

72

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

CASE NO. : 25/2 OF 2021
DATE OF INSTITUTION : 29.01.2021
DATE OF DECISION : 08.10.2021

STATE THROUGH ABDUL QAYYUM ASI, STORI KHEL CHECK-
POST LOWER ORAKZAI KALAYA

.....(COMPLAINANT)

-VERSUS-

JAAN AKBAR S/O KHIAL BADSHAH, AGED ABOUT 32 YEARS,
TRIBE MALAK DIN KHEL, KARNA KHEL BRANALA KHOR BARA
DISTRICT KHYBER

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

ASLAM KHAN S/O NAZAR BAND, TRIBE ZAKHA KHEL, KHROGE,
TEHSIL LANDI KOTAL, DISTRICT KHYBER

..... (ABSCONDING CO-ACCUSED)

Present: Umar Niaz, District Public Prosecutor for State.
: Sana Ullah Khan Advocate for accused facing trial.

FIR No. 82 **Dated:** 19.07.2020 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019 & 468/471 PPC
Police Station: Kalaya Lower Orakzai

JUDGEMENT
08.10.2021

The accused named above faced trial for the offence
u/s 9 (d) of KP CNSA Act, 2019 & 468/471 PPC vide FIR
no. 82, dated 19.07.2020 of PS Kalaya Lower Orakzai.

The case of the prosecution as per contents of Murasila
Ex. PA/1 converted into FIR Ex. PA is; that on 19.07.2020,
complainant, Abdul Qayyum ASI, PW-3 alongwith other
police officials having laid a picket, were present at Stori

Shaukat Ahmad Khan
District & Sessions Judge
Orakzai at Baber Mela (2).
08/10/21

73

Khel check-post, where he received information regarding smuggling of huge quantity of chars via motorcar no. LXF251/Lahore. In the meanwhile, at about 12:00 pm, the said motorcar bearing registration no. LXF251/Lahore on way from Anjari side was stopped. The driver of the motorcar was deboarded who disclosed his name as Jaan Akbar s/o Khial Badshah. On search of the motorcar, the complainant recovered a sack of cloth of blue colour beneath the front seat of the car which contained 06 packets of chars, each on weighing turned 1200 grams (total of 7200 grams of chars). The complainant/PW-3 separated 10 grams of chars from each packet for chemical analysis of FSL, packed and sealed the same into parcels no. 1 to 6 whereas the remaining quantity of chars weighing 1190 grams in each packet were packed and sealed in parcels no. 7 to 12 with a blue colour sack weighing 58 grams in parcel no. 13. The accused was accordingly arrested by issuing his card of arrest Ex. PW 3/2.

The complainant/PW-3 took into possession the recovered chars alongwith the said motorcar and its key vide recovery memo Ex. PW 3/1. Murasila Ex. PA/1 was drafted and sent to the PS which was converted into FIR Ex. PA by PW-2 Moharrir Libab Ali.

- (3). After registration of FIR, it was handed over to PW-5, Shal Muhammad Khan SI for investigation. Accordingly, after receipt of FIR, PW-5 reached on the spot, he prepared site plan

Ex. PB at the pointation of the complainant. The samples for chemical analysis were sent by him to FSL vide application Ex. PW 5/2 through constable Khan Wada PW-6 and road permit certificate Ex. PW 5/3, the result whereof Ex. PK was received and placed on file by him. The IO sent the motorcar bearing registration no. LXF251/Lahore vide letter no. 625/PA/DPO/OKZ to FSL for verification of its chassis number. The result of which Ex. PK/1 was received and placed on file. As per report of FSL Ex. PK/1, the chassis number of the motorcar was found tempered, on the basis of which the owner of the motorcar Aslam Khan, the absconding accused was charged in the instant case as co-accused and section 468/471 PPC were added in the instant case. The said co-accused absconded. After completion of investigation, the IO handed over the case file to Muhammad Shafiq SHO, PW-1, who submitted complete challan Ex. PW 1/1 for the offence u/s 9(d) CNSA while separate challan u/s 468/471 PPC was submitted.


Saad Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Wala

(4).

Upon the receipt of case file for the purpose of trial, the accused on bail was summoned, copies of the record were provided to him u/s 265-C Cr.P.C, and formal charge was framed against accused Jaan Akbar to which he pleaded not guilty and claimed trial. With respect to absconding accused statement of SW Nazrab Shah DFC was recorded and in view of his statement co-accused Aslam Khan was proceeded u/s

512 Cr.P.C and the prosecution was directed to produce evidence in his absentia. Accordingly, the prosecution produced and examined as many as 06 witnesses. The gist of the evidence is as follow;


- I. Muhammad Shafiq SHO is PW-1. He has submitted complete challan Ex. PW 1/1 in the instant case against the accused facing trial.
- II. AMHC Libab Ali deposed as PW-2. He has registered FIR Ex. PA by incorporating the contents of Murasila Ex. PA/1 therein. He has also received the case property received from the complainant duly packed and sealed which he has deposited in mal khana in safe custody. The witness further deposed that he has made entry in respect of deposit and handing over of the case property to the IO in register 19, Ex. PW 2/1.
- III. Qayyum Khan ASI is complainant of the case. He appeared in the witness box as PW-3. In his statement he repeated the story narrated in the FIR.
- IV. Constable, Muhammad Ayaz appeared in the witness box as PW-4. He besides the eyewitness of occurrence is the marginal witness of recovery memo Ex. Ex. PW 3/1 as well, vide which the complainant/PW-3 has taken into possession the

Signature of Ahmad Khan
District & Sessions Judge
Gulistan Sahib
8/20/21

recovered chars alongwith motorcar and its key.

He also reiterated the contents of FIR in his statement.

