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**STATE VS QEEMAT KHAN ETC.**  
**FIR No. 50 | Dated: 18.12.2022 | U/S: 9 (d) of the Khyber**  
**Pakhtunkhwa CNSA 2019 | Police Station: Mishti Mela**

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

SPECIAL CASE NO. : 11/3 OF 2023  
DATE OF ORIGINAL INSTITUTION : 13.02.2023  
DATE OF TRANSFER-IN : 09.03.2023  
DATE OF DECISION : 25.08.2023

STATE THROUGH MUHAMMAD YOUNAS SHO, POLICE STATION  
MISHTI MELA

.....(COMPLAINANT)

-VERSUS-

1. QEEMAT KHAN S/O ABDUL KHALIQ, AGED ABOUT 33 YEARS,  
R/O CASTE MISHTI VILLAGE DARA HASSANZAI, DISTRICT  
ORAKZAI
2. UMMAT KHAN S/O ABDUL KHALIQ, AGED ABOUT 31 YEARS,  
R/O CASTE MISHTI VILLAGE DARA HASSANZAI, DISTRICT  
ORAKZAI

..... (ACCUSED FACING TRIAL)

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

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**Pakhtunkhwa Control of Narcotic Substances Act, 2019,**  
**Police Station: Mishti Mela**

JUDGEMENT  
25.08.2023

The above-named accused faced trial for the offence  
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR  
No. 50, dated 18.12.2022 of Police Station Mishti Mela.

- (2).                      The case of the prosecution as per contents of Murasila  
based FIR is; that on 18.12.2022, the complainant Muhammad  
Younas SHO along with constables Saleem Khan and  
Muhammad Umar having laid a picket were present on the  
spot where at about 1400 hours a motorcycle of red colour on  
way from Mishti Mela towards the picket was stopped for the  
purpose of checking. Both the persons were made come down

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from motorcycle. Nothing incriminating was recovered from their personal search; however, a blue colour plastic shopper tied with oil tank of the motorcycle in possession of the driver and a white colour bag in the lap of the person occupying the rear seat were recovered. Upon search of the plastic shopper, 2000 grams of chars were recovered whereas the search of the white colour bag led the complainant to the recovery of 9000 grams of chars. The driver of the motorcycle disclosed his name as Qeemat Khan while the person occupying the rear seat disclosed his name as Ummat Khan. The complainant separated 10 grams of chars each from the shopper and the bag for chemical analysis through FSL, sealed the same into parcels no. 1 and 2 whereas the remaining quantity of chars weighing 1990 grams inside the shopper were sealed in parcel no. 3 while the remaining quantity of chars weighing 8990 grams inside the bag was sealed in parcel no. 4 by placing/affixing monograms of 'MY' on all the parcels. The complainant took into possession the recovered chars and the motorcycle without registration number having scratched Engine and Chassis numbers vide recovery memo. The accused were arrested on the spot by issuing his card of arrest. Murasila was drafted and the same along with other relevant documents was sent to Police Station through constable Muhammad Umar which was converted into FIR by Muhammad Saeed MHC.

  
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(3). After registration of FIR, it was handed over to Abdul Manaf 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 21.12.2023, the IO sent the samples of chars for chemical analysis to FSL through constable Khalil Khan, the 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 were summoned through addendum-B, copies of the record were provided to them in line with section 265-C CrPC and formal charge was framed against them to which they pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned and examined. The gist of the evidence is as follow;

I. Constable Muhammad Khalil, the marginal witness of the pointation memo Ex. PW 1/1 vide which the accused led the police party to the spot and pointed out the spot to the IO, is PW-1. He has taken the samples of chars in parcels no. 1 & 2 to the FSL for chemical analysis on 21.12.2022 and after submission of the same, he has handed over the receipt of the parcels to the IO.

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- II. Muhammad Saeed MHC, 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 parked the motorcycle in vicinity of the police station and 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, he has handed over the case property to the IO for production of the same before the court of Judicial Magistrate on 19.12.2022 and he has handed over the samples of the case property to the IO for sending the same to FSL on 21.12.2022.
- III. Muhammad Younas SHO is the complainant of the case. He, as PW-3, repeated the same story as narrated in the FIR. He has submitted complete challan Ex. PW 3/2 against the accused facing trial in the instant case.
- IV. Constable Muhammad Umar 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 chargs and the motorcycle. He also reiterated the contents of FIR in his statement.

  
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V. Investigating Officer Abdul Manaf 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, drafted application Ex. PW 5/1 for verification of the motorcycle, produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 5/2 and Ex. PW 5/5, prepared pointation memo Ex. PW 1/1, sent the representative samples to FSL along with application addressed to the incharge FSL Ex. PW 5/3 and road permit certificate Ex. PW 5/4 and result of the same Ex. PK was placed on file by him, placed on file copy of Register No. 19 Ex. PW 2/1, a letter Ex. PW 5/6 regarding examination of the motorcycle, photograph of accused Ex. PW 5/7, DDs Ex. PW 5/8 and submitted the case file to SHO for its onward submission.

