

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

CNSA CASE NO. : 30/3 OF 2021
DATE OF INSTITUTION : 14.01.2021
DATE OF DECISION : 25.03.2021

STATE THROUGH KHURSHEED ANWAR ASHO, POLICE STATION
KALAYA, LOWER ORAKZAI

.....(COMPLAINANT)

-VERSUS-

1. SAJID KHAN S/O WAZIR AZAM, AGED ABOUT 19 YEARS, R/O MUKHTAR GUL ROAD HOUSE NO. 1/8, STREET NO. 1, KOHAT CANTT.
2. SYED HAMZA SHAH S/O SYED TARIQ SHAH, AGED ABOUT 19 YEARS, R/O MUKHTAR GUL ROAD HOUSE NO. 1/8, STREET NO. 1, KOHAT CANTT

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


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


FIR No. 124 **Dated:** 10.12.2020 **U/S:** 9 (c) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019

Police Station: Kalaya Lower Orakzai

JUDGEMENT
25.03.2021

The story of the prosecution as per contents of Murasila Ex. PA/1 converted into FIR Ex. PA are that; on 10.12.2020, complainant, Khusheed Anwar ASHO alongwith other police official were on their routine patrolling in the locality when he saw two persons in suspicious condition who disclosed their names as Sajid Khan s/o Wazir Azam and Syed Hamza s/o Tariq Shah. The local police searched the accused, Sajid Khan and consequently, found one plastic shoper from his trouser-fold which led to the recovery of 300 grams chars. The complainant separated 10 grams chars from the same and packed and sealed it into parcels no. 1 for



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela



chemical analysis of FSL, whereas remaining quantity 290 grams of chars was packed and sealed in separate parcels bearing no. 2. Similarly, the complainant also searched the accused, Syed Hamza as a result of which he found one plastic shoper from his trouser-fold which led to the recovery of 300 grams chars. The complainant separated 10 grams chars from the same and packed and sealed it into parcels no. 3 for chemical analysis of FSL, whereas remaining quantity 290 grams of chars was packed and sealed in separate parcels bearing no. 4. The local police took into possession the recovered chars through recovery memo Ex. PC. Both the accused were accordingly arrested by issuing their card of arrest Ex. PW 4/1. Murasila Ex. PA/1 was drafted and sent to the PS which was converted into FIR Ex. PA. Hence, the case in hand.

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

- I. Muhammad Shafiq SHO as PW-1 deposed in respect of submission of complete challan Ex. PW 1/1 on 12.12.2020 in the instant case against the accused facing trial.
- II. Ain Ullah Moharrir as PW-2 deposed in respect of registration of FIR Ex. PA from the contents of Murasila and handing over copy of Murasila, FIR,


ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela



recovery memo and card of arrest to the incharge investigation besides deposited in respect of receipt of case property duly packed and sealed from the complainant which he thereafter kept in mal-khana in safe custody. The witness further deposed in respect of recording of entry regarding the safe custody of case property in register 19 Ex. PW 2/1 as well as handing over of samples of the case property for FSL to the IO, Shal Muhammad on 18.12.2020.

III. Constable, Nikzad Ali appeared as PW-3 deposed that he has taken the samples of recovered chars to the FSL for chemical analysis on 18.12.2020 and after submission of the same, he was given the receipt of the parcels which he handed over to the IO upon return.

IV. Complainant, Khursheed Anwar ASHO and eyewitness, constable Jameel Khan in their evidence as PW-4 and PW-5 respectively, repeated the story of FIR.

V. Lastly, investigating officer Shal Muhammad was examined as PW-6 who in his evidence deposed in respect of the investigation carried out by him in the instant case including preparation of site plan Ex. PB, recoding statements of PWs, production of accused before the court, handing over samples of chars to constable, Nikzad Ali for FSL Peshawar alongwith application Ex. PW 6/2 and road permit certificate

ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

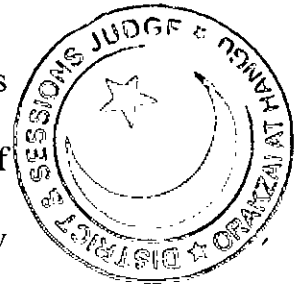


Ex. PW 6/3, receipt of FSL report Ex. PK, copies of daily diary Ex. PW 6/4 and Ex. PW 6/5 regarding his departure and return as well as that of complainant from the PS to the spot on the day of occurrence and submission of case file upon completion of investigation to the SHO for submission of complete challan against the accused facing trial.

