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IN THE COURT OF ZAHIR KHAN, JUDICIAL MAGISTRATE -I
TEHSIL KALAYA, DISTRICT ORAKZAI

Case No.....5/3 of 2023.

Date of Institution.....30.03.2023.

Date of Decision.....10.08.2023.

State through:

SI/SHO Shal Muhammad, PS Kalaya.....**Complainant**

VERSES

Syed Itizaz Hassan S/O Syed Bahadar Hussain R/O Qaum Kalaya
Saidan, Tehsil Lower, District Orakzai..... **Accused**


Case FIR No. 12, Dated 03.02.2023 U/S 11-A CNSA, PS Kalaya.

JUDGEMENT

10.08.2023

Through this judgement, I am going to dispose of the instant case registered against accused Syed Itizaz Hassan vide Case FIR No. 12, Dated 03.02.2023 U/S 11-A CNSA, PS Kalaya.

1. Brief facts as per contents of FIR are that on 03.02.2023 at 13:00 hours, at Kalaya chowk, Orakzai, SHO/complainant Shal Muhammad, who was accompanied with by Constable Amir Ullah No. 443, Muhammad Rasool No. 1423 and driver Muhammad Ayaz No. 1348 was on patrol duty and improvised barricade at Kalaya chowk. A person was coming from Kalaya Bazar side. He was stopped and during his body search, a plastic envelope of white colour was recovered from his side pocket. On checking the same, it was containing 40 grams ICE. It was weighed through digital scale. One gram was separated for FSL examination and it was


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packed and sealed into parcel No. 1 while 39 grams ICE was packed and sealed into parcel No. 2. The person disclosed his name Syed Itizaz Hassan S/O Syed Bahadar Hussain R/O Qaum Kalaya Saidan, Tehsil Lower, District Orakzai. The recovered ICE was taken into possession through recovery memo in presence of marginal witnesses. Accused was formally arrested. Murasila was drafted at the spot and sent to PS through constable Muhammad Rasool No. 1423 for registration of the case and on the strength of Murasila, case in hand was registered against the accused.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
3. Accused was summoned and legal formalities under Section 241-A Cr. PC were complied with. Formal charge was framed to which accused pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.



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Prosecution produced five (05) witnesses to prove its case against the accused while PW constable Amir Ullah No. 443 was abandoned by the prosecution being witness of the same facts.

5. Sub Inspector Shal Muhammad deposed as PW-01. He stated that during the days of occurrence, he was posted as SHO, PS Kalaya. On the day of occurrence i.e 03.02.2023, he along with constable Amir Ullah No. 443, Muhammad Rasool No. 1423 and driver Muhammad Ayaz No. 1348 were on area patrol. Barricade was erected at Kalaya Chowk. A young person, coming on foot from

Kalaya bazar side was stopped who disclosed his name as Itizaz Hassan S/O Syed Bahadar Hussain R/O Kalaya. His body search led to the recovery of a white color plastic envelope and on checking, it was containing ice which was weighed with digital scale and came out as 40 grams ice. One gram was separated for FSL examination which was packed and sealed into parcel No. 1 while the remaining 39 grams ice were packed and sealed into parcel No. 2 Ex.P-1 by affixing 1/1 seal with mark of SH. Accused was formally arrested at the spot. Murasila was sent to PS for registration of the case through constable Muhammad Rasool No. 1423. Recovery memo is Ex.PW-1/1, card of arrest is Ex.PW-1/2 and Murasila is Ex.PW-1/3. After registration of the case, he pointed out the spot to IO who prepared site plan on his pointation. Accused and case property was brought to PS and handed over to Muharrir of the PS. After completion of investigation, he submitted complete challan against the accused.



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PW-02, is the statement of constable Muhammad Rasool. He stated that during the days of occurrence, he was posted at PS Kalaya. On the day of occurrence i.e 03.02.2023, he along with constable Amir Ullah No. 443 and driver Muhammad Ayaz No. 1348 were on area patrol under the supervision of seizing officer and in his presence, SHO/complainant recovered and took into possession a white color plastic envelope and on checking, it was containing ice which was weighed with digital scale and came out as 40 grams ice. One gram

was separated for FSL examination which was packed and sealed into parcel No. 1 while the remaining 39 grams ice were packed and sealed into parcel No. 2 Ex.P-1 by affixing 1/1 seal with mark of SH by the seizing officer. He was handed over murasila which he took to the PS and handed over it to Muharrir for registration of the case. His statement was recorded u/s 161 Cr.PC.

7. Constable Gul Kareem was examined as PW-03. He stated that parcel No. 1 containing 01 gram ice for FSL examination along with application was handed over to him which he took to Peshawar. He handed over the parcel to incharge FSL, obtained his signature. His statement was recorded U/S 161 Cr.PC.

8. Sub-Inspector Muhammad Hanif was examined as PW-04. He is IO of the case. He stated that after registration of the case, copy of FIR along with relevant documents were handed over to him for investigation. He proceeded to the spot and prepared site plan Ex.PB on the pointation of SHO Shal Muhammad. He recorded statements of PWs u/s 161 Cr.PC. Accused was handed over to him for interrogation/investigation. He produced the accused before the court for obtaining physical custody vide his application Ex.PW-4/1. 02 days custody was granted. He interrogated the accused and recorded his statement u/s 161 Cr.PC. Accused confessed his guilt before him, therefore, on 06.02.2023, he produced the accused before the court for recording his confessional statement u/s 164/364 Cr.PC vide his application Ex.PW-4/2. Accused refused to



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confess his guilt and he was committed to judicial lock-up. Parcel No.1 in sealed condition was handed over to him and he sent the same to FSL vide his application Ex.PW-4/3. FSL report was received and placed on file which is Ex.PW-4/4. Copy of road permit certificate is Ex.PW-4/5. After completion of investigation, he handed over case file to SHO for submission of complete challan against accused.

