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STATE VS ABID SALEEM

**FIR No. 16 | Dated: 03.05.2023 | U/S: 9 (c) 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. : 28/3 OF 2023
DATE OF INSTITUTION : 14.06.2023
DATE OF DECISION : 30.08.2023

STATE THROUGH AMANAT KHAN ASI, INCHARGE SHAHU KHEL
POST

.....(COMPLAINANT)

-VERSUS-

ABID SALEEM S/O GUL IKRAM KHAN, AGED ABOUT 37 YEARS,
R/O TAKHT E NUSRATI, DISTRICT KARAK

..... (ACCUSED FACING TRIAL)

Present : Umar Niaz, District Public Prosecutor for State.
: Khursheed Alam Advocate, the counsel for accused facing
trial.

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Pakhtunkhwa Control of Narcotic Substances Act, 2019
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JUDGEMENT
30.08.2023

The above-named accused faced trial for the offence
u/s 9 (c) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR
No. 16, dated 03.05.2023 of Police Station Mishti Mela.

- (2). The case of the prosecution as per contents of Murasila
based FIR is; that on 03.05.2023, the complainant Amanat
Khan ASI along with constables Mehboob Shah and Sher
Muhammad were present on the spot where at about 1730
hours a red colour motorcycle on way from Lal Baz Garey
towards the spot boarding by two persons was stopped for the
purpose of checking. The persons boarding the motorcycle
were made come down from motorcycle. Nothing
incriminating was recovered from personal search of the
person occupying the rear seat of the motorcycle while the

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personal search of the driver of the motorcycle led the complainant to the recovery of a white colour plastic shopper from side pocket of his Qamees containing 150 grams of chars. The complainant separated 10 grams of chars from the total quantity for chemical analysis through FSL, sealed the same into parcel no. 1 whereas the remaining quantity of chars weighing 140 grams along with the shopper were sealed in parcel no. 2 (Ex. P1) by placing/affixing monograms of 'AR' on all the parcels. The complainant took into possession the recovered chars and the motorcycle without registration number having Engine No. T307641 and Chassis No. EB989789 vide recovery memo. The accused disclosed his name as **Abid Saleem** s/o Ikram Khan who was arrested on the spot by issuing his card of arrest. Murasila was drafted and was sent to Police Station through constable Sher Muhammad which was converted into FIR by Akhtar Munir ASHO.

- (3). After registration of FIR, it was handed over to Muhammad Ayyub 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 06.05.2023, the IO sent the sample of chars for chemical analysis to FSL through constable Naveed Ullah, 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 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. Investigating Officer Muhammad Ayyub was examined as PW-1 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 application Ex. PW 1/1, sent the representative sample to FSL along with his application addressed to the incharge FSL Ex. PW 1/2 and road permit certificate Ex. PW 1/3 and result of the same Ex. PK was placed on file by him, placed on file copy of Register No. 19 Ex. PW 1/4, copies of daily diaries Ex. PW 1/5 and Ex. PW 1/6 and submitted the case file to SHO for its onward submission.

II. Akhtar Munir ASHO is PW-2. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA.


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- III. Amanat Khan ASI is the complainant of the case. He as PW-3 repeated the same story as narrated in the FIR.
- IV. Constable Sher Muhammad 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. Muhammad Saeed AMHC appeared in the witness box as PW-5. 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 lock-up. The witness further deposed that he has recorded entry of the case property in Register No. 19 Ex. PW 1/4 and he has handed over the sample of the case property to the IO for sending the same to FSL on 06.05.2023.
- VI. Constable Naveed Ullah is PW-6. He has taken the sample of chars in parcel no. to the FSL for chemical analysis on 06.05.2023 and after submission of the same, he has handed over the receipt of the parcels to the IO.


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VII. Lastly, Naseeb Khan SHO appeared in the witness box as PW-7 who has submitted complete challan Ex. PW 7/1 against the accused facing trial in the instant case.

(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, 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 sample for chemical analysis has been transmitted to the FSL within the prescribed period and the same has been found positive for chars vide report of FSL Ex. PK. The complainant, the witnesses of the recovery, the official transmitted the sample 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/1, court statements of Amanat Khan ASI as PW-3 and constable Sher Muhammad SI as PW-4 is, that the

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complainant Amanat Khan/PW-3 along with constables Mehboob Ali and Sher Muhammad/PW-4 were present on the spot where at about 1730 hours a red colour motorcycle on way from Lal Baz Garey towards the spot boarding by two persons was stopped for the purpose of checking. The persons boarding the motorcycle were made come down from motorcycle. Nothing incriminating was recovered from personal search of the person occupying the rear seat of the motorcycle while the personal search of the driver of the motorcycle led the complainant to the recovery of a white colour plastic shopper from side pocket of his Qamees containing 150 grams of chars. The complainant/PW-3 on the spot has separated 10 grams of chars from the total quantity for chemical analysis through FSL, sealed the same into parcel no. 1 whereas the remaining quantity of chars weighing 140 grams along with the shopper were sealed in parcel no: 2 (Ex. P2), placing/affixing monograms of 'AR' on all the parcels. The accused disclosing his name as **Abid Saleem** s/o Ikram Khan, 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 constable Sher Muhammad/PW-4 to police station where, after registration of FIR by Akhtar Munir ASHO/PW-2, it has been handed over to Muhammad Ayyub OII/PW-1, the IO of the case. The IO has visited the spot and conducted investigation by making a site plan Ex. PB on the pointation

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of Amanat Khan ASI/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 Amanat Khan ASI, the complainant of the case, as PW-3 who has reiterated the contents of Murasila Ex. PA/1 and constable Sher Muhammad, 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 Akhtar Munir ASHO/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 Ayyub OII as PW-1 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 sample to the FSL.