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

(4). From the arguments and record available on file, it reveals that the recovery was effected on 10.12.2020 whereas samples of chars were received in the FSL on 18.12.2020 i.e., on the 8th day of the recovery which delay has not been properly explained besides the constable, Nikzad Ali PW-3 who allegedly taken the samples to the FSL admitted in his cross examination that he was not examined by the IO u/s 161 Cr.P.C as such the very sending of the samples through the said constable is doubtful and the chain of safe custody of case property from spot to the PS and from PS to the FSL is broken thereby creating a doubt regarding the availability of the case property either at the spot on the day of recovery or for the purpose of FSL to Peshawar. The samples as per rule 4 (2) of The Control of Narcotic Substances (Government Analysts) Rules, 2001 are to be sent not later than 72 hours of its

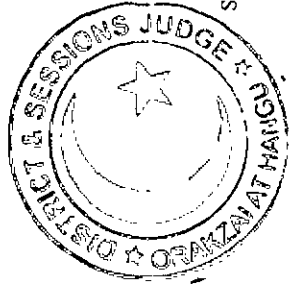
ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Meela



recovery which was not done in the instant case. The late sending of samples of chars to the FSL Peshawar has created a doubt regarding the recovery and availability of the same for the purpose of FSL. Thus, the report of the FSL cannot be based as piece of evidence for conviction of the accused facing trial.

(5). The recovery memo Ex. PC is showing that as many four parcels were prepared at the spot which were sealed with three seals each having abbreviation of M.S. However, the seal of M.S is not mentioned in the Murasila Ex. PA/1 to determine that the recovered contraband was sealed and Murasila was prepared at the spot. The seal of M.S belongs to Muhammad Shafiq SHO of the PS who by the time of recovery was at PS Kalaya Lower Orakzai situated at a distance of half kilometre from the spot and it was not explained as to how the seal of M.S came to the possession of the complainant. The SHO Muhammad Shafiq as PW-1 in his evidence did not utter a single word regarding the handing over of his seal of M.S to the complainant, Khursheed Anwar. The daily diary pertaining to the departure of the complainant not produced to determine as to when and from what place he departed for the spot. Moreover, neither in the recovery memo nor in the Murasila, the scaling of chars through digital scale is mentioned, however in the evidence, the ocular account deposed that the same were scaled through digital scale which is in fact a dishonest improvement on the part of ocular account. Thus, the proceeding of scaling by means of digital scale, sealing and affixing the seal of M.S at the spot as alleged by the complainant failed to establish and it contradicts the very mode

ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela



and manner of the occurrence besides it would denote that the proceedings of scaling, packing and sealing has not been conducted at the spot. Thus, the very mode and manner of the occurrence is doubtful.

(6). The complainant, Khursheed Anwar as PW-4 deposed that at the spot apart from him HC Shah Wali Khan, constable Jameel Khan, constable Shah Wali and police officials Noor Hassan and Zeeshan were present but however when the situation is placed in juxta-position with the site plan Ex. PB then it would reveal that police officials Noor Hassan and Zeeshan have not been shown in the site plan. Thus, the very mode and manner of the occurrence is doubtful.

(7). It is worth mentioning that Shah Wali HC who has been assigned the role of taking Murasila from the spot has not been produced for evidence as such the very chain of the prosecution case from spot to the PS regarding the recovery and safe custody of chars of the instant case has been broken. The evidence of Shah Wali HC was of utmost importance and by withholding the said piece of evidence, the adverse inference under article 129 of the Qanon e Shahadat Order, 1984 would be drawn against the prosecution that had such witness was produced, his evidence would have gone against the version of the prosecution. Thus, the very presence of the PWs and the mode and manner of the occurrence alleged at the relevant time is doubtful.

(8). It is also necessary to mention here that accused facing trial are neither previous convict nor involved in any such case in the past besides neither they have confessed their guilt nor any



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

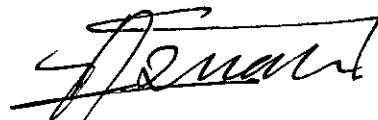


further recovery was affected at their pointation despite they being in police custody for some time. Also, no evidence was brought on record to prove their connection with the recovered contraband rather the evidence led by the prosecution is full of doubts and contradictions which have denied the very presence of the witnesses and their proceedings at the spot at the relevant time. As per discussion above it is established that the evidence of the witnesses has contradicted the very mode and manner of the occurrence and thereby created serious dents and doubts in their version regarding the involvement of the accused facing trial in the commission of offence charged for.

(9). Accordingly, in the light of above, both the above-named accused are acquitted of the charges levelled against them through the FIR in question. Accused are on bail, their bail bonds stand cancelled and their sureties stand discharged from the liabilities of bail bonds. The Chars be destroyed after the expiry of period provided for appeal/revision in accordance with law.

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

Announced
25.03.2021




ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

CERTIFICATE

Certified that this judgment consists of seven (07) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 25.03.2021



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