9. PW-05 is the statement of Hamayoon Muharrir. He stated that on the day of occurrence, he was present in the PS on duty when constable Muhammad Rasool No. 1423 brought Murasila, recovery memo and card of arrest from complainant/SHO Shal Muhammad. He incorporated the contents of Murasila into FIR Ex. PA. Case property was brought to PS along with accused by SHO/complainant and handed over to him. Case property was kept in safe custody. Entry was made in register 19. Copy of same is Ex.PW-5/1. Entry regarding departure from and arrival to PS of SHO Shal Muhammad was made in DD. Copy of the same is Ex.PW-5/2. Accused was locked up. Parcel No. 1 containing sample from the recovered ice was handed over to IO for the purpose of sending it to FSL. His statement was recorded U/S 161 Cr.PC.

10. Afterwards, statement of accused U/S 342 Cr. PC was recorded wherein he pleaded not his guilt and did not wish to be examined on oath. He opted not to produce defense evidence.




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11. PW-01, stated in his cross examination that he had entered his departure in DD of the PS. Copy or extract of DD is not placed on file. He left the PS at about 08:30 am. The place of occurrence is a straight road and one can be seen from a considerable distance. It is correct that there is Bank Al Habib near the spot but he has not cited/associated security guard of the bank during search/recovery proceedings. He handed over the murasila to one constable Muhammad Rasool at about 13:30 hours. The IO arrived to the spot at 12:10 hours. The murasila bearer returned to the spot at about 12:00 pm. PW-02, stated in his cross examination that murasila was handed over to him at 13:30 hours and he took the same to the PS within 10 minutes and handed over it to Muharrir. He returned back to the spot at about 16:00 hours.


12. PW-04, who is IO of the case, stated in his cross examination that he has not recorded statement u/s 161 Cr.PC of driver namely Muhammad Ayaz. He reached the spot at 14:10 hours in official vehicle. He remained at the spot for about 40 minutes. He has not placed on file copy of DD regarding departure of SHO from PS. There is a security guard on the gate of Bank-Al-Habib, Kalaya. He has not recorded statement of the said security guard. Self-stated that nobody likes to poke his nose in the affairs of others. It is correct that he has not asked him to give statement. It is correct that the spot is a busy place. There is a bank near the spot. There is also a petrol pump near the spot. It is correct that he has not associated


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any private person during his investigation. PW-05 deposed that he has not brought with him original DD and register 19. Copy/extract of DD regarding departure of SHO from PS is not placed on file. Entry regarding production of case property before the court at the time of production of accused was not made in DD. Constable Muhammad Rasool brought murasila to PS at about 13:40 hours. Copy of FIR was handed over to IO at about 14:00 hours.

- 13.** Record transpires that the alleged occurrence took place on 03.02.2023 at 13:00 hours at Kalaya Chowk, Lower Orakzai. It was reported on 03.02.2023 at 13:30 hours and FIR was registered on 03.02.2023 at 13:50 hours. PW-01, stated in his cross examination that he handed over murasila to constable Muhammad Rasool at about 13:30 hours but answering to a question he stated that IO arrived to the spot at **12:10 hours**. The murasila bearer returned to the spot at about **12:00 pm**. When the occurrence took place at 13:00 hours and it was reported at 13:30 hours, then how it is possible that IO reached the spot at 12:10 pm. The murasila bearer returned back to the spot at 12:00 pm. On the other hand PW-02 (murasila bearer) stated that he was handed over murasila at 13:30 hours and he took the same to PS within 10 minutes and handed over it to Muharrir. He also deposed that he returned back to the spot at about 16:00 hours. PW-03, stated in his cross examination that murasila was brought to PS at about 13:40 hours. Copy of FIR was handed over to IO at about 14:00 hours. There are serious


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contradictions in the statements of PW-01, PW-02 and PW-03. Statement of PW-01 contradicts Ex.PW-1/3 (Murasila) and Ex.PA (FIR).

14. PW-04, who investigated the case stated in his cross examination that he has not recorded statement u/s 161 Cr.PC of driver Muhammad Ayaz. He reached the spot at 14:10 hours in official vehicle and remained there for about 40 minutes. He has not recorded statement of security guard on duty on the gate of Bank-Al Habib, Kalaya where the alleged occurrence took place. There is petrol pump near the spot but he did not associate any private person during investigation.

15. While going through the record available on file, it is noticed that prosecution version qua the recovery of 40 grams ICE from possession of the accused has not been substantiated through the statements of PWs. PWs are not consistent on salient respect of the prosecution version. The chain of custody of the recovered ICE has not been established. Accused has not confessed his guilt before the court. There is no criminal history of accused facing trial. Case of prosecution is full of dents and doubts benefit of which goes to the accused. There are serious contradictions in the statements of PWs. Prosecution failed to prove its case against the accused facing trial.

16. As prosecution failed to prove its case against the accused, therefore, accused namely Syed Itizaz Hassan is hereby acquitted from the charges leveled against him. He is on bail. His bail bonds



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stand cancelled. Sureties are discharged from their liability. Case property be dealt with in accordance with law.

- 17.** Case file be consigned to record room after its completion and necessary compilation.

Announced
10.08.2023



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CERTIFICATE

It is certified that this judgment consists of **09** pages. Each page has been dictated, read, corrected and signed by me.



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