The complainant/PW-3 and constable Sher Muhammad/PW-4 with constable Mehboob Shah accompanying the complainant are posted at Shahu Khel check-post. The occurrence has taken place in front of Shahu Khel check-post. In these circumstances, the presence of the complainant party on the spot is natural and cannot be doubted. With respect to the mode and manner of occurrence, the accused facing trial along with another person riding a


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motorcycle, are alleged to have arrived on the spot. The person of the accused has been searched and 150 grams of chars have allegedly been recovered from side pocket of the Qamees of the accused; however, nothing incriminating has been recovered from the person occupying the rear seat of the motorcycle but the name and other particulars of the person occupying the rear seat of motorcycle are neither mentioned in the Murasila nor the complainant or the eyewitness have told the name of the said person in their court statements. The said person has neither been produced to the IO nor he has been shown in the site plan Ex. PB. Similarly, the date of occurrence is 03.05.2023 and as per judgement dated 25.11.2022 of the Hon'ble Peshawar High Court, Peshawar in case titled as "IMAD ULLAH VS THE STATE", complainant was bound to make videography of all the occurrence but no videography of the occurrence has been made by the complainant/PW-3. With respect to process of sealing and sampling of the case property, when the complainant as PW-3 was asked about the investigation kit and digital scale, he told that these were available at the check-post. Similarly, the monogram allegedly affixed over the parcels is in the name of Akhtar Munir ASHO/PW-2. When the complainant as PW-3 was asked about the availability of the monogram on the spot, he stated that it was requisitioned from the police station and was brought by his relative. The eyewitness/PW-3 has also admitted that the monogram was not available with the

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complainant on the spot and it was brought by Muhammad Ayyub IO/PW-1. The aforementioned facts told by the complainant and eyewitness regarding non-availability of investigation kit including the digital scale and monogram shows that the sampling and sealing of the case property has not been carried out on the spot. With respect to drafting of the documents, the complainant stated that the Murasila is in his own handwriting; however, he cannot read the Murasila and other documents. Astonishingly, how it is possible that a person can write but unable to read the same. Similarly, the taking of the documents by the eyewitness/PW-4 to the police station and his return to the spot, is also doubtful i.e., the complainant as PW-3 in his cross examination stated that constable Sher Muhammad returned to the spot at 08:30. He went to the police station on a motorcycle of his relative and returned to the spot via passenger vehicle; however, when he was asked about the availability of passenger vehicle at that late night time he realised his mistake and stated that no passenger vehicle used to ply at night time and constable Sher Muhammad returned to the spot with the IO. Again, constable Sher Muhammad as PW-4 has told a difference story i.e., that he has taken the Murasila from the spot to the police station via passenger motorcar and his also returned to the spot via passenger vehicle. Similarly, with respect to handing over of the accused to the Moharrir, the complainant/PW-3 stated that he handed over the accused to Moharrir on the spot. Again,

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stated that he handed over the accused to Moharrir in the police station.

The aforementioned contradictory statements of the material witnesses of the prosecution regarding the mode and manner of occurrence, the mode and manner of proceedings conducted by the IO on the spot and the mode and manner of investigation shows that the occurrence has not taken place and the investigation has not been carried out by the IO as alleged by the prosecution.

With respect to transmission of the case property from the spot to the Police Station and sending of the representative sample 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 Muhammad Saeed AMHC/PW-5, who deposited the same in Mal khana while parked the motorcycle in vicinity of police station. The representative sample was handed over by Moharrir of the police station to the IO on 06.05.2023 who transmitted the same to FSL through constable Naveed Ullah/PW-6 vide road permit certificate Ex. PW 1/3. In order to prove its case, the prosecution produced Muhammad Saeed AMHC as PW-5, constable Naveed Ullah as PW-6 and Muhammad Ayyub Oll as PW-1. It is evident from the record that the occurrence has taken place on 03.05.2023 and the representative sample has been sent to the FSL on 06.05.2023 within the prescribed

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period of 72 hours. The report of FSL Ex. PK is also positive for chars.

(10). In the light of aforementioned discussion, it is held that the prosecution has failed to prove the mode and manner of occurrence, the mode and manner of the proceedings conducted by complainant on the spot, the mode and manner of the investigation carried out by the IO on the spot leading to failure of the prosecution to prove the case against the accused beyond shadow of doubt. Therefore, the accused namely, **Abid Saleem** 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 has already been returned to its lawful owner. Consign.

Pronounced
30.08.2023





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

CERTIFICATE

Certified that this judgement consists of twelve (12) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 30.08.2023


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