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STATE VS ABBAS KHAN
FIR No. 02 | Dated: 14.01.2022 | U/S: 9 (d) 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. : 10/3 OF 2023
DATE OF ORIGINAL INSTITUTION : 28.03.2022
DATE OF TRANSFER-IN : 09.03.2023
DATE OF DECISION : 23.05.2023

STATE THROUGH MUHAMMAD NASEEB KHAN SHO, POLICE STATION
MISHTI MELA

.....(COMPLAINANT)

-VERSUS-

ABBAS KHAN S/O UTMAN KHEL, AGED ABOUT 21 YEARS, R/O CASTE
MISHTI, TAPA DARWI KHEL, DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL)

Present: Umar Niaz, District Public Prosecutor for State.
: Hamid Sarfaraz Advocate, the counsel for accused facing trial.

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Pakhtunkhwa Control of Narcotic Substances Act, 2019
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JUDGEMENT
23.05.2023

The above-named accused faced trial for the offence
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR
No. 02, dated 14.01.2022 of Police Station Mishti Mela.

(2). The case of the prosecution as per contents of Murasila
based FIR is; that on 14.01.2022, the complainant Inspector
Naseeb Khan along with constables Saleem Khan and
Muhammad Umar during routine patrolling acting on
information regarding smuggling of narcotics from Mishti
Bazar to Feroz Khel Bazar, laid a picket on main road Sangra,
where at about 1630 hours a motorcycle without registration
number riding by a person on way from Mishti Bazar towards
the picket was stopped for the purpose of checking. The person

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riding the motorcycle was boarded who disclosed his name as Abbas Khan s/o Utman Khel. Upon personal search of the accused, a bag tied with a muffler on his back was recovered wherefrom 09 packets of chars each wrapped with yellow colour scotch tape, weighing 1000 grams, making a total of 9000 grams of chars were recovered. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 9 whereas the remaining quantity of chars weighing 8910 grams along with the empty bag and the muffler were sealed in parcel no. 10 by placing/affixing monograms of 'AR' on all the parcels. The accused was accordingly arrested by issuing his card of arrest. The complainant took into possession the recovered chars and the motorcycle bearing Engine No. B225722 and Chassis No. MRA225722 vide recovery memo. Murasila was drafted and sent to Police Station through constable Saleem Khan which was converted into FIR by Muhammad Ayyub AMHC.

- (3). After registration of FIR, it was handed over to Muhammad Riaz OII/PW-2 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 17.01.2022, the IO sent the samples of chars for chemical analysis to FSL vide his application Ex. PW 2/3 through constable Abdullah/PW-3 and

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road permit certificate Ex. PW 1/1, the result whereof 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 was summoned through addendum-B, copies of the record were provided to him in line with section 265-C CrPC and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned and examined. The gist of the evidence is as follow;

I. Muhammad Ayyub AMHC appeared in the witness box as PW-1. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He has received the case property from the complainant duly packed and sealed which he had kept in mal khana in safe custody besides parked the motorcycle in vicinity of the police station. He has prepared road permit certificate Ex. PW 1/1. The witness further deposed that he has recorded entry of the case property in Register No. 19 Ex. PW 1/2 and he has handed over the samples of the case property for sending the same to FSL on 17.01.2022. He has also made entry of departure and arrival of SHO from and to the police station in DD which is Ex. PW 1/3.

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II. Investigating Officer Muhammad Riaz SI was examined as PW-2 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 the complainant, recorded the statements of witnesses on the spot, produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 2/1 and Ex. PW 2/2, sent the representative samples to FSL along with application addressed to the incharge FSL Ex. PW 2/3 and road permit certificate Ex. PW 1/1 and result of the same Ex. PZ was placed on file by him, placed on file copy of Register No. 19 Ex. PW 1/2 and copies of daily diary Ex. PW 1/3 and submitted the case file to SHO for its onward submission.

III. Constable Abdullah is PW-3. He has also taken the samples of chars in parcels no. 1 to 9 to the FSL for chemical analysis on 17.01.2022 and after submission of the same, he has handed over the receipt of the parcels to the IO.

IV. Inspector Naseeb Khan is the complainant of the case. He as PW-4 repeated the same story as narrated in the FIR.

V. Head Constable Saleem Khan is PW-4. He besides being eyewitness of occurrence is marginal witness


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of recovery memo Ex. PC as well vide which the complainant has taken into possession the recovered chars and the motorcycle. He also reiterated the contents of FIR in his statement.

(5). Prosecution closed its evidence whereafter the statement of accused was 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 State and learned counsel for accused facing trial heard and case file perused.

