

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

CNSA CASE NO. : 26/3 OF 2020
DATE OF INSTITUTION : 26.11.2020
DATE OF TRANSFER-IN : 16.12.2020
DATE OF DECISION : 09.06.2021

STATE THROUGH NASEEM KHAN SHO, INCHARGE POLICE
STATION UPPER ORAKZAI

.....(COMPLAINANT)

-VERSUS-

1. ABDUL RABI S/O SAWAB GUL, AGED ABOUT 29 YEARS, TRIBE SHEIKHAN, SUB-TRIBE SAMOZAI, AWYO MELA DISTRICT ORKZAI
2. AMEEN FAZAL S/O MIR AFZAL, AGED ABOUT 24 YEARS, TRIBE SHEIKHAN, SUB-TRIBE UMARZAI, OOT MELA, DISTRICT ORKZAI

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

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

FIR No. 49 **Dated: 07.10.2020** **U/S: 9 (d) of the Khyber**
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Ghiljo Upper Orakzai

JUDGEMENT
09.06.2021

The accused named above faced trial for the offence u/s 9 (d) of KP CNSA Act, 2019 vide FIR no. 49 dated 07.10.2020 of PS Ghiljo Upper Orakzai.

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

(2). The case of the prosecution as per contents of Murasila Ex. PA/1 converted into FIR Ex. PA is, that on 07.10.2020, complainant, Naseem Khan SHO PW-3 on receipt of spy information regarding smuggling of chars from Daradar Mamozai via motorcycle, laid a barricade on the spot where at about 09:30 am two persons boarding a motorcycle on way


from Daradar Mamozai were stopped. The search of the motorcycle led the complainant to the recovery of a packet from the side cover of motorcycle containing chars weighing 1200 grams which were taken into possession. The persons riding the motorcycle disclosed their names as Abdul Rabi s/o Sawab Gul and Ameen Afzal s/o Mir Afzal. The complainant SHO/PW-3 separated 10 grams of chars for chemical analysis and sealed it into parcel no. 1, whereas the remaining quantity was sealed in parcel no. 2. Murasila Ex. PA/1 was drafted and sent to the PS through constable Fazal Malik which was converted into FIR Ex. PA by PW-2 Gul Asghar Moharrir of the PS. The accused were arrested vide arrest card Ex. PW 3/1.

- (3). After registration of FIR, the same was handed over to Nawaz Sharif SI PW-5 for investigation. Accordingly, he reached on the spot where he took into possession the recovered contrabands and motorcycle vide recovery memo Ex. PC duly witnessed by constable Muhammad Shah and PW-4 constable Shahid Khan, the marginal witnesses. He prepared the site plan Ex. PB at the pointation of complainant. The sample for chemical analysis was sent to FSL vide application PW 5/1 through constable Abdul Janan PW-1 vide road permit certificate Ex. PW 2/1, the result whereof Ex. PK was received and placed on file by him. After completion of investigation, he handed over the case file to SHO PW-3, who submitted complete challan Ex. PW 3/2.

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

(4). Upon the receipt of case file for trial, the accused were summoned, who attended the court and after compliance of the provision of 265-C Cr.P.C, charge was framed against them to which they pleaded not guilty and claimed trial. The prosecution was directed to produce evidence. Accordingly, the prosecution examined as many as five witnesses. The gist of the statements of the witnesses of prosecution is as under:

- I. Malak Abdul Janan SI as PW-1 deposed that he has taken and submitted the sample of recovered chars to the FSL for chemical analysis on 08.10.2020 against a receipt which was handed over by him to the IO upon his return.
- II. Gul Asghar Moharrir as PW-2 deposed that the FIR Ex. PA was registered by him wherein he has incorporated the contents of Murasila Ex. PA/1, which he handed over to the IO. On return from the spot, the SHO handed over to him the case property containing two packets of chars and a motorcycle which he deposited in the mal-khana vide register 19 Ex. PW 2/2. On 08.10.2020, he handed over parcel no. 1 alongwith road permit certificate Ex. PW 2/1 to the IO who sent the same to FSL through SI Malak Abdul Janan.
- III. Complainant, Naseem Khan SI and eyewitness, constable Muhammad Shahid Khan, in their



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

statements as PW-3 and PW-4 respectively, repeated the story of FIR. PW-3 also deposed that he had submitted complete challan Ex. PW 3/2 in the instant case against the accused facing trial.

IV. Lastly, the investigating officer of the case, Nawaz Sharif SI, was examined as PW-5 who in his statement deposed in respect of the investigation carried out by him in the instant case including drafting of recovery memo Ex. PC, preparation of site plan Ex. PB, recording statements of PWs, handing over sample of chars to Malak Abdul Janan SI for FSL Peshawar alongwith application Ex. PW 5/1 and road permit certificate Ex. PW 2/1, production of accused before the Judicial Magistrate vide application Ex. PW 5/2, submission of an application Ex. PW 5/3 for verification of the ownership of motorcycle, annexing copies of naqal mad Ex. PW 5/4 regarding departure and return of SHO from and to the PS, receipt of FSL report Ex. PK and submission of case file upon completion of investigation to the SHO for submission of complete challan against the accused facing trial.



