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STATE VS MUNIR KHAN
FIR No. 05 | Dated: 10.02.2023 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Kurez Boya

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

SPECIAL CASE NO. : 20/3 OF 2023
DATE OF INSTITUTION : 04.04.2023
DATE OF DECISION : 23.06.2023

STATE THROUGH MUJAHID KHAN SI, NARCOTICS
ERADICATION TEAM (NET)
.....(COMPLAINANT)

-VERSUS-

MUNIR KHAN S/O FAZAL AZEEM, AGED ABOUT 19 YEARS, R/O
CASTE STORI KHEL, TAPA LALBI KHEL, CHAMAN JANA
..... (ACCUSED FACING TRIAL)

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

FIR No. 05 **Dated:** 10.02.2023 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019
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JUDGEMENT
23.06.2023

The above-named accused faced trial for the offence
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR
No. 05, dated 10.02.2023 of Police Station Kurez Boya.

(2). The case of the prosecution as per contents of Murasila
based FIR is; that on 10.02.2023, the complainant Mujahid
Khan along with constables Hajat Ali and Manzoor Ali in
official vehicle driven by Abdul Haq, during routine
patrolling, laid a picket on main road Ghodzara, where at
about 1900 hours a motorcycle of red colour without
registration number on way from Anjari towards the picket
was stopped for the purpose of checking. The driver of the
motorcycle having a bag of yellow colour in his lap, was made

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come down from motorcycle. Upon search of the bag, 10 packets of chars each wrapped with yellow colour scotch tape, weighing 1000 grams, making a total of 10000 grams were recovered whereas the empty bag turned 120 grams upon weighment. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 10 whereas the remaining quantity of chars weighing 990/990 grams were sealed in parcels no. 11 to 20 while the empty bag was sealed in parcel no. 21 by placing/affixing monograms of 'MK' on all the parcels. The complainant took into possession the recovered chars and the motorcycle without registration number having Engine No. T051045 and Chassis No. EB729677 vide recovery memo. The accused disclosed his name as **Munir Khan** s/o Fazal Azeem who was arrested on the spot by issuing his card of arrest. Murasila was drafted and the same along with other relevant documents, the accused and the case property were sent to Police Station through constable Manzoor Ali which was converted into FIR by Ain Ullah MM.

- (3). After registration of FIR, it was handed over to Hashim Khan SI for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan on the pointation of the complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 12.02.2023, the IO sent the samples of chars for chemical analysis to FSL through constable Khial Hassan, the

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result whereof 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. Constable Khial Hassan is PW-1. He has taken the samples of chars in parcels no. 1 to 10 to the FSL for chemical analysis on 12.02.2023 and after submission of the same, he has handed over the receipt of the parcels to the IO.

II. Ain Ullah MM appeared in the witness box as PW-2. 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 put the accused behind the bars. The witness further deposed that he has recorded entry of the case property in Register No. 19 Ex. PW 2/1 and he has


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handed over the samples of the case property to the IO for sending the same to FSL on 12.02.2023.

III. Mujahid Khan SI is the complainant of the case. He as PW-3 repeated the same story as narrated in the FIR.

IV. Constable Manzoor Ali is PW-4. 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 chas and the motorcycle. He also reiterated the contents of FIR in his statement.

V. Investigating Officer Hashim Khan SI was examined as PW-5 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, sent the representative samples to FSL along with application addressed to the incharge FSL Ex. PW 5/1 and road permit certificate Ex. PW 5/2 and result of the same Ex. PK/1 was placed on file by him, produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 5/3 and Ex. PW 5/4, drafted application Ex. PW 5/5 to his high-ups for verification of the motorcycle and the report of FSL

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in this respect is Ex. PK which is also placed on file by him, placed on file copy of Register No. 19 Ex. PW 2/1, copies of daily diaries Ex. PW 5/6 and submitted the case file to SHO for its onward submission.

VI. Lastly, Muhammad Shafiq Khan SHO appeared in the witness box as PW-6 who has submitted complete challan Ex. PW 6/1 against the accused facing trial in the instant case.

(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 have been transmitted to the FSL within the prescribed period and the same have been found positive for chars vide report of FSL Ex. PK. The complainant, the witnesses of the recovery, the official transmitted the samples to the FSL and the IO have

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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 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. 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:

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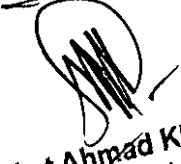
(i). Whether the occurrence has taken place in the mode and manner as alleged by the prosecution?

