

IN THE COURT OF ASGHAR SHAH
SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI
(AT BABER MELA)

SPECIAL CASE NO. : 24/3 OF 2020
DATE OF INSTITUTION : 03.11.2020
DATE OF DECISION : 12.01.2021

STATE THROUGH JAHANZEB KHAN SHO, POLICE STATION,
UPPER ORAKZAI

.....(COMPLAINANT)

-VERSUS-

SHER JAAN S/O JANAT GUL, AGED ABOUT 44 YEARS, TRIBE
ALI KHEL, SUB-TRIBE MIRWAS KHEL, TERYO PKHA, GHILJO
ORAKZAI.

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

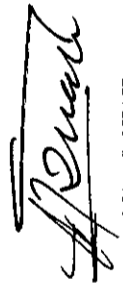
Present: Umar Niaz, District Public Prosecutor for state.
: Sana Ullah Khan Advocate for accused facing trial.

FIR No. 21 **Dated:** 06.06.2020 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019

Police Station: Upper Orakzai Ghiljo


JUDGEMENT
12.01.2021

The story of the prosecution as per contents of Murasila
Ex. PA/1 converted into FIR Ex. PA are that; on 06.06.2020,
complainant, Jahanzeb Khan SHO alongwith other police
officials were on their routine patrolling in the official vehicle
at the area of Tor Kanre when meanwhile he received spy
information about smuggling of chars in pick-up Double
cabin white colour having registration no. ID5427. Upon
receipt of the information, the police officials laid barricade
at Tor Kanre. At about 1200 hours, one white colour pick-up
Double cabin having registration no. ID5427 came to the spot



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which was stopped and upon search of the vehicle, the police official recovered a plastic shoper white colour from beneath the driver seat which upon search led to the recovery of 05 packets of chars, which chars upon weighment came out to be 4556 grams in total. The police officials separated 10/10 grams chars from each packet and packed and sealed the same into parcels no. 1 to 5 for chemical analysis of FSL, whereas remaining quantity of chars was packed and sealed in separate parcel bearing no. 6. The accused disclosed his name as Sher Jaan s/o Janat Gul, who was accordingly arrested by issuing his card of arrest Ex. PW 2/1. The local police took into possession the recovered chars alongwith pick-up double cabin white colour through recovery memo Ex. PC. Murasila Ex. PA/1 was drafted and sent to the PS which was converted into FIR Ex. PA. Hence, the case in hand.


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(2). Upon the receipt of case file for the purpose of trial, notice was issued to the accused facing trial and upon his appearance, proceedings were initiated and he was charge sheeted to which he pleaded not guilty and claimed trial and accordingly the witnesses were summoned and examined. The gist of the evidence is as follow;

(3). Gul Asghar ASI Moharrir of PS Upper Orakzai Ghiljo as PW-1 deposed that he has reduced the contents of Murasila Ex. PA/1 into FIR Ex. PA besides handed over copy of FIR to the IO for investigation. This PW also deposed with respect to

receipt of 06 parcels of case property as well as the double cabin pick-up from the complainant/SHO and kept the parcels in the mal khana of the PS for safe custody while the vehicle was parked inside the PS. The detail of the case property was recorded in register 19 Ex. PW 1/1. PW-1 further deposed regarding the departure and return of the complainant/SHO on the day of occurrence to have had been recorded by him in daily diary no. 4 and daily diary no. 13 dated 06.06.2020 Ex. PW 1/2 and Ex. PW 1/3 respectively. Lastly, the PW-1 deposed with regard to handing over the samples of chars to the IO for FSL Peshawar on 06.07.2020. Complainant, Jahanzeb Khan SHO as PW-2 and eyewitness constable Shahid Khan as PW-3, both in their statements repeated the story of FIR. Malak Abdul Janan SI as PW-4 stated to have taken the samples of chars to the FSL for chemical analysis. Muhammad Ishaq SI as PW-5 deposed in respect of investigation carried out by him in the instant case.


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(4). Thereafter, prosecution closed their evidence where after statement of the accused was recorded U/S 342 Cr.P.C but the accused neither wished to be examined on oath nor produced evidence in defence. Accordingly, arguments of the learned DPP for the state and counsel for the accused facing trial heard and case file perused.