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

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

(6). Learned DPP for the state submitted that both the accused facing trial are directly nominated in the FIR, huge quantity of chars have 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 of 72 hours which has been found positive for chars vide report of FSL Ex. PK, the complainant, the witness 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, 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

SHAIKAT AHMAD KHAN
Sessions Judge/Judge Special Court,
Orakzai at Baber Meia


alleged chars have been shown recovered from their possession and the report of FSL support the case of prosecution, however, both the accused facing trial are falsely implicated in the instant case and nothing has been recovered from their possession. He submitted that the alleged recovery has not been effected from personal possession of any of the accused facing trial rather the recovery has been shown made from the side cover of the motorcycle allegedly riding by the accused facing trial. It cannot be gathered from the file that who amongst the accused was driving the motorcycle at the time of alleged recovery. Similarly, the prosecution has also not brought anything on the file to connect the ownership of the motorcycle as that of any of the accused facing trial. Learned counsel for the defence further argued that the prosecution has also 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 the learned DPP for the state and learned counsel for the defence and the available record, following are the points for determination of charge against the accused facing trial:



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

- (i). Whether the recovery is proved to have been made from possession of accused facing trial?
- (ii). Whether the occurrence has taken place and the investigation have been conducted in the mode and manner as detailed in the file?
- (iii). Whether the recovered substance is proved through report of FSL as chars?
- (9). As per contents of Murasila, admittedly the alleged chars have not been recovered from possession of any of the accused facing trial rather from the side cover of the motorcycle boarding by the accused. In these circumstances, the prosecution was required to prove that who amongst the accused was driving the motorcycle and who amongst the accused is owner of the motorcycle. However, on both counts, the case of the prosecution is silent. It is mentioned neither in the Murasila Ex. PA/1 nor in the site plan Ex. PB that who amongst the accused facing trial was driving the motorcycle at the time of alleged recovery. Similarly, none of the accused facing trial has claimed the ownership of motorcycle nor the IO has proved the ownership of the motorcycle as that of any of the accused facing trial.
- (10). According to contents of Murasila Ex. PA/1, the complainant alongwith other police officials were present on the spot having laid a barricade when he received information regarding smuggling of chars via a motorcycle.


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

To that extent, the complainant in his examination in chief as PW-3 has reiterated his contention. However, in the very first line of his cross examination, he has stated that information was received to him at Gari area at 08:20 am and he reached on the spot at about 09:15 am. The relevant portion of his cross examination is as;

"I proceeded from PS for gasht at about 08:00 am. I received information at about 08: 20 am at Gari area. The distance between the place of receiving information and spot can be covered in 40 minutes in vehicle. I reached the spot at about 09:15 am."

As per site plan Ex. PB, the spot of occurrence is a public road situated in front of a Chena check-post but the complainant, despite having prior information regarding the occurrence, has neither tried to associate any witness from the public with the occurrence nor the statement of any official posted at Chena check-post, who can be a natural witness of the occurrence, has been recorded by the IO in that respect.

- (11). Moreover, as per Murasila Ex. PA/1, the alleged recovery of chars has been effected from possession of the accused facing trial by PW-3, the complainant, who has also separated a sample for chemical analysis and sealed the sample and the remaining chars on the spot but no recovery memo in that respect has been drafted by him. The alleged




SHAIKAT AHMAD KHAN
Sessions Judge/Judge Special Court,
Orakzai at Baber Meia

recovered chars in two parcels have been handed over by the complainant to the IO in sealed condition but while drafting the recovery memo Ex. PC by the IO, he himself has shown made recovery of chars, weighed the same, separated 10 grams and sealed the chars in two parcels on the spot.

The aforementioned discussion led to the conclusion that neither the recovery has been made in the mode and manner as detailed in the Murasila Ex. PA nor the investigation have been conducted by the IO on the spot as shown by him.


(12). As per record, the occurrence has taken place on 07.10.2020 while as per report of FSL Ex. PK, the sample for chemical analysis has been received to it on 08.10.2020 within the period of less than 72 hours as prescribed under the Control of Narcotics Substances (Government Analysts) Rules, 2001. Similarly, the chain of custody beginning with the seizing of chars on the spot till receipt of the sample at FSL is also proved i.e., the seizing officer has separated 10 grams of chars and sealed into parcel no. 1 which has been handed over by him to the IO on the spot. The IO has deposited the same in mal-khana through Moharrir of the PS and transmitted the same to FSL on the very next day. The report of FSL is also positive for chars. Hence, to that extent, the case of the prosecution is substantiated by the report of FSL Ex. PK.


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

(13). Accordingly, in the light of what is discussed above, it is held that though the case of prosecution is substantiated by the report of FSL, however, as the prosecution failed to prove the alleged recovery of chars from possession of the accused facing trial and it also failed to prove the mode and manner of recovery and the mode and manner of investigation conducted by the IO on the spot as alleged by the prosecution leading to failure of the prosecution to prove the case against the accused beyond shadow of doubt, therefore, both the above-named accused are acquitted of the charges levelled against them by extending the benefit of doubt. 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. Similarly, the motorcycle bearing chassis no. RO32228 and engine no. LEM 3205 is confiscated to the state. It be disposed of in accordance with law after the expiry of period provided for appeal/revision.

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

Announced
09.06.2021



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