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**IN THE COURT OF SYED ABBAS BUKHARI, JUDICIAL
MAGISTRATE-II TEHSIL COURTS KALAYA, DISTRICT
ORAKZAI**

Case No. 2/15 AA OF 2022
Date of Original Institution: 04.02.2023
Date of Transfer In: 08.03.2023
Date of Decision: 06.07.2023

State through: Muhammad Younas SHO PS Mishti Mela.

.....Complainant

VERSES

1. Muhammad Anas S/O Abdul Hameed and
2. Abdul Hameed S/O Mewa Khan, both residents of Qoum Malak Deen Khel, Khajori, District Khyber.

.....Accused

Present: Sayed Amir Abbas, Deputy Public Prosecutor for complainant.

: Sana Ullah Khan Advocate, for accused facing trial.

Case FIR No. 49, Dated 14.02.2022 U/S 15AA, PS Mishti Mela


JUDGMENT:
06.07.2023

Through this judgement, I am going to dispose of the instant case registered against accused Muhammad Anas

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and Abdul Hameed vide Case FIR No. 49, Dated 14.12.2022 U/S 15 Khyber Pakhtunkhwa Arms Act, 2013, PS Mishti Mela.

1. Brief facts as per contents of FIR are that, on 14.12.2022 at about 15:00 hours, SHO/complainant Muhammad Younas, who was accompanied with by other police officials, was on patrol duty when he received a spy information that at any time smuggling would be conducted through Alto Motor Car. Upon said information complainant along with other police officials laid barricade at the place of occurrence and meanwhile a motorcar (Alto) bearing registration number NT-982/Islamabad blue in color came from Mishti Mela side, which was engaged and the two persons sitting in the front seat were bodily searched but no incriminating article was recovered from their possession. However upon search of motor car cartridges of different bores were recovered from the secret cavity, made over the left tyre of vehicle. Upon counting of said cartridges, 1930 cartridges of 3x3 bore and 900 cartridges of 7.62 bore were found. 930 and 1000 Cartridges of 3x3 bore were sealed in parcel no.1 and parcel no.2 respectively while


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900 rounds of 7.62 bore were sealed in parcel no.3. All the cartridges as well as vehicle was taken into possession through recovery memo. Accused were arrested, who disclosed their names as Muhammad Anas and Abdul Hameed.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.

Accused were summoned. They appeared before the court and all the legal formalities under Section 241-A Cr. PC were complied. Accused were formally indicted.

They pleaded not guilty and claimed trial, hence prosecution was directed to produce its evidence.

4. Prosecution produced five (05) witnesses to prove its case against the accused while one Constable Fazal Hameed Khan FC# 1247 was abandoned by prosecution and thereafter closed its evidence.

5. **PW-01** is the statement of Muhammad Saeed MHC. Stated that during the days of occurrence, he was posted as Muharrir of PS Mishti Mela L/Orakzai. On 14.12.2022 he chalked the FIR as per contents of Murasila received from Constable Abdul Saif sent by Muhammad Younas SHO which is Ex. PW-1/1. He also prepared the daily




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dairies which are Ex. PW-1/2 and Ex. PW-1/3. The SHO handed over parcels No. 1 to 03, one motorcar and accused to him in the PS. He entered the same in Register No. 19 which is Ex. PW-1/4. He also entered the details of case property in the relevant record, which he handed over to IO for FSL, which is Ex. PW-1/5 and Ex. PW-1/6. IO recorded his statement u/s 161 Cr. PC. Today, he had seen the relevant documents, which are correct and correctly bear his signatures.


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PW-02, is the statement of ASI/complainant Muhammad Younas. Stated that during the days of occurrence, he was posted as SHO of PS Mishti Mela L/Orakzai. On 14.12.2022 he alongwith constable Abdul Saif Khan, Fazal Hameed were on routine patrolling, when he received spy information that smuggling of ammunition is expected in Alto motorcar. Accordingly barricade was arranged on the place of occurrence. One Alto motorcar, blue in colour having registration no. NT-982/Islamabad, came from Mishti Mela side color, which was stopped for checking. The two persons present in the motorcar were deboarded and were bodily searched but nothing incriminating articles was recovered from their