(6). Learned DPP for State submitted that the accused facing trial is 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 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


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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 is directly nominated in the FIR, the alleged chars have been shown recovered from his possession and the report of FSL support the case of prosecution; however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his 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 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?

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(iii). Whether the case of prosecution is substantiated through report of FSL?

(9). The case of prosecution, as per contents of Murasila Ex. PA/1, court statements of Inspector Naseeb Khan as PW-4 and constable Saleem Khan as PW-5 is, that the complainant Inspector Naseeb Khan/PW-4 along with constables Saleem Khan/PW-5 and Muhammad Umar during routine patrolling acting on information regarding smuggling of narcotics from Mishti Bazar to Feroz Khel Bazar, laid a picket on main road Sangra, where at about 1630 hours a motorcycle without registration number riding by a person on way from Mishti Bazar towards the picket was stopped for the purpose of checking. The person riding the motorcycle was deboraded who disclosed his name as Abbas Khan s/o Utman Khel. Upon personal search of the accused, a bag tied with a muffler on his back was recovered wherefrom 09 packets of chars each wrapped with yellow colour scotch tape, weighing 1000 grams, making a total of 9000 grams of chars were recovered. The complainant/PW-4 on the spot has shown himself separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 9 whereas the remaining quantity of chars weighing 8910 grams along with the empty bag and the muffler were sealed in parcel no. 10, affixing monograms of 'AR' on all the parcels. The accused disclosing his name as **Abbas Khan** s/o Utman Khel,

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has been shown arrested on the spot by issuing his card of arrest Ex. PW 4/1. The Murasila Ex. PA/1 has been transmitted by HC Saleem Khan/PW-5 to police station where, after registration of FIR by Muhammad Ayyub AMHC/PW-1, it has been handed over to Muhammad Riaz SI/PW-2, the IO of the case. The IO has visited the spot and conducted investigation by making a site plan Ex. PB on the pointation of Inspector Naseeb Khan/PW-4 and recorded the statements of marginal witnesses.

It is evident from the record that as per contents of Murasila Ex. PA/1, a bag tied on back of the accused facing trial with muffler (*Gulaband*) has been recovered from possession of accused facing trial wherefrom 09 packets of chars, each weighing of 1000 grams, making a total of 9000 grams of chars have been recovered; however, as against this as per recovery memo Ex. PC a bag **abandoned by accused** facing trial has been recovered wherefrom 09 packets of chars, each weighing 1000 grams, a total of 8910 grams have been recovered. The complainant in his court statement as PW-4 has also stated that the bag was tied on back of the accused facing trial with a muffler wherefrom 09 packets of chars, each weighing 1000 grams, a total of 9000 grams of chars have been recovered but he has not spoken a single word regarding the fact that either the figures in the recovery memo were incorrect



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or it was a result of clerical mistake. He has also not brought on record any clarification in this respect.

With respect to making of proceeding by complainant on the spot, as discussed above, the claim of the prosecution is; that after recovery of the alleged chars, 10 grams from each of the packet were separated and sealed into parcels no. 1 to 9 while the rest of alleged contrabands were sealed in parcel no. 10. Thereafter, the recovery memo, card of arrest and Murasila were also prepared on the spot. Keeping in view the aforementioned contention of prosecution, the FIR number was not known to the complainant at the time of preparation of parcels and documents; however, astonishingly the recovery memo and card of arrest both bear the number of FIR which, as per statement of the complainant as PW-4 has not been entered by him. Similarly, the Investigation Officer as PW-2 has also admitted in his cross examination that the same has not entered in both the documents by him. Moreover, the parcel no. 10 also bears the number of FIR which when confronted with the marginal witness PW-5 he stated that all the details of case including the FIR number was entered by the complainant. In these circumstances the fact that if at the time of preparation of documents and the parcels, the FIR was not yet registered then as to how the complainant came to know about the number of FIR which has been scribed by him in the recovery memo, card of arrest and parcel no. 10.


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With respect to spot of occurrence, as per contents of Murasila Ex. PA/1 the occurrence has taken place on a main road from Sangra to Headquarter Chowk but the name of the specific place where the occurrence has allegedly taken place is neither mentioned in the Murasila nor in the site plan Ex. PB. Moreover, as per site plan Ex. PB prepared on the spot, the road leading to the spot of occurrence is a straight road and there is no curve or other hurdle obstructing the vision over there. This fact has also been admitted by the complainant/PW-4 in his cross examination where, as per cross examination he stated that;

“There is no curve on main road or any hurdle/obstacle on main road to obstruct the vision. I have seen the accused from a distance of 150 meters while proceeding towards the spot. The police party was in uniform. It is correct that the police party was also visible to the accused from a distance of 150 meters. It is correct that I have shown the place to the IO where the accused was first seen”.

