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STATE VS JALIL

FIR No. 13 | Dated: 03.02.2023 | U/S: 9 (d) of the Khyber  
Pakhtunkhwa CNSA 2019 | Police Station: Kalaya

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

SPECIAL CASE NO. : 9/3 OF 2023  
DATE OF INSTITUTION : 09.03.2023  
DATE OF DECISION : 26.03.2023

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

.....(COMPLAINANT)

-VERSUS-

JALIL S/O TOR KHAN, AGED ABOUT 38 YEARS, R/O CASTE  
BEZOT, TAPA QAMBAR KHEL, BEZOT, PO JALAKA MELA,  
TEHSIL LOWER, DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL)

**Present:** Umar Niaz, District Public Prosecutor for State.

: Khursheed Alam Advocate, the counsel for accused facing trial.

**FIR No. 13**                      **Dated:** 03.02.2023      **U/S:** 9 (d) of the Khyber  
Pakhtunkhwa Control of Narcotic Substances Act, 2019  
**Police Station:** Kalaya

JUDGEMENT  
26.06.2023

The above-named accused faced trial for the offence  
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR  
No. 13, dated 03.02.2023 of Police Station Kalaya.

- (2).                      The case of the prosecution as per contents of Murasila  
based FIR is; that on 03.02.2023, the complainant Mujahid  
Khan SI along with constables Hameed Ullah and Rafi Ullah  
in official vehicle driven by driver Abdul Haq having laid a  
picket at Geedare Kaley on main road leading from  
Headquarter chowk to Kohat, where at about 1600 hours a  
person holding a plastic shopper in his right hand on way from  
Headquarter Chowk towards the picket was stopped who  
disclosed his name as **Jalil s/o Toor Khan**. His person was

  
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searched but nothing incriminating were recovered from his personal search. Upon search of the plastic shopper, 02 packets of chars each wrapped with yellow colour scotch tape, weighing 1000 grams, making a total of 2000 grams were recovered. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 and 2 whereas the remaining quantity of chars weighing 990/990 grams were sealed in parcels no. 3 and 4 while the empty shopper weighing 24 grams was sealed in parcel no. 5 by placing/affixing monograms of 'MK' on all the parcels. The complainant took into possession the recovered chars vide recovery memo. The accused was arrested on the spot by issuing his card of arrest. Murasila was drafted and sent to Police Station through constable Hameed Ullah which was converted into FIR by Humayun Khan AMHC.

- (3). After registration of FIR, it was handed over to Muhammad Hanif OII 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 05.02.2023, the IO sent the samples of chars for chemical analysis to FSL through constable Gul Karim, the result whereof was received and placed on file by him. After completion of investigation, he handed over the

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case file to SHO Shal Muhammad who submitted complete challan against the accused facing trial.

(4). Upon receipt of case file for the purpose of trial, the accused was summoned, 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. Mujahid Khan SI is the complainant of the case. He as PW-1 repeated the same story as narrated in the FIR.

II. Constable Hameed Ullah is PW-2. 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 chars. He also reiterated the contents of FIR in his statement.

III. Shal Muhammad SHO is PW-3. He has submitted complete challan Ex. PW 3/1 against the accused facing trial in the instant case.

IV. Humayun Khan AMHC appeared in the witness box as PW-4. He has incorporated the contents of Murasila Ex. PA into FIR Ex. PA/1. He has received the case property from the complainant duly packed and sealed which he had kept in mal khana in safe

  
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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 4/1 and he has handed over the samples of the case property to the IO for sending the same to FSL on 05.02.2023.

V. Investigating Officer Muhammad Hanif 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, produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 5/1 and Ex. PW 5/4, sent the representative samples to FSL along with application addressed to the incharge FSL Ex. PW 5/2 and road permit certificate Ex. PW 5/3 and result of the same Ex. PK was placed on file by him, placed on file copy of Register No. 19 Ex. PW 4/1, copies of daily diaries along with other relevant documents and submitted the case file to SHO for its onward submission.

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VI. Lastly, Constable Gul Karim was examined as PW-6. He has taken the samples of chars in parcels no. 1 and 2 to the FSL for chemical analysis on 05.02.2023 and after submission of the same, he has handed over the receipt of the parcels to the IO.


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(5). Prosecution closed its evidence whereafter the statement of accused was recorded u/s 342 Cr.P.C but the accused wished to be examined on oath nor opted to produce evidence in defence. Accordingly, statement of accused u/s 342 (2) CrPC was recorded and produced Shah Jahan s/o Abdul Sharif as DW-1 in his defence. 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 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.

