

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

SPECIAL CASE NO. : 7/3 OF 2023
DATE OF INSTITUTION : 08.03.2023
DATE OF DECISION : 23.06.2023

STATE THROUGH INSPECTOR FAROOQ, INCHARGE CP GARAG

.....(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. 14 **Dated:** 03.02.2023 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Kalaya

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. 14, 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 Inspector Farooq along with Muhammad Qayyum ASI and constable Kashmalo Khan in an official vehicle having laid a picket at Anjari Bazar were present on the spot where at about 1700 hours a motorcycle on way from Sheeraz Garhi towards the picket was stopped for the purpose of checking. The driver of the motorcycle was made come down from motorcycle but nothing incriminating was recovered from his personal search.

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Upon search of a plastic shopper of yellow colour placed on oil tank of the motorcycle, 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 plastic shopper weighing 35 grams was sealed in parcel no. 5 by placing/affixing monograms of 'SH' on all the parcels. The complainant took into possession the recovered chars and the motorcycle without registration number having Engine No. CTE13859 and Chassis No. CTC13759 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 was sent to Police Station through Muhammad Qayyum ASI which was converted into FIR by Jameel Khan MHC.

- (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

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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, 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. Shal Muhammad SHO appeared in the witness box as PW-1 who has submitted complete challan Ex. PW 1/1 against the accused facing trial in the instant case.
- II. Jameel Khan MHC is 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 parked the motorcycle in vicinity of the police station. The witness further deposed that he has recorded entry of the case property in Register No. 19 Ex. PW 2/1 and he has handed over the samples of the case property to the IO for sending the same to FSL on 05.02.2023.
- III. Inspector Farooq is the complainant of the case. He as PW-3 repeated the same story as narrated in the FIR.


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- IV. Muhammad Qayyum ASI 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 chars and the motorcycle. He also reiterated the contents of FIR in his statement.
- V. Constable Gul Karim is PW-5. 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.
- VI. Lastly, Investigating Officer Muhammad Hanif was examined as PW-6 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 6/3 and Ex. PW 6/4, sent the representative samples to FSL along with application addressed to the incharge FSL Ex. PW 6/2 and road permit certificate Ex. PW 6/3 and result of the same Ex. PK was placed on file by him, drafted applications Ex. PW 6/5 and Ex. PW 6/6 to his high-ups for verification of the motorcycle, placed on file


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copy of Register No. 19 Ex. PW 2/1, copies of daily diaries Ex. PW 2/2 and Ex. PW 2/3 and submitted the case file to SHO for its onward submission.

(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 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?

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(9). The case of prosecution, as per contents of Murasila Ex. PA/1, court statements of Inspector Farooq as PW-3 and

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Muhammad Qayyum ASI as PW-4 is, that the complainant Inspector Farooq/PW-3 along with Muhammad Qayyum ASI/PW-4 and constable Kashmalo Khanin an official vehicle having laid a picket at Anjari Bazar were present on the spot where at about 1700 hours a motorcycle on way from Sheeraz Garhi towards the picket was stopped for the purpose of checking. The driver of the motorcycle was made come down from motorcycle but nothing incriminating was recovered from his personal search. Upon search of a plastic shopper of yellow colour placed on oil tank of the motorcycle, 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-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 and 2 whereas the remaining quantity of chars weighing 990/990 grams were sealed in parcels no. 2 and 3 while the plastic shopper weighing 35 grams was sealed in parcel no. 5, placing/affixing monograms of 'SH' on all the parcels. The accused disclosing his name as **Munir Khan** 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 has been transmitted by Muhammad Qayyum ASI/PW-4 to police station where, after registration of FIR by Jameel Khan MHC/PW-2, it has been handed over to Muhammad Hanif OII/PW-6, the IO of the case. The IO has

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visited the spot and conducted investigation by making a site plan Ex. PB on the pointation of Inspector Farooq/PW-3 and recorded the statements of marginal witnesses.

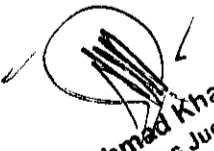
The prosecution in order to prove its case in the mode and manner as alleged, has examined Inspector Farooq, the complainant of the case, as PW-3 who has reiterated the contents of Murasila Ex. PA/1 and Muhammad Qayyum ASI, the eyewitness witness of the occurrence and marginal witness of recovery memo Ex. PC as PW-4 who besides repeating the same story as narrated in the FIR, has stated to have taken the documents to the police station and handed over the same to Jameel Khan MHC/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 Muhammad Hanif OII as PW-6 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.