(5). Prosecution closed its evidence whereafter the statements of accused were 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.

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(6). Learned DPP for State submitted that the accused facing trial are 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.

(7). Learned counsel for the defence argued that though the accused facing trial are directly nominated in the FIR, the alleged chars have been shown recovered from their possession and the report of FSL support the case of prosecution; however, the accused facing trial are falsely implicated in the instant case and nothing have been recovered from their 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

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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/1, court statements of Muhammad Younas as PW-3 and constable Muhammad Umar as PW-4 is, that the complainant Muhammad Younas/PW-3 along with constables Muhammad Umar/PW-4 and Saleem Khan having laid a picket were present on the spot where at about 1400 hours a motorcycle of red colour on way from Mishti Mela towards the picket was stopped for the purpose of checking. Both the persons were made come down from motorcycle. Nothing incriminating was recovered from their personal search; however, a blue colour plastic shopper tied with oil tank of the motorcycle in possession of the driver and a white colour bag in the lap of the person occupying the rear seat were recovered.

  
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Upon search of the plastic shopper, 2000 grams of chars were recovered whereas the search of the white colour bag led the complainant to the recovery of 9000 grams of chars. The driver of the motorcycle disclosed his name as Qeemat Khan while the person occupying the rear seat disclosed his name as Ummat Khan. The complainant/PW-3 on the spot has separated 10 grams of chars from the shopper and the bag for chemical analysis through FSL, sealed the same into parcels no. 1 and 2 whereas the remaining quantity of chars weighing 1990 grams inside the shopper were sealed in parcel no. 3 while the remaining quantity of chars weighing 8990 grams inside the bag was sealed in parcel no. 4 by placing/affixing monograms of 'MY' on all the parcels. The accused have been arrested on the spot by issuing their joint card of arrest Ex. PW 3/1. The Murasila Ex. PA/1 along with the relevant documents has been transmitted by constable Muhammad Umar/PW-4 to police station where, after registration of FIR by Muhammad Saeed MHC/PW-2, it has been handed over to Abdul Manaf/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 Muhammad Younas/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 Muhammad Younas, the complainant of the case, as PW-3 who has reiterated the contents of Murasila Ex. PA/1 and constable Muhammad

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Umar, 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 to the police station and handed over the documents to Muhammad Saeed 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 Abdul Manaf as PW-5 who has made the site plan Ex. PB, recorded the statements of witnesses u/s 161 CrPC, produced the accused before the court of Judicial Magistrate and sent the representative samples to the FSL.

The PWs have been cross examined regarding their departure from the police station, the number and names of police officials accompanied with complainant/PW-3, the areas patrolled by the complainant party prior to the occurrence, the time of laying a picket on the spot, the time consumed by the complainant on preparation of documents, the time of departure of constable Muhammad Umar/PW-4 for taking documents to the police station for registration of FIR, the time of arrival of the IO on the spot, the length and width of digital scale, the mode of weighing of contrabands, the mode and manner of separation of 10 grams for FSL, the affixation of monogram on the parcels, the kind, nature and colour of chars and the time of leaving the spot. However, all the PWs, besides being unanimous on all the material points,

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there is no contradiction in their statements even on minute details: Complainant/PW-3, in his cross examination, has explained that he left the police station at 08:20 am and that he was accompanied by the police officials whose names are mentioned in the Murasila and the driver. His statement is supported by Daily Diary No. 3 regarding departure of complainant party from the police station Ex. PW 5/9. That after leaving the police station first he laid a picket at Taga Sam and thereafter came to the spot of occurrence and laid a picket over there. This question has also been put to the marginal witness PW-4 who has also stated the same fact. With respect to kind of chars the complainant/PW-3 has stated that it was "garda" which is also mentioned in the Murasila Ex. PA/1. The colour of chars was told by him as brown which is supported by the report of FSL Ex. PK. The complainant/PW-3 has also confirmed in his cross examination that 10 grams of chars were separated by picking through hand and that monogram of 'MY' were affixed on all the parcels. Both the witnesses are unanimous on the points that complainant/PW-3 consumed about 25 minutes on preparation of the documents whereafter these were handed over to the constable Muhammad Umar/PW-4 for taking the same to the police station. Both the witnesses are unanimous on the point that constable Muhammad Umar/PW-4 travelled to the police station via motorcycle of a passer-by. Both the witnesses have stated that the IO arrived on the spot at 1540

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hours and he was accompanied by two police officials. The counsel for defence pointed out that the time of return of constable Muhammad Umar/PW-4 in his cross examination which is told by him as 03:10 pm and at that time even the FIR was not registered. However, this PW has first stated that he reached the spot at 03:10 pm but he has clarified that actually he has reached the police station at 03:20 pm and returned to spot at 03:30 pm. The relevant portion of his cross examination is as under;

*"I reached the spot at 03:10 pm. Again, stated that I reached the PS at 03:10 pm and returned to the spot at 03:30 pm."*