In these circumstances where the police party was visible to the accused from a long distance then as to why the accused facing trial in possession of huge quantity of chars, allegedly riding a motorcycle despite having opportunity to make his escape good, has not even tried to escape.

While sealing the parcels, monogram of ‘AR’ has been affixed over the parcels which is not in the name of


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complainant rather in the name of Akhtar Munir ASHO. The said Akhtar Munir was not present with the complainant. It is not explained that as to how the monogram of Akhtar Munir ASHO came in possession of complainant.

With respect of process of investigation allegedly conducted by investigation officer as PW-2, as per his statement after receipt of the FIR and other documents from PW-1 Moharrir of police station he has proceeded to the spot where he has conducted investigation on the spot but he has not annexed any daily diary showing his departure from the police station and his arrival back to the police station. Despite being cross examined on this point the prosecution has not produced any such daily diary later on in the statements of other witnesses of prosecution. Similarly, in the daily diary no. 17 of 14.01.2023 regarding arrival of complainant to the police station, the factum of the investigation allegedly conducted by the IO on the spot, is not mentioned. Though in his court statement he has alleged that the case property was shown to him but despite occurring of discrepancies in Murasila and recovery memo regarding quantity of chars, he has not weighed parcel no. 10 containing the chars. Similarly, he has also not verified the particulars of motorcycle despite being observed overwriting in engine number and chassis number of the motorcycle mentioned in the recovery memo.


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In view of aforementioned dents noted in the case of prosecution, it is held that there are various doubts regarding the mode and manner of occurrence and mode and manner of investigation allegedly conducted on the spot leading to failure of the prosecution to prove the mode and manner of recovery, the mode of manner of proceedings conducted by the complainant on the spot and mode and manner of investigation allegedly conducted by the IO 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 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 Muhammad Ayyub AMHC/PW-1, who deposited the same in Mal khana while parked the motorcycle in vicinity of police station. The representative samples were handed over by Moharrir of the Police Station to the IO on 17.01.2022 who transmitted the same to FSL through constable Abdullah/PW-3 vide road permit certificate.

In order to prove its case, the prosecution produced Muhammad Ayyub AMHC as PW-1, constable Abdullah as PW-3 and Muhammad Riaz OII as PW-2. PW-1, though in his examination in chief has stated that he had received case property from the complainant, made entry of the same in

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register no. 19, handed over parcels no. 1 to 9 to the IO and a copy of the same as Ex. PW 1/2 has been placed on file but the original register no. 19 has not been produced before the court. As per copy of register no. 19 Ex. PW 1/2 the case property containing parcels no. 1 to 10 and a motorcycle have been received by PW-1, the moharrir of the police station, from complainant Muhammad Naseeb Khan SHO but the relevant column of register no. 19 does not bear the signature of the Moharrir of the police station at the time of receipt of case property. Moreover, in the next column probably referring to the person from whom the case property has been received the name of Muhammad Riaz SI has been crossed and name of Muhammad Naseeb Khan SHO has been written but there is no initial of any authorized person making the entry testifying the cutting of the name of Muhammad Riaz SI. In the last column parcels no. 1 to 9 have been shown handed over to PW-2 on 17.01.2023 for taking the same to FSL but as per statement of PW-1 Moharrir of the PS, who has allegedly made entry, does not bear his signature and neither the name of official assigning the register no. 19 has disclosed nor he has been produced in the court as a witness. Furthermore, the occurrence has taken place on 14.01.2023 while as per report of the FSL Ex. PZ, the representative samples have been transmitted to FSL on 17.01.2023 with a delay of 04-days which has not been explained.


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Hence, in view of what is discussed above, though the representative samples, as per report of FSL Ex. PK, have been found as chars but keeping in view the failure of the prosecution to prove the safe custody of the case property, 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 in the mode and manner as detailed in the report. Similarly, the prosecution has also failed to prove the alleged mode and manner of the investigation carried out by the IO on the spot. The prosecution 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 namely, **Abbas Khan** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is in custody. He be released forthwith, if not required in any other case. The case property i.e., chars be destroyed after the expiry of period provided for appeal/revision in accordance with law while the motorcycle be returned to its lawful owner.


Consign.

Pronounced
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SHAUKAT AHMAD KHAN
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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: 23.05.2023


SHAUKAT AHMAD KHAN
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