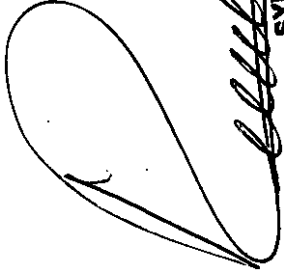
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possession. On the checking of motorcar a secret cavity on the upper part of left tyre of motorcar was found, wherefrom he recovered cartridges of different bore. On counting 1930 cartridges were of 3x3 bore and 900 cartridges were of 7.62 bore. The 930 cartridges of 3x3 bore were sealed in parcel no. 1, which is Ex. PA, while 1000 cartridges of 3x3 bore were sealed in parcel no. 2 which is Ex. PB and 900 cartridges of 7.62 bore were sealed in parcel no. 3 which is Ex. PC. All the parcels were sealed on the spot and affixed a monogram "MY" on the parcels. The accused disclosed their name as Abdul Hameed S/O Mewa Khan and Muhammad Anas S/O Abdul Hameed R/O District Khyber. He took into possession the case property in the presence of marginal witnesses. He prepared the recovery memo, which is Ex. PW-2/1 and took into possession the motorcar in question, which is Ex. P-1 and has been brought today in the court premises. He arrested the accused and issued their card of arrest of accused Muhammad Anas and Abdul Hameed, which are Ex. PW-2/2 & Ex. PW-2/3 respectively. He scribed the Murasila, which is Ex. PW-2/4. After scribing the Murasila, he sent the Murasila,


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card of arrest and recovery memo through Constable Abdul Saif to the PS. IO prepared the site plan on his pointation. On completion of investigation, he submitted complete challan, which is Ex. PW-2/5. Today he had seen the relevant documents, which are correct and correctly bear his signatures.


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7. PW-03, is the statement of Constable Abdul Saif Khan. Stated that during the days of occurrence, he was posted as constable in PS Mishti Mela L./Orakzai. On 14.12.2022 he was present with the SHO Younas khan and the SHO recovered and took into possession the cartridges of different bores from the secret cavity of the motorcar bearing no. NT-982/Islamabad, which is already exhibited as P-1. The cartridges were parceled in 03 parcels and affixed the monogram MY on each parcel, which are already exhibited as PA, PB and PC. The complainant prepared recovery memo Ex. PW-2/1 on the spot in his presence. He signed the same on the spot. After the subscribing the Murasila the complainant handed over Murasila, card of arrest and recovery memo to him and he brought the same to the PS and handed over

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the Muharrir of the PS. The IO recorded his statement u/s 161 Cr. PC.

8. **PW-04**, was examined as one Muhammad Ayub Khan IO, who Stated on oath that during the days of occurrence, he was posted as IO PS Mishti Mela L/Orakzai. On 14.12.2022, the case file was handed over to him for investigation. He visited the spot and prepared the site plan on the pointation of the complainant SHO Younas Khan, which is Ex. PW-4/1. He also took photographs of the secret cavity of motorcar, which is Ex. PW-4/2. He recorded statements of PWs u/s 161 Cr. PC. On 15.12.2022, he produced the accused before the court with the application for 05 days custody, which is Ex. PW-4/3. The application was turned down and the accused were sent to the judicial lock up. He also made an application for issuance of letter to FSL regarding the examination of vehicle, which is Ex. PW-4/4, and SP investigation issued the letter to Director FSL, which is Ex. PW-4/5. He also received the report of FSL regarding the motorcar, which is Ex. PW-4/6. He made an application to the SP Investigation with request to issue a letter to ETO (excise and taxation department), which is

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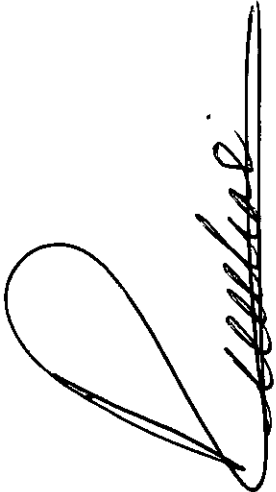
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Ex. PW-4/7 and the letter of SP investigation is Ex. PW-4/8. The report of ETO is Ex. PW-4/9. He also made road certificate to FSL for arms expert opinion, which is Ex. PW-4/10, an application to FSL, which is Ex. PW-4/11. He also received the FSL report regarding the cartridges, which is Ex. PW-4/12. He recorded statements of PWs u/s 161 Cr. PC. After completion of investigation, he handed over the case file to SHO for FIR.