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- (ii). Whether the investigation has been carried out in the mode and manner as alleged by the prosecution?
- (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 Mujahid Khan as PW-3 and constable Manzoor Ali as PW-4 is, that the complainant Mujahid Khan/PW-3 along with constables Hajat Ali and Manzoor Ali/PW-4 in official vehicle driven by Abdul Haq, during routine patrolling, laid a picket on main road Ghodzara, where at about 1900 hours a motorcycle of red colour without registration number on way from Anjari towards the picket was stopped for the purpose of checking. The driver of the motorcycle having a bag of yellow colour in his lap, was made come down from motorcycle. Upon search of the bag, 10 packets of chars each wrapped with yellow colour scotch tape, weighing 1000 grams, making a total of 10000 grams were recovered whereas the empty bag turned 120 grams upon weighment. The complainant/PW-3 on the spot has separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 10 whereas the remaining quantity of chars weighing 990/990 grams were sealed in parcels no. 11 to 20 while the empty bag was sealed in parcel no. 21, placing/affixing monograms of 'MK' on all the parcels. The accused disclosing his name as **Munir Khan**


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s/o Fazal Azeem, has been arrested on the spot by issuing his card of arrest Ex. PW 3/1. The Murasila Ex. PA/1 along with the accused and the case property have been transmitted by constable Manzoor Ali/PW-4 to police station where, after registration of FIR by Ain Ullah MM/PW-2, it has been handed over to Hashim Khan SI/PW-5, 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 Mujahid Khan/PW-3 and recorded the statements of marginal witnesses.

The prosecution in order to prove its case in the mode and manner as alleged, has examined Mujahid Khan, the complainant of the case, as PW-3 who has reiterated the contents of Murasila Ex. PA/1 and constable Manzoor Ali, the eyewitness witness of the occurrence and marginal witness of recovery memo Ex. PC as PW-4 who besides repeating the same story as narrated in the FIR, stated to have taken the documents along with the accused and the case property to the police station and handed over the documents to Ain Ullah/PW-2 who has registered the FIR. In order to prove the mode and manner of investigation allegedly conducted on the spot, prosecution has examined Investigating Officer Hashim Khan SI as PW-5 who has made the site plan Ex. PB, recorded the statement of witnesses u/s 161 CrPC, produced the accused before the court of Judicial Magistrate and sent the representative samples to the FSL.


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As per contents of Murasila Ex. PA/1, the occurrence has allegedly taken place at main road Gozdara, which is situated within the local limits of Police Station Kurez. The complainant/PW-3 along with constable Manzoor Ali/PW-4 and constable Hajat Ali are posted at NET, having their office at Kalaya Headquarter. As per cross examination of complainant/PW-3 on the day of occurrence they had left Headquarter at about 05:00 pm and straightaway reached the spot at 06:55 pm; however, as per contents of Murasila, at the time of occurrence they were patrolling in the locality. As per his statement, the complainant party had left for the spot from their office informing his high-ups but as per cross examination of PW-4 constable Manzoor Ali, they had left from Police Station Kalaya. Besides the contradictions in both the statements, there is nothing available on file as to the factum of informing their high-ups or any daily diary regarding their departure from Police Station Kalaya. Similarly, as per contents of Murasila Ex. PA/1 coupled with the daily diary no. 19 regarding arrival of the complainant party to Police Station Kurez, the complainant was accompanied by constable Manzoor Ali/PW-4 and constable Hajat Ali along with driver Abdul Haq but as per cross examination of complainant/PW-3 on their return from the spot the front seat of the vehicle was occupied by Hajat Ali ASI, the complainant and driver of the vehicle while the rear

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seat of the vehicle besides the accused was occupied by constable Manzoor Ali, Hamid Ali and Rafi Ullah. The names of constables Hamid Ali and Rafi Ullah are neither mentioned in the Murasila nor in the daily diary mentioned above. Similarly, constable Manzoor Ali in his statement as PW-4 has also denied the presence of constables Hamid and Rafi Ullah when cross examined as to how they had travelled to the police station where he has stated that;

"I was alone sitting in the rear portion of the vehicle/pick-up. The accused was also made seated in the rear portion of the vehicle."

Moreover, when this fact was put to the IO/PW-5 in his cross examination he stated that;

"On the spot, the complainant Mujahid Khan was accompanied by constable Manzoor Ali and ASI Hajat Ali. No other police official was accompanied him on the spot."