V. Investigating officer, Shal Muhammad Khan SHO 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, produced the accused before the court, sent the representative samples to FSL and result of the same was placed on file by him. He has sent the motorcar bearing registration no. LXF251/Lahore vide letter no. 625/PA/DPO/OKZ to FSL for verification of its chassis number. The result of which Ex. PK/1 was received and placed on file. He has also conducted proceedings u/s 204/87 Cr.P.C vide his applications Ex. PW 5/6 and Ex. PW 5/7 against the absconding co-accused Aslam Khan.



Shaukat Ahmad Khan
District & Sessions Judge,
Orangi at Bar, Faisalabad

VI. Lastly, Khan Wada HC was examined as PW-6 who deposed that he has taken the samples of recovered chars in parcels no. 1 to 6 to the FSL for chemical analysis vide road permit certificate Ex. PW 5/3 and application Ex. PW 5/2 and after

submission of the same, he was given the receipt of the parcels which he handed over to the IO upon his return.

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

(6). Learned DPP for the state submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars have been recovered from possession of the accused facing trial, transporting by him in a motorcar number LXF251/Lahore the chassis sheet of which was tempered by the accused facing trial for the purpose of cheating, that as per report of FSL Ex. PK/1 the chassis sheet of the motorcar recovered from the possession of accused facing trial, is tempered which alone, is sufficient for conviction of the accused facing trial and that the prosecution has proved its case beyond shadow of any doubt.

Shaukat Ahmad Khan
District & Sessions Judge
Oranjal at Dera Ghaat
8/10/21

(7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR but the prosecution has failed to prove that the motorcar has been recovered from possession of the accused facing trial, that there is nothing available on file as to show that the alleged


tempering has been made by the accused facing trial, that the facts of the case do not attract the provisions of section 468/471 PPC and that the prosecution has failed 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:

- (i). whether the chassis sheet of the motorcar is proved tempered?
- (ii). Whether the recovery of motorcar is proved to have been made from possession of accused facing trial?
- (iii). Whether the tempering in the chassis sheet of the motorcar, if proved, has been made by the accused facing trial?

(9). With respect to tempering in the chassis sheet of the motorcar, as per report of FSL Ex. PK/1, the chassis sheet of the motorcar is welded and refitted, which alone is sufficient to hold that tempering has been made in the chassis sheet of the motorcar.

(10). With respect to recovery of motorcar from the possession of the accused facing trial, as per contents of Murasila Ex. PA/1, on 19.07.2020, complainant, Abdul Qayyum ASI, PW-3 alongwith constable Muhammad Ayaz PW-3, constable Riwaj Gul and other police officials having


 Shaukat Ahmad Khan
 District & Sessions Judge
 08/10/21

laid a picket, were present at Stori Khel check-post, where he received information regarding smuggling of huge quantity of chars via motorcar no. LXF251/Lahore. In the meanwhile, at about 12:00 pm, the said motorcar bearing registration no. LXF251/Lahore on way from Anjari side was stopped. The driver of the motorcar was deboraded who disclosed his name as Jaan Akbar s/o Khial Badshah. On search of the motorcar, the complainant recovered a sack of cloth of blue colour beneath the front seat of the car which contained 06 packets of chars, each on weighing turned 1200 grams (total of 7200 grams of chars). The complainant/PW-3 separated 10 grams of chars from each packet for chemical analysis of FSL, packed and sealed the same into parcels no. 1 to 6 whereas the remaining quantity of chars weighing 1190 grams in each packet were packed and sealed in parcels no. 7 to 12 with a blue colour sack weighing 58 grams in parcel no. 13, affixing monograms of MS on each of the parcel.

Shaukat Ahmad Khan
District & Sessions Judge,
Sikzli at Baber Meta

10/2

He conducted the search, seizure and in this respect prepared the recovery memo Ex. PC on the spot in the presence of marginal witnesses, constable Riway Gul and constable Muhammad Ayaz, PW-4. The prosecution in order to prove the recovery of motorcar, examined the complainant Qayum Khan SI as PW-3. In his examination in chief, he has reiterated the story detailed in the Murasila Ex. PA/1. The stance of the prosecution is further supported by the statement of constable

88

Muhammad Ayaz as PW-4 who besides being eyewitness of the occurrence is a marginal witness of the recovery memo Ex. PC as well. He has almost narrated the same story as that of narrated by the complainant in his statement as PW-3. The statements of the complainant and eyewitness are tried to be shattered in cross examination but nothing contradictory have been extracted from their mouths. Even not a single suggestion in respect of the recovery of the motorcar has been put to the accused facing trial.

Hence, the recovery of the motorcar has been proved to have been made from the possession of the accused facing trial.

(11). With respect to the tempering in the chassis sheet of the motorcar, neither the accused facing trial is owner of the motorcar nor any evidence regarding tempering made by the accused facing trial, has been brought on record rather the absconding co-accused Aslam Khan has claimed himself is owner of the motorcar.

(12). Accordingly, in light of what is discussed above, it is held that the prosecution has failed to prove the charge u/s 468/471 PPC against the accused facing trial beyond shadow of any reasonable doubt; hence, the accused namely, Jaan Akbar is acquitted of the charges levelled against him u/s 468/471 PPC.


Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Estar Mela

88/10/21

81


The absconding co-accused Aslam Khan, in the light of evidence recorded by prosecution in absentia of the accused, is declared proclaimed offender. Perpetual warrant be issued against him. the quarter concerned be informed to enter his name in register of proclaimed offenders. Consign.

Pronounced
08.10.2021


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

CERTIFICATE

Certified that this judgement consists of ten (10) pages. Each page has been read, corrected wherever necessary and signed by me


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