PW-05, is the statement of Constable Muhammad Khalil.

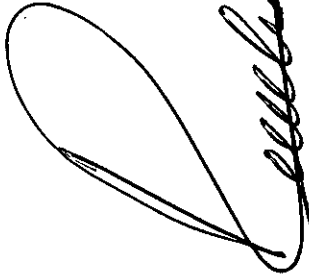
Stated that during the days of occurrence, he was posted as constable in PS Mishti Mela L/Orakzai. On 21.12.2022, IO handed over parcels no. 01 to no.03 to him, which were duly sealed and stamped with monogram "MY" alongwith FSL application and road certificate as well as motorcar bearing no. NT-982/Islamabad. He took the same to FSL and handed over to the official on duty at FSL, who signed and stamped the receipt. The motorcar were also examined in FSL. On return he handed over the receipt to IO and motorcar in question to the Moharrir of the PS. Motorcar was driven by Ameen Khan. IO recorded his statement u/s 161 Cr.PC.

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10. PW Constable Fazal Hameed was abandoned by prosecution, being a witness of same fact as narrated by Constable Abdul Saif Khan and closed its evidence.
11. Afterwards, statements of accused U/S 342 Cr. PC was recorded, wherein they pleaded not their guilt and did not wish to be examined on oath. They opted not to produce defense evidence.


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12. Thereafter arguments were heard from both the sides. Now on perusal of the record, the evidence produced by prosecution and valuable assistance of learned APP for the state and learned counsel for the accused, this court is of the humble view that prosecution in the instant case allege that the accused facing trial were involved in smuggling of ammunition and accordingly they were apprehended on the basis of spy information and the case property was recovered from the secret cavity of the vehicle in question. In given circumstances perusal of the evidence produced by the prosecution would reveal that all the PWs have fully supported the prosecution version during their respective examination in chiefs. However during their cross examination, they were contradicted in

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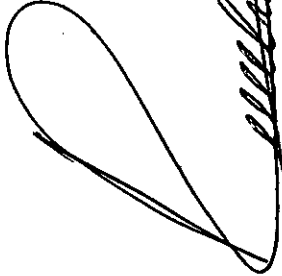
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material particulars and a vast contradiction has been brought on the record, brief of same is narrated as under;

As for as the driver of vehicle in question is concerned, PW-02 in his cross examination has deposed that he failed to mention the name of driver in murasila, however, same was driven by one Muhammad Anas while on the other hand PW-04 stated in his cross examination had deposed that he had not mentioned the name of driver in his whole investigation, however same was driven by one Abdul Hameed. Later on he deposed in his cross examination that he has shown one Muhammad Anas as driver of motor car in the site plan. Moreover perusal of the murasila would reveal that complainant failed to mention the name of driver in the murasila. Furthermore, the contradiction with regard to the name of driver amongst prosecution witnesses is material one and make the case one of further inquiry.

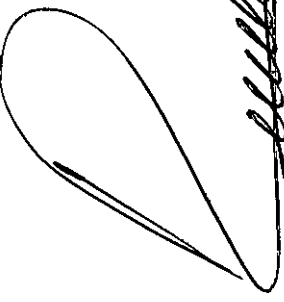
As for as police officials accompanied with the IO are concerned, PW-02 stated in his cross examination that IO was accompanied by 02 police officials while PW-03, eye witness, stated in his cross examination that he IO was accompanied by 03 police officials. Similarly


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IO of the case when appeared as PW-04 had stated that he was accompanied by 02 police officials. Furthermore, as for as the arrival of the IO to the spot is concerned, PW-02 and PW-04 depose in their respective cross examinations that he reached the spot at 16:40 hrs while PW-03 depose in his cross examination that IO reached the spot at 17:00 hrs.

As for as consumption of time on preparation of card of arrest, Murasila and recovery memo is concerned, PW-02, the complainant, has deposed in his cross examination that he consumed 03, 02 and 04 minutes on preparation of recovery memo, card of arrest and murasila respectively i.e. he consumed 09 minutes on preparation of all the three above documents while on the other hand PW-03, the marginal/eye witness, had deposed in his cross examination that SHO consumed 50 minutes on drafting of murasila, card of arrest and recovery memo. This contradiction on the part of prosecution witness create serious doubts regarding the story narrated by the complainant in the FIR subsequent proceedings thereto and make the case one of further inquiry.


