

(79)

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

SPECIAL CASE NO. : 29/3 OF 2021  
DATE OF TRANSFER-IN : 11.01.2021  
DATE OF INSTITUTION : 21.10.2020  
DATE OF DECISION : 08.10.2021

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

.....(COMPLAINANT)

**-VERSUS-**

JAAN AKBAR S/O KHAL 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 LNADI 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

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**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

  
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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.

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- (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.

- (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

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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

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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.

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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, the recovered chars are sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, the samples 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 motorcar has been verified from the FSL by the IO through his applications, the complainant, the witness of the recovery, the official transmitted the samples 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

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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 is directly nominated in the FIR, the alleged chargs have been shown recovered from the motorcar driven by the accused facing trial and the report of FSL support the case of prosecution, however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his possession. He argued that the prosecution has 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.

  
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(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 recovery is proved to have been made from possession of accused facing trial in the mode and manner as detailed in the Murasila?
- (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 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 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 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, affixing monograms of MS on each of the parcel. 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 Riwaj Gul and constable Muhammad

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Ayaz, PW-4. 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 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 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 on the grounds; that the recovery has not been effected from the possession of accused facing trial rather shown from the motor car which is neither owned by the accused facing trial nor it has been proved to have been recovered from him, that it is not proved that from which place of the motor car the recovery has been effected, that as per statement of PW-3 during the days of occurrence he was posted at Sheraz garhi check post while the occurrence has allegedly taken place near chaman jana check post where he has not proved his presence on the spot, that as per statement of PW-3 the digital scale was hanged from the safeguard of the motor cycle via which they were travelling while as per statement of PW-4, the eye witness, it was carrying by him while travelling on the motor

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cycle, that there is no DD regarding departure of complainant from the PS, that there are contradictions between the statements of witnesses regarding the time of arrival of the IO on the spot and that of the arrival of IO and complainant party to the PS ,that as per statement of PW-3 the accused shifted to the PS in motor car with constables Muhammad Ayaz and Riwaj gul however as per statement of the PW-4 , the eye witness , the accused left with the complainant and that the FIR, Murasila, the card of arrest and site plane are in same handwriting which means that all these documents are prepared by one and same person in the PS and no proceedings have been conducted on the spot

Keeping in view the aforementioned objections of defence, careful perusal of the material available on file coupled with statements of the PWs shows; that as the statements of complainant and eyewitness are consistent regarding the time, date and place of occurrence, the mode and manner of recovery and the mode and manner of proceedings conducted by him on the spot; therefore, their statements cannot be thrown away on the aforementioned dents for the reasons as follows;

First, true the recovery has not been effected from the personal possession of the accused facing trial rather it has been shown effected from the motor car and it is also true that the accused facing trial is not the owner of the motor car rather

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the co accused has claimed himself as owner of the motor car but as per statements of complainant and eye witness as PW-3 and PW-4 the motor car was driving by the accused facing trial and their statements have not been shattered on this point even no suggestion in that respect has been put to either of the PW. Second, it is also true that it is neither explained on the record nor in the statements of PWs that from which of the front seat of the motor car the chars were recovered but when this question is put to the complainant and eye witness in their cross examinations both of them have explained that front seat means a seat adjacent to the driver seat. Third, the presence of the complainant on the spot though disputed by the defence but as explained by the complainant in cross examination that Chaman Jana check post, the place where the occurrence has taken place, is situated at distance of 02 kilometres from Sheeraz Garhi check post and that he being posted at Sheeraz Garhi check post was required to perform duty in the area which include the place of occurrence as well, therefore his presence on the spot being on duty in the area was natural. Fourth, as the complainant was posted at Sheeraz Garhi check post and on the day of occurrence he had arrived on the spot from the check post and not from the PS that's why the DD in respect of his departure is not available. Fifth, the contradictions between the statements of PWs regarding the facts that who was carrying the scale while travelling on

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the motorcycle , that whether the accused travelled to the PS either with the complainant or with constables Muhammad Yaz and Riway Gul, that whether the complainant or the IO returned to the PS first , are minor in nature and are natural to be occurred with the laps of time.

Hence, in view of what is discussed above, it is held that the statements of the complainant and the eyewitness are consistent regarding the date, time and place of occurrence and the mode and manner of the recovery. Therefore, the recovery of contrabands is proved by the prosecution beyond shadow of any doubt.