  
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(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:

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

(9). The case of prosecution, as per contents of Murasila Ex. PA, court statements of Mujahid Khan SI as PW-1 and

  
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constable Hameed Ullah as PW-2 is, that the complainant Mujahid Khan SI/PW-1 along with constables Hameed Ullah/PW-2 and Rafi Ullah in official vehicle driven by driver Abdul Haq having laid a picket at Geedare Kaley on main road leading from Headquarter chowk to Kohat, where at about 1600 hours a person holding a plastic shopper in his right hand on way from Headquarter Chowk towards the picket was stopped who disclosed his name as **Jalil s/o Toor Khan**. His person was searched but nothing incriminating were recovered from his personal search. Upon search of the plastic shopper, 02 packets of chars each wrapped with yellow colour scotch tape, weighing 1000 grams, making a total of 2000 grams were recovered. The complainant/PW-1 on the spot has separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 and 2 whereas the remaining quantity of chars weighing 990/990 grams were sealed in parcels no. 3 and 4 while the empty shopper weighing 24 grams was sealed in parcel no. 5, placing/affixing monograms of 'MK' on all the parcels. The accused has been arrested on the spot by issuing his card of arrest Ex. PW 1/1.

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The Murasila Ex. PA has been transmitted by constable Hameed Ullah/PW-2 to police station where, after registration of FIR by Humayun Khan AMHC/PW-4, it has been handed over to Muhammad Hanif/PW-5, the IO of the case. The IO has visited the spot and conducted investigation by making a

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site plan Ex. PB on the pointation of Mujahid Khan SI/PW-2  
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 SI, the  
complainant of the case, as PW-1 who reiterated the contents  
of Murasila Ex. PA and constable Hameed Ullah, the  
eyewitness witness of the occurrence and marginal witness of  
recovery memo Ex. PC as PW-2 who besides repeating the  
same story as narrated in the FIR, stated to have taken the  
documents to the police station for registration of FIR and  
handed over the documents to Humayun Khan AMHC/PW-4  
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 Muhammad  
Hanif as PW-5 who has prepared 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.

As per contents of Murasila Ex. PA, the occurrence has  
allegedly taken place at 1600 hours i.e., 04:00 pm but when  
the complainant/PW-1 was cross examined on that point he  
stated that he left his office at Headquarter at 03:00 pm and  
reached the place of occurrence at 03:30 pm and the accused  
arrived there within 15 minutes i.e., 03:45 pm. His statement  
was even contradicted by PW-2, the marginal witness, when

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he stated that they reached the place of occurrence at 13:45 pm. Similarly, with respect to presence of the complainant/PW-1 on the spot of occurrence, he has not annexed/produced any daily diary regarding his departure from his office. Moreover, as per site plan Ex. PB the place of occurrence is situated on a straight road and as admitted by the complainant in his cross examination, a straight road is leading to the spot of occurrence from Headquarter chowk side and the police party was visible from a long distance. It is also admitted on record that on both side of road leading to the spot, there are fields. So, in these circumstances, as to why a person having in possession of 2kg of chars allegedly holding by him in his hands, would straight away go towards the police party instead of changing his root or making his escape good from 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-1 to the Police Station and handed over the same to Humayun Khan AMHC/PW-4, who deposited the same in mal khana of police station. The representative samples were handed over by Moharrir of the Police Station to the IO on 05.02.2023 who

  
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transmitted the same to FSL through constable Gul Karim/PW-6 vide road permit certificate Ex. PW 5/3.

In order to prove its case, the prosecution produced Humayun Khan AMHC as PW-4, constable Gul Karim as PW-6 and Muhammad Hanif OII as PW-5. The occurrence has taken place on 03.02.2023 while the representative samples have been transmitted to FSL on 05.02.2023 with a delay of 02 days. Moreover, as per calendar, 05.02.2023 is a Sunday, the holiday, where the public offices are closed and the FSL, being a public office, is also presumed to be closed while the vice versa situation i.e., that the FSL, is opened even on Sunday, is to be proved by prosecution. However, the prosecution has not brought anything on record in this respect.

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 and transmission of the representative samples, 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

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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, **Jalil** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is on bail. His bail bonds stand cancelled and his sureties are discharged of the liabilities of bail bonds. The case property i.e., chargs be destroyed after the expiry of period provided for appeal/revision in accordance with law. Consign.

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



**CERTIFICATE**

Certified that this judgement consists of eleven (11) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 26.06.2023



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