submitted the case file to the SHO for onward proceedings.

IV. Umar Khan ASI, the complainant of the instant case, appeared in the witness box as PW-4 and repeated the story narrated in the FIR.

Constable Abdul Haq appeared in the witness box as PW-5. He, besides eyewitness of the

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occurrence, is the marginal witness of recovery memo Ex. PC as well vide which the complainant/PW-4 has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement.

VI. Lastly, Imtiaz Khan SHO was examined as PW-6 who has submitted complete challan Ex. PW 6/1 against the accused facing trial.

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

(6). Learned DPP for State submitted that the accused facing trial are directly nominated in the FIR, huge quantity of chars have been recovered from possession of each of the accused, 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 has been transmitted to the FSL within the prescribed period of 72 hours which have been found positive for chars vide report of FSL Ex. PZ, the complainant, the witness of the recovery, the Official transmitted the samples to the FSL and the IO have been produced by the prosecution as witnesses, whom have

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fully supported the case of 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 possession of the accused facing trial and the report of FSL supports the case of prosecution; however, the accused facing trial are falsely implicated in the instant case. 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. 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 the learned DPP for State and learned counsel for the defence and the 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 detailed by the prosecution?
- (ii). Whether the investigation has been carried out in the mode and manner as detailed by the prosecution?

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(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 Umar Khan ASI as PW-4 and constable Abdul Haq as PW-5, is, the complainant, Umar Khan SI/PW-4 along with constables Muhammad Arif, Haji Rehman, Abdul Haq/PW-5 and other police officials having laid a picket, were present on the spot where at about 1130 hours, two persons walking on foot from Arhanga towards the picket having white colour plastic bags in their right hands were stopped by the police party on the basis of suspicion. The bag holding by the person who disclosed his name **Jan Wali s/o Khial Afzal** was searched which led the complainant/PW-4 to the recovery of 2000 grams of chars, from which the complainant/PW-4 on the spot has shown himself separated 10 grams for chemical analysis through FSL, sealed the same into parcel no. 1 whereas the remaining quantity of chars weighing 1990 grams along with the bag were sealed in parcel no. 2. Similarly, the bag in possession of the person disclosing his name as **Wazir Khan s/o Fazal Hakeem** was also searched by the complainant/PW-4 wherefrom 3000 grams of chars were recovered, from which the complainant on the spot also shown himself separated 10 grams for chemical analysis through FSL, sealed the same in parcel no. 3 whereas the remaining quantity of chars weighing 2990 grams along with the bag were sealed in

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parcel no. 4 by affixing monogram of 'DB' on all the parcels.  
The accused have been shown arrested on the spot by issuing their joint card of arrest Ex. PW 4/2.

The complainant is a member of Narcotics Eradication Team (NET), who, as per contents of Murasila Ex. PA/1, along with constables Muhammad Arif, Haji Rehman, Abdul Haq and other police officials having allegedly laid a picket, was present on the spot at the time of occurrence; however, no daily diary regarding his departure and arrival to police station or any other corroborative evidence has been produced to corroborate this fact. When this fact was placed to complainant/PW-4 in his cross examination he stated that on 19.01.2022 he was posted as ASI at Police Station Dabori, that the officials of NET at Dabori used to report their arrival and departure in concerned Police Station and that he himself has entered his departure in the daily diary. But neither the said daily diary has been produced before the court nor the extract of alleged daily diary available on file has been exhibited in examination in chief of the complainant. The statement of the IO as PW-3 is also silent regarding this fact. Moreover, the factum of the number and names of the police officials accompanying the complainant/PW-4 on the spot is also doubtful. As per Murasila Ex. PA/1, the complainant, Muhammad Umar/PW-4 has shown himself accompanied by constables Muhammad Arif, Haji Rehman, Abdul Haq and other police officials.

  
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When this fact was placed to the complainant in his cross examination he stated that he had left the Police Station with constables Abdul Haq, Haji Rehman, Muhammad Arif, Ihsan Ullah and Zalif and that he had himself entered his departure from the Police Station in the daily diary, the extract of which is available on file. According to the said daily diary the complainant was accompanied only by Abdul Haq, Ihsan Ullah and Haji Rehman which on one hand contradicts the contents of Murasila Ex. PA/1 where the name of Muhammad Arif is mentioned while the name of Ihsan Ullah is excluded. Similarly, as per contents of daily diary the complainant was only accompanied by Abdul Haq, Ihsan Ullah and Haji Rehman while as per Murasila, Ex. PA/1, the complainant besides Haji Rehman and Abdul Haq was also accompanied by other police officials. The same is the case with the daily diary no. 08 wherein the complainant has shown himself returned to the Police Station in the company of his fellows left the Police Station with him vide daily diary no. 04 regarding his departure.

