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

CASE NO. : 30/2 OF 2021
DATE OF INSTITUTION : 29.06.2021
DATE OF DECISION : 17.11.2021

STATE THROUGH MUHAMMAD SHAFIQ SI, POLICE STATION
LOWER ORAKZAI KALAYA

.....(COMPLAINANT)

-VERSUS-

MUHAMMAD KHALID S/O MOMIN KHAN, AGED ABOUT 18
YEARS, CASTE UTMAN KHEL, SUB CASTE BRANKA KHEL PO
FEROZ KHEL, TANDA, TEHSIL LOWER, DISTRICT ORAKZAI

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

Present: Umar Niaz, District Public Prosecutor for State.
: Farida Qureshi Advocate for accused facing trial.

FIR No. 01 **Dated:** 02.01.2021 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019 & 468/471 PPC
Police Station: Kalaya Lower Orakzai

JUDGEMENT
17.11.2021

The accused named above faced trial for the offence
u/s 468/471 PPC vide FIR no. 01, dated 01.02.2021 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 02.01.2021,
complainant, Muhammad Shafiq SI, PW-3 along with other
police officials having laid a picket, were present on the spot.
Meanwhile, at about 1700 hours, a motorcycle on way from
Feroz Khel side towards the picket, was stopped by the local
police for checking. The driver of the motorcycle was having

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a white colour plastic bag in his lap which was searched by the complainant/PW-3, wherefrom 02 packets of chars wrapped with yellow colour scotch tape, each weighing 1210 grams (total of 2420 grams of chars), were recovered. The complainant/PW-3 separated 10 grams of chars from each of the packet for chemical analysis through FSL, packed and sealed into parcels no. 1 and 2 whereas the remaining quantity of chars weighing 2400 grams were packed and sealed in parcel no. 3 by affixing monogram of MS on all the parcels. The accused was accordingly arrested by issuing his card of arrest Ex. PW 3/1. The complainant/PW-3 took into possession the recovered chars along with the motorcycle without number vide recovery memo Ex. PW PC. Murasila Ex. PA/1 was drafted and sent to the PS which was converted into FIR Ex. PA by PW-1 Muhammad Fayyaz MHC.

After registration of FIR, it was handed over to PW-5, Aftab Hassan 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 Nikzad Ali/PW-2 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 motorcycle without registration number vide letter no. 132/PA/DPO/OKZ to FSL for verification of its chassis number/engine number,

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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, as a result of which section 468/471 PPC were added in the instant case. After completion of investigation, the IO handed over the case file to Muhammad Shafiq SHO, PW-3, who submitted complete challan Ex. PW 3/2 for the offence u/s 9 (d) CNSA while separate challan u/s 468/471 PPC in the instant case was submitted.

(4). Upon receipt of case file for the purpose of trial, the accused was summoned, copies of the record were provided to him u/s 265-C Cr.P.C, and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the prosecution produced and examined as many as 05 witnesses. The gist of the evidence is as follow;

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- I. MHC Fayyaz Ali is PW-1. He has registered FIR Ex. PA by incorporating the contents of Murasila Ex. PA/1 therein. He has also received the case property from the complainant duly packed and sealed which he has deposited in mal khana in safe custody and parked the motorcycle in the premises of the Police Station. 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 1/1.

- II. Constable Nikzad Ali is PW-2. He deposed that he had taken the samples of chars in parcel no. 1 and 2 alongwith application Ex. PW 5/2 and road permit certificate Ex. PW 5/3 for chemical analysis and handed over its receipt to the IO upon his return to the Police Station.
- III. Muhammad Shafiq SHO 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. He has also drafted card of arrest Ex. PW 3/1 and submitted complete challan Ex. PW 3/2 in the instant case against the accused facing trial.
- IV. Constable, Najib Ullah appeared in the witness box as PW-4. He besides the eyewitness of occurrence is the marginal witness of recovery memo Ex. Ex. PC as well, vide which the complainant/PW-3 has taken into possession the recovered chars alongwith motorcycle. He also reiterated the contents of FIR in his statement.
- V. Lastly, Investigating Officer, Aftab Hassan SI 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 site plan Ex. PB on the pointation of the complainant, recorded the statements of witnesses on the spot,


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produced the accused before the court, sent the representative samples to FSL and result of the same was placed on file by him which is Ex. PK/1. He has drafted letters, Ex. PW 5/5 and Ex. PW 5/6 for verification of the particulars of the motorcycle and its involvement in other cases. The result of the FSL in respect of parcels no 1 and 2 Ex. PK was received and placed on file by him. He has also added section 468/471 PPC and submitted the case file to SHO for submission of complete challan in the instant case.

- (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 via motorcycle without registration number, 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 motorcycle recovered from the possession of accused facing trial, is

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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.

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

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

(10). With respect to recovery of motorcycle from the possession of the accused facing trial, as per contents of Murasila Ex. PA/1, on 02.01.2021, complainant, Muhammad Shafiq SI, PW-3 along with constables Najib Ullah PW-3, Yasin Ullah and other police officials having laid a picket, were present on the spot. In the meanwhile, at about 1700 hours, a motorcycle on his way from Feroz Khel side towards the picket, was stopped by the local police for checking. The driver of the motorcycle was having a white colour plastic bag in his lap which was searched by the complainant/PW-3 wherefrom 02 packets of chars wrapped with yellow colour scotch tape, each weighing 1210 grams (total of 2420 grams of chars), were recovered. The complainant/PW-3 separated 10 grams of chars from each of the packet for chemical analysis through FSL and sealed the same into parcels no. 1 and 2 whereas the remaining quantity of chars weighing 2400 grams were packed and sealed in parcel no. 3 by affixing monograms of MS on all the parcels. He conducted the search, seizure and in this respect prepared the recovery memo Ex. PC on the spot in the presence of marginal witnesses, constables


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Najib Ullah, PW-4 and Yasin Ullah. The prosecution in order to prove the recovery of chars in the mode and manner as detailed in the Murasila Ex. PA/1 and recovery memo Ex. PC, examined the complainant Muhammad Shafiq 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 Najib Ullah 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 motorcycle has been put to the accused facing trial.

Hence, the recovery of the motorcycle 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 motorcycle, it was found that the sheet was tempered and no vehicle was found against the chassis number displayed on the said sheet. However, there is nothing available on file to suggest that the tempering has been made by the accused facing trial.


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(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, Muhammad Khalid is acquitted of the charges levelled against him u/s 468/471 PPC.


Pronounced

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CERTIFICATE

Certified that this judgement consists of nine (09) pages. Each page has been read, corrected wherever necessary and signed by me


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