As per contents of Murasila, the occurrence has allegedly taken place at Anjani bazar. The complainant party consisted of the complainant, Inspector Farooq Khan, constable Kashmalo Khan No. 1166 and Muhammad Qayyum ASI. The complainant Inspector Farooq/PW-3 and constable Kashmalo Khan were posted at Garag check-post while Muhammad Qayyum ASI was posted at Shiraz Garhi check-


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post. As per cross examination of complainant Inspector Farooq Khan as PW-3, on the day of occurrence he along with constable Kashmalo Khan had left the Garag check-post at 04:00 pm, went to Shiraz Garhi check-post and left the Shiraz Garhi check-post at 04:50; however, they have neither annexed/produced daily diary of Garag check-post nor that of Shiraz Garhi check-post. Similarly, as per statements of the complainant as PW-3 and Muhammad Qayyum ASI, the marginal witness of the recovery memo, they have travelled to the spot in personal vehicle of complainant Farooq Khan; however, when asked about the registration number of the vehicle, none of the witnesses was found aware of this fact. Moreover, when this fact was put to the IO in his cross examination, he was also found unaware even of the type of the vehicle which the complainant was in possession of, at the time of spot inspection besides having failed to show the vehicle of the complainant party in the site plan Ex. PB.

With respect to taking of documents by PW Muhammad Qayyum ASI to the police station, the complainant in his cross examination as PW-3 stated that Muhammad Qayyum ASI while taking the documents to the police station has travelled via his own motorcycle. Similarly, Muhammad Qayyum ASI also stated that he has travelled to the police station by his own motorcycle and returned to the spot via said motorcycle. When further cross examined both


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the PWs stated that while leaving the spot for police station, Muhammad Qayyum ASI boarded the private vehicle of the complainant. In these circumstances, the fact that Muhammad Qayyum ASI, being posted at Shiraz Garhi check-post, his personal motorcycle is presumed to be parked over there so as to how he was able to make his motorcycle available on the spot for travelling to the police station and after return to the spot via same motorcycle how he was able to dispose of his own motorcycle while leaving the spot with complainant. In this respect the explanation provided by Muhammad Qayyum ASI in his cross examination as PW-4 to the fact that after collecting documents from the complainant he went to Shiraz Garhi check-post and took his motorcycle and went to the police station. Similarly, when he returned to the spot via same motorcycle, at the time of leaving the spot with complainant, he handed over his motorcycle to Tariq Aziz constable at Anjani bazar. This much explanation on behalf of PW comes within the purview of improvements for filling the lacunas. The facts as to the mode and manner of leaving the spot by complainant party, the complainant as PW-3 in his cross examination stated that;

"I along with Muhammad Qayyum ASI and Kashmalo Khan constable left the spot for PS at 07:50 pm. while on way to the PS Muhammad Qayyum ASI was occupying the front seat


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while constable Kashmalo Khan was occupying the rear seat of the motorcar.”

In these circumstances, the question that if the complainant, Muhammad Qayyum ASI and Constable Kashmalo Khan have travelled to the police station from the spot in the motorcar of complainant then as to how they were able to shift the motorcycle of the accused, the case property and the accused to the police station; however, when realized his mistake the complainant contradicted his own statement and stated that;

“While leaving from the spot to the PS besides police officials they were accompanied by accused and the case property. The motorcycle was taken to the PS from the spot by constable Kashmalo Khan.”

The IO has been examined as PW-6 where, as per his court statement after registration of FIR the same along with other documents have been handed over to him for investigation and he along with police officials has left the police station for spot investigation. He has prepared the site plan on the spot and recorded the statements of PWs. In his cross examination, as discussed earlier, when he was cross examined about the type of vehicle which the complainant was in possession of, he was found unaware which means that either the complainant was not in possession of any vehicle as claimed by him or the IO has not visited the spot at all.


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PW-2 Jamil Khan MHC has produced original daily diary showing the departure of the IO from the police station for the purpose of investigation wherein he has admitted that on the same day the return of Muhammad Hanif OII has been shown in connection of case FIR No. 13 where cutting and overwriting has been made in the time of return of Muhammad Hanif OII to the police station, mentioned as 1800 hours via Mad No. 19.

In view of what is discussed above, it is held that there are glaring contradictions between the statements of PWs on one hand and the record and the statements of PWs on the other hand regarding the presence of complainant party on the spot, the mode and manner of taking documents by the PW-4 Muhammad Qayyum ASI 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.

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-3 to the Police Station and handed over the same to Jameel Khan MHC/PW-2, who deposited the same in Mal khana while parked the motorcycle in vicinity of police station. The representative

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samples were handed over by Moharrir of the Police Station to the IO on 05.02.2023 who transmitted the same to FSL through constable Gul Karim/PW-5 vide road permit certificate Ex. PW 6/3. In order to prove its case, the prosecution produced Jameel Khan MHC as PW-2, constable Gul Karim as PW-5 and Muhammad Hanif OII as PW-6. However, as discussed earlier, the transmission of case property by complainant/PW-3 from the spot to the police station, is doubtful. Moreover, 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. Furthermore, 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



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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 by extending him the benefit of doubt. Accused is on bail. His bail bonds stand cancelled and his sureties are released of the liabilities of bail bonds. 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.

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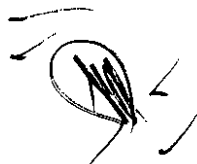



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CERTIFICATE

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

Dated: 23.06.2023


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