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Furthermore, PW-02, the complainant, had deposed in his cross examination that IO reached the spot at 16:40 hrs while PW-03, the eye witness, stated in his cross examination that IO reached the spot at 17:00 hrs. Similarly, as per version of complainant, PW-02, he spent about 62 minutes on counting of cartridges while as per version of eye/marginal witness, PW-03, the complainant consumed about 50 minutes on counting of cartridges. PW-02 deposed that murasila was taken to PS from the spot by constable at 16:00 hrs and he came back to the spot in 30 minutes while PW-03 deposed that same was taken by him at about 16:40 hrs and he came back to spot on 18:30 hrs.


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It is also worth mentioning here that as per version of the complainant, he drafted the murasila, recovery memo and card of arrest on the spot and thereafter sent the murasila to the PS for registration of FIR. In given circumstances, the question arise that when the recovery memo was drafted prior to the registration of FIR, how the complainant had mentioned FIR no. over the same. This act of complainant lead this court to presume that the alleged recovery memo was prepared

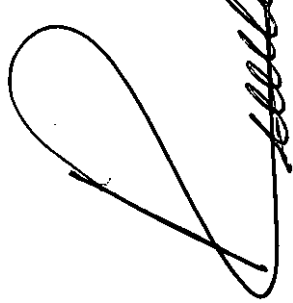
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after the registration of FIR, which make the case of prosecution one of further inquiry.

14. In light of the evidence produced by the prosecution to establish its case against accused facing trial, it has been noticed that there exist a vast contradiction in the statements of PWs and furthermore, the witnesses were contradicted in material particulars. Hence case of prosecution is one of further inquiry and furthermore, prosecution miserably failed to bring home the charge against the accused facing trial.

15. As prosecution failed to prove its case against the accused beyond the shadow of doubt, therefore, by extending the benefit of doubt to the accused facing trial namely Muhammad Anas and Abdul Hameed, they are hereby acquitted from the charges leveled against them. As they are on bail, their Sureties are discharged from the liability of bail bonds.

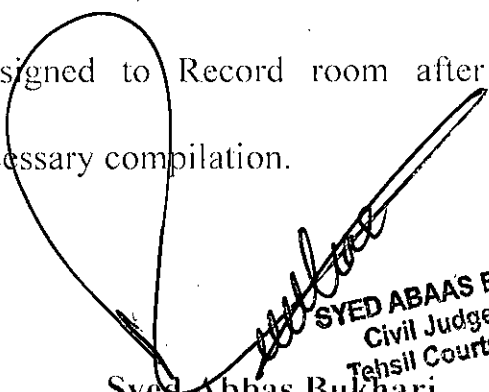
16. Case property in shape of ammunition/cartridges stands confiscated in favor of state while case property in shape of Alto motor no. NT-982, be handed over to its original owner/last possessor, after the expiry of period of appeal.


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17. Case file be consigned to Record room after its completion and necessary compilation.

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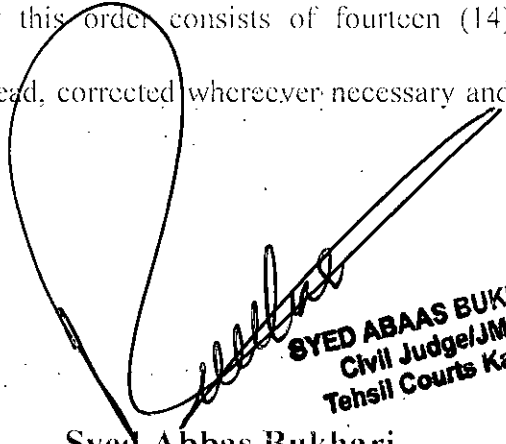

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Civil Judge/JM-II
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Syed Abbas Bukhari,
Judicial Magistrate-II
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CERTIFICATE

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

Dated: 06.07.2023.


SYED ABAAS BUKHARI
Civil Judge/JM-II
Tehsil Courts Kalaya

Syed Abbas Bukhari,
Judicial Magistrate-II
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