With respect to proceedings carried out by the complainant on the spot, as per contents of Murasila Ex. PA/1 the time of report is 1950 hours (07:50 pm). The complainant/PW-3 when cross examined on this point he stated that he spent 08 minutes each on preparation of recovery memo and card of arrest while 14 minutes were spent on preparation of Murasila which means that the documents were prepared in 30 minutes and after preparation of the same these were handed over to constable Manzoor Ali

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in this way counting from the time of report i.e., 07:50 pm the documents would have been handed over to the constable Manzoor Ali/PW-4 at 08:20 pm but as against this when the complainant was cross examined regarding the time of handing over the documents to constable Manzoor Ali he stated that these were handed over to him at 07:50 pm. Moreover, as per contents of Murasila, constable Manzoor Ali at the time of handing over the documents was also handed over the case property to him for taking the same to the police station. In these circumstances, the question that whether the motorcycle being part of the case property was also handed over to constable Manzoor Ali or the same was later on transported to the police station. On this point all the PWs have given contradictory statements i.e., PW-2/Ain Ullah MM in his cross examination stated that;

"The motorcycle being part of the case property was handed over to me by constable Manzoor Ali."

He further stated that;

"The arrival of Mujahid Khan to the police station was recorded by me in daily diary. It is correctly mentioned in the said daily diary that the motorcycle was brought to police station by Mujahid Khan SI and handed over the same to me."

PW-3/Mujahid Khan SI when cross examined on this point, he stated that;

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"On return the front seat of the vehicle was occupied by Hajat Ali ASI, me and driver of the vehicle while the rear seat of the vehicle, besides the accused were occupied by constables Manzoor Ali, Hamid and Rafi Ullah. Nothing else was loaded in the rear portion of the vehicle/pick-up."

He stated nothing about the fact that as to how the motorcycle of the accused was taken from the spot to the police station. PW-4/constable Manzoor Ali tells a deferent story in his cross examination i.e.,

"The motorcycle was driven from the spot to the police station by constable Hamid."

With respect to process of sampling and sealing of the case property on the spot the complainant/PW-3 in his cross examination admitted that at the time of making proceedings on the spot it was Isha time and there was pitch dark and no source of light was available on spot.

With respect to texture and form of the alleged recovered chars, he stated that it was hard in texture and were in slabs form and the samples were extracted through a knife; however, when confronted with the case property in parcels no. 11 to 20 he admitted that parcels no. 12, 15 and 18 were in powdered form. In these circumstances, besides contradicting his stance regarding the texture and form of the alleged recovered chars it is also astonishing to note that as to how samples can be extracted from powder through a knife.

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In view of what is discussed above, it is held that on one hand there are glaring contradictions between the statements of PWs and the record while on the other hand the presence of complainant party on the spot, the mode and manner of taking documents by the PW-4 Constable Manzoor Ali to the police station, mode and manner of going back from the spot to the police station and the mode and manner of investigation conducted by the IO on the spot, are also doubtful.

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 constable Manzoor Ali/PW-4 to the Police Station and handed over the same to Ain Ullah MM/PW-2, 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 12.02.2023 who transmitted the same to FSL through constable Khial Hassan/PW-1 vide road permit certificate Ex. PW 5/2. In order to prove its case, the prosecution produced Ain Ullah MM as PW-2, constable Khial Hassan as PW-2 and Hashim Khan OII as PW-5. However, as discussed above the factum of the transmission of case property by constable Manzoor Ali/PW-4 to the police

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station, is doubtful. Moreover, as per application to the FSL Ex. PW 5/1, road permit certificate Ex. PW 5/2, statements of PW-5, the IO of the case, the representative samples which have been sent to the FSL on 11.02.2023 but as against this as per FSL report Ex. PK/1 the samples have been received to the FSL on 12.02.2023 and the fact that from 11.02.2023 to 12.02.2023 in whose possession the representative samples were laying, breaks the chain of the transmission of representative samples and safe custody of the same.

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 presence of complainant party on the spot, the mode and manner of recovery, the mode and manner of the transmission of case property from spot to police station, the mode and manner of the investigation carried out by the IO on the spot and transmission of representative samples to FSL. All these facts lead to the failure of prosecution to prove the case against the accused beyond shadow of doubt. Therefore, the accused namely, **Munir Khan** is acquitted of the charge levelled against him


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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., chargs 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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Sessions Judge/Judge Special Court,
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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: 23.06.2023


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Sessions Judge/Judge Special Court,
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