Similarly, counsel for defence also referred to the cross examination of complainant/PW-3 regarding time of leaving the spot and time of his arrival in the police station where has told that they left the spot at 1750 hours and reached the police station at 1810 hours but as per daily diary no. 9 regarding arrival of the complainant/PW-3 in the police station the time is noted as 1610 hours. Though there is a contradiction between the factum of time told by complainant/PW-3 in his cross examination and that of contents of daily diary; however, as discussed above all the PWs are unanimous on all the material points and the only contradiction in terms of time regarding leaving the spot and arrival at police station do not create any serious doubt regarding the mode and manner of occurrence. The defence has also objected that the Engine

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number and Chassis number of motorcycle is not mentioned in the Murasila and that it is not clear that as to whether the motorcycle has taken to the FSL by PW-4 or by constable Muhammad Khalil. The defence further objected that the FIR number is not mentioned in the recovery memo Ex. PC and card of arrest Ex. PW 3/1 while these are mentioned on the documents of the police file. However, both the objections do not create any doubt regarding the occurrence for, it is specifically mentioned in the Murasila that the engine and chassis number of motorcycle was scratched and not readable and this fact has confirmed by the report of FSL Ex. PK/1. So far taking of the motorcycle to the FSL is concerned, as per statement of IO/PW-5, the motorcycle has been taken to the FSL by him and this fact is very much clear from daily diary no. 4 of 10.01.2023 Ex. PW 5/D-3 where the IO/PW-5 has shown taken the motorcycle while constable Muhammad Khalil has been shown taken the samples of case FIR No. 1 of 07.01.2023 u/s 9 (d) CNSA of Police Station Mishti Mela to the FSL. Similarly, the non-mentioning of the FIR number on recovery memo and card of arrest does not adversely affect the case of prosecution for, no objection has been raised to any of the said documents that these are not the recovery memo and card of arrest of subject case FIR. Moreover, as exhibited by the defence the recovery memo and card of arrest provided to the accused u/s 265-C CrPC as Ex. PW 5/D-1 and Ex. PW 5/D-2, also do not bear the FIR number which further strengthen

  
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the version of prosecution that these are the true copies of judicial record. So far, the availability of FIR number on police documents is concerned, these might have been added by the IO for his own record. Hence, in view of what is discussed above, it is held that the prosecution has successfully discharged its burden to prove the mode and manner of occurrence, the mode and manner of proceedings conducted by the complainant and 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 complainant Muhammad Younas/PW-3 to the Police Station and handed over the same to Muhammad Saeed MHC/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 21.12.2022 who transmitted the same to FSL through constable Khalil Khan/PW-1 vide road permit certificate Ex. PW 5/4. In order to prove its case, the prosecution produced Muhammad Saeed MHC as PW-2, constable Khalil Khan as PW-1 and Abdul Manaf OII as PW-5. All the PWs have been lengthy cross examined on this point but nothing contradictory has been extracted from their mouths. The occurrence has taken place

  
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on 18.12.2022 and the representative samples have been sent to the FSL on 21.12.2022 within the prescribed period of 72 hours. The report of the FSL Ex. PK is positive for chars.

- (10). In the light of aforementioned discussion, it is held that the prosecution has successfully proved its case against the accused facing trial without any shadow of doubt. Hence, the accused facing trial, **Qeemat Khan** and **Ummat Khan** are held guilty for having in their possession 2000 grams and 9000 grams of chars respectively. They are convicted u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 *“punishable with death, imprisonment for life or imprisonment for a term which may extend to 14 years and with fine which may extend to Rs. 1000000 and not less than 05 lacs if the quantity of narcotics substance exceeds the limit of 01 kilograms. Provided that if the quantity exceeds 10 kilograms, the punishment shall not be less than imprisonment for life in any case.”*

As the maximum punishment provided for the offence is death with a fine which shall not be less than 05 lacs but keeping in view the quantity of chars which is not exceeding the limit of 10 kilograms and the minor contradictions, which though not sufficient for acquittal of the accused but can be counted as a mitigating circumstance; therefore, the accused **Qeemat Khan** is sentenced to imprisonment for one (01) year and a fine of Rs. 500,000/- (five lacs). In case of default of the payment of fine, the accused shall further undergo simple imprisonment for six

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(06) months. The benefit of section 382-B Cr.P.C is extended to the accused. The accused **Ummat Khan** is sentenced to imprisonment for three (03) years and a fine of Rs. 500,000/- (five lacs). In case of default of the payment of fine, the accused shall further undergo simple imprisonment for six (06) months. The benefit of section 382-B Cr.P.C is extended to the accused. The case property i.e., charrs be destroyed after the expiry of period provided for appeal/revision while the motorcycle being used in the commission of offence is confiscated to the State. Copy of the judgement delivered to the accused today free of cost and their thumb impression to this effect obtained at the margin of the order sheet. The copy of judgement also be issued to the District Public Prosecutor u/s 373 of the Cr.P.C free of cost. 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 fifteen (15) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 25.08.2023



**SHAUKAT AHMAD KHAN**  
Sessions Judge/Judge Special Court,  
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