With respect to process of recovery, weighing, sampling and sealing as per contents of Murasila Ex. PA/, a plastic bag has been recovered from possession of accused facing trial Jan Wali wherefrom 2000 grams of chars have been recovered while from a plastic bag in the possession of accused Wazir Khan 3000 grams of chars have been recovered but it is neither mentioned in the Murasila nor in

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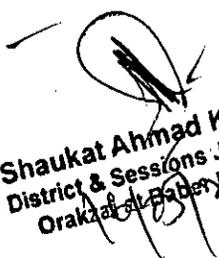
the recovery memo nor even in court statement of complainant or that of the eyewitness that whether the chars recovered from possession of the accused Jan Wali were in the form of two packets or otherwise and whether the chars recovered from possession of the accused Wazir Khan were in form of one piece or three pieces. In this respect, both the witnesses i.e., the complainant as PW-4 and eyewitness as PW-5 have been cross examined where the complainant as PW-4 has stated that;

*“The alleged recovered chars were not in slabs from. Self-stated that some of them were in round shape while some were having irregular shape”.*

Similarly, the eyewitness as PW-5 has also stated the same fact that;

*“Some of the alleged recovered chars were soft and some were of solid state”.*

The aforementioned extract of cross examination of both the PWs shows that the alleged chars irrespective of their shapes, texture and kinds, consisted of at least more than one piece. In these circumstances, it cannot be established that from which of the packet, 10 grams of chars have been separated. Moreover, as per record and court statements of complainant and eyewitness, the parcels were affixed with monogram of “DB” which, as per cross examination of complainant/PW-4, was handed over to him by Moharrir Abdullah but the said Moharrir in his cross

  
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examination as PW-2 has stated that he has not handed over anything i.e., parcels monogram to the complainant. As per site plan Ex. PW 3/1 the occurrence has allegedly taken place on a metalled road leading from Arhanga to Dabori but the name of specific place has not been mentioned. Moreover, as per site plan, the place of occurrence is located on a straight road and as per cross examination of the complainant/PW-4, a person on way towards the spot can be seen from a long distance. The relevant portion of cross examination is as;

*"It is correct that on the spot a straight road is leading to the spot of occurrence and a person on way towards the spot can see the police party from a long distance. Self-stated that there is a curve at a distance of 50 paces away from the spot of occurrence. It is correct that the said curve is not shown in the site plan".*

In these circumstances, the fact, that as to why a person in possession of contrabands seeing a police party from a long distance, would straight away approach towards them, is not appealable to prudent mind.

Keeping in view the non-availability of any corroborative evidence regarding the presence of the complainant along with other police officials named in the Murasila Ex. PA/1 on the spot, the contradictory statements regarding the number and names of the police officials allegedly accompanying the complainant and the doubt

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regarding the process of recovery, sampling and sealing of the parcels, the prosecution has failed to prove the mode and manner of occurrence as detailed on the file.

With respect to process of investigation allegedly conducted by the IO on the spot he has not placed on file any daily diary regarding his departure from the police station and making investigation conducted on the spot. He has also not placed on file any daily diary regarding his return to the spot and conducting investigation over there. Similarly, as per his court statement, he has recorded statements of the witnesses on the spot but in cross examination when he was asked about the names of the witnesses, he was unable to tell their names i.e.,

*“During the spot inspection the complainant along with witnesses and other police constables were present on the spot. I cannot tell the other three police officials names”*

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 sampling and sealing of case property in parcels on the spot, these were brought by the complainant/PW-4 to the Police Station and handed over the same to Abdullah AMHC /PW-2, who deposited the same in Mal khana. The representative samples were handed over by Moharrir of the Police Station to the IO on 20.01.2022 who transmitted the

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same to FSL through constable Kaleem Ullah/PW-1 vide road permit certificate.

In order to prove its case, the prosecution produced Abdullah AMHC as PW-2, constable Kaleem Ullah as PW-1 and Muhammad Ishaq OII as PW-3. 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 photocopy of the same as Ex. PW 2/1 has been placed on file but the original register no. 19 has not been produced before the court. Moreover, the IO as PW-3 in his cross examination has stated that register no. 19 is provided by government in printed form but the photocopy of register no. 19 Ex. PW 2/1 available on file, is in manual form; hence in such circumstances, the photocopy of register no. 19 in absence of original is not admissible in evidence. Moreover, as discussed earlier, the alleged recovered chars from possession of both the accused seem to be in the form of more than one piece and it cannot be established that the samples in parcels no. 1 and 3 have been separated from which of piece/packet.

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 in view of above, it is held that the report of FSL cannot be relied for recording conviction.

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(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 in the mode and manner as alleged in the Murasila. Similarly, the prosecution has also failed to prove the safe custody of case property. All these facts lead to the failure of prosecution to prove the case against the accused beyond shadow of doubt. Therefore, the accused **Jan Wali** and **Wazir Khan** are acquitted of the charges levelled against them by extending the benefit of doubt. Accused are on bail, their bail bonds stand cancelled and their sureties are discharged of the liabilities of the bail bonds. The chars be destroyed after the expiry of period provided for appeal/revision in accordance with law. Consign.



Pronounced  
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CERTIFICATE

Certified that this judgement consists of fourteen (14) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 16.05.2023

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