(5). From the arguments and record available on file it reveals that the alleged recovery of contraband was affected

on 06.06.2020 whereas as per report of the FSL Ex. PK, the samples of chars were received in the FSL Peshawar on 06.07.2020 i.e., after 01 month of the recovery. With regard to the delay of 01 month, the IO Muhammad Ishaq SI as PW-5 deposed that he took the samples of chars to the FSL Peshawar on 27.06.2020 but the FSL was closed on account of Covid-19, hence he came back and recorded his entry to this effect in the daily diary no. 7 dated 27.06.2020. It was further deposed that thereafter on 06.07.2020, he again sent the samples through SI Abdul Janan who deposited the same in the FSL. However, no notification regarding the closure of FSL Peshawar on account of Covid-19 was produced besides the Moharrir Gul Asghar as PW-1 in his evidence did not utter a single word regarding the handing over of samples of chars to the IO on 27.06.2020. The application Ex. Pw 5/3 addressed to the incharge FSL Peshawar is having no name of the IO Muhammad Ishaq or that of SI Abdul Janan to confirm the dispatch of the samples through either of them. Moreover, the evidence is silent as to why within 72 hours of the occurrence the samples were not dispatched to the FSL. The delay in sending the samples of chars has not been properly explained by the prosecution and the same has created a doubt regarding the recovery and availability of the same for the purpose of FSL. Moreover, the local Police in the recovery memo Ex. PC as well as in Murasila Ex. PA/1



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have mentioned that the recovered Chars were in Gardah (Powder) form but the report of FSL Ex. PK overleaf shows that the form of the contraband received and examined in the FSL was brown solid besides the complainant, Jahanzeb Khan SHO as PW-2 in his cross examination deposed that chars in powder form was recovered and he separated 10 grams from each packet through knife which is beyond the understandings of a prudent mind as if it was in powder form, there was no need to cut the same through knife. As such not only the form of chars recovered is doubtful but also the FSL report cannot be based as evidence for the conviction of accused facing trial as the same is not pertains to Chars Gardah which was allegedly recovered from the accused facing trial besides the difference of nature of the recovered chars as mentioned in the Murasila and report of the FSL coupled with the late sending of samples to the FSL Peshawar has badly dented the version of the prosecution pertaining to the recovery of contraband, determination of its nature through FSL etc. Thus, the report of the FSL is inconclusive and unreliable.

- (6). The perusal of record further reveals that the recovery memo Ex. PC is showing that as many 06 parcels were prepared at the spot which were sealed with seal having abbreviation of G.J. However, the seal of G.J is not mentioned in the Murasila Ex. PA/1 and more so the



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Murasila is also silent with regard to scaling of samples through digital scale as well as scaling of each and every packet separately to determine that the recovered contraband was sealed and Murasila was prepared at the spot or otherwise. Moreover, constable Arshad Ullah through whom allegedly the Murasila was sent for registration of FIR is neither shown in the site plan Ex. PB nor was produced to determine and support the version of the complainant and eyewitness. The evidence of constable Arshad Ullah was the best evidence withheld by the prosecution. So, adverse inference under Article 129 of Qanoon e Shahadat Order, 1984 would be drawn that had such witness was produced, his evidence would have gone against the version of his producer. The complainant PW-2 and eyewitness as PW-3 are in contradiction with regard to packing and sealing of the samples either by the complainant himself or through constable Mustafa. The complainant in his cross examination deposed that constable Arshad Ullah proceeded to the PS through private vehicle whereas the eyewitness, constable Shahid Khan PW-3 deposed that he went through motorcycle. The complainant has mentioned the time of occurrence as 1200 hours, time of report as 1210 hours whereas the FIR Ex. PA is showing the same was registered at 1240 hours. However, in evidence, the complainant in his cross examination at page 5 deposed that he spent 30 minutes


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on checking, recovery, packing and sealing while 10/15 minutes on drafting of documents besides it was alleged that the distance between the spot and PS is coverable within 20/25 minutes. By the said calculations, the FIR was supposed to have been chalked out at 1300/1310 hours but the registration of FIR at about 1240 hours means that the same is denying the mode and manner of the occurrence as well as the very presence of the PWs at the spot at the relevant time of occurrence as alleged by the prosecution.

(7). It is also necessary to mention here that accused facing trial is neither previous convict nor involved in any such case in the past besides neither he has confessed his guilt nor any further recovery was affected at their pointation despite he being in police custody for some time. Also, no evidence was brought on record to prove his connection with the recovered contraband rather the evidence led by the prosecution is full of doubts and contradictions which have denied the very presence of the witnesses and their proceedings at the spot at the relevant time. It seems that either the witnesses were not present at the relevant place on the relevant date and time or have not deposed in the mode and manner in which the occurrence was alleged to have had been committed.

(8). Accordingly, in the light of above, the above-named accused is acquitted of the charges levelled against him



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through the FIR in question. Accused is on bail, his bail bonds stand cancelled and his sureties are discharged from liabilities of bail bonds. The recovered motorcar has already been returned to the lawful owner and since the recovery was not alleged from the secret cavities of the vehicle, hence no further order for the vehicle is required. Chars be destroyed but after the expiry of period provided for appeal/revision in accordance with law.

- (9). File be consigned to Session Record Room after its necessary completion and compilation.

Announced
12.01.2021



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CERTIFICATE

Certified that this judgment consists of eight (08) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 12.01.2021



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