- (10). With respect to proceedings conducted by the IO on the spot, the stance of the prosecution as per Murasila Ex. PA/1, FIR Ex. PA and recovery memo Ex. PC, is; that after drafting of Murasila, recovery memo and card of arrest of the accused by the complainant, the same were handed over to PW-5 constable Muhammad Ayaz, PW-4 who took the same to PS and handed over to PW-2 Libab Ali, who registered FIR Ex. PA on the basis of Murasila. He handed over copy of the FIR, Murasila, card of arrest and recovery memo to Incharge investigation Shal Muhammad. The said Shal Muhammad SI proceeded to the spot where he prepared site plan Ex. PB on the pointation of the complainant and recorded the statements of witnesses u/s 161 Cr.P.C. In order to prove its stance, the prosecution has produced Constable Muhammad Ayaz as

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PW-4, Libab Ali as PW-2 and Shal Muhammad SI as PW-5. All the three witnesses narrated the aforementioned story and the sequence of different events in their statements. Constable Muhammad Ayaz as PW-4 when cross examined as to how and by which means he transmitted the documents to PS, he stated that he took the Murasila to PS riding a motor cycle of Qayyum ASI, the complainant of the case. This fact is also confirmed by the complainant in his cross examination. However, both the witnesses have contradicted each other on the point of time of the departure of PW-4 from the spot while taking Murasila to the PS i.e., PW-3 stated that he left the spot at 1245 hrs while PW-4 stated that he left the spot at 1145 hrs but this can be a clerical mistake between "11" and "12". All the three witnesses are also unanimous on the points of arrival of the IO on the spot, his departure and return to PS and the time of arrival of the complainant party to the PS. The statements of all the three witnesses are consistent regarding proceedings conducted by the IO on the spot, their statements could not have been shattered in cross examinations and the prosecution has proved its stance regarding proceedings conducted on the spot in the mode and manner as alleged by it, without shadow of any doubt.

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- (11). The case of the prosecution regarding the chain of the custody of the representative samples, their transmission to the FSL within the prescribed period of time and following full

protocols of the tests applied in the FSL, is; that after seizure of the contrabands by the complainant containing 06 packets, 10 grams from each of the parcel has been separated and sealed by him on the spot with affixing of three monograms of MS on each of the parcel. The complainant after his arrival in the PS has handed over the representative samples to PW-2 Libab Ali, who has made entry of the case property in register no. 19 and has kept the samples in safe custody. On 21.07.2020, the incharge investigation has collected the samples from Moharrir and has handed over the same to Khan Wada HC PW-6 to transmit the same to FSL, who has transmitted the same against a road permit certificate and deposited the same in FSL against proper receipt which on return has been handed over by him to the IO. After receipt of FSL report Ex. PK, the same has been placed on file by the IO. The prosecution in order to prove its stance has examined the complainant as PW-3, Libab Ali as PW-3, Shal Muhammad SI, the IO of the case as PW-5 and Khan Wada HC as PW-6. All the four witnesses have narrated the aforementioned story in their statements. In cross examination PW-6 when asked about the documents which he had taken to the FSL, he pointed EXPW5/2, the application for FSL, and ExPW5/3, the road permit certificate, on the judicial file. The defence referred to ExPW5/2, the application of the IO addressed to the FSL and submitted that it bears the particulars of the official and receipt number

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scribed with pencil to which the prosecution replied that the application has been drafted by the IO on 19/07/2020 with a copy placed on file and till that time these particulars were not known because the samples have been sent to FSL on 21/07/2020 therefore these particulars have been filled later on. This objection does not in way prove that either samples have not been transmitted on the date as alleged by the prosecution or these have not been taken by the official whose name is mentioned over there, for, on one hand these entries match with the entries of FSL report and on the other hand the explanation of the prosecution in this respect is also seems genuine.

In view of what is discussed above, it is held that the prosecution has proved beyond shadow of any doubt the chain of the custody of the representative samples, within the prescribed period of time, from the spot till these are received in the FSL. Similarly, as per report of FSL Ex. PK, the representative samples no. 1 to 6 were found positive for chars after following full protocols of the tests applied. Hence, the case of the prosecution is substantiated by the report of FSL.

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(12). Therefore, in light of what is discussed above, it is held that the prosecution has successfully proved its case against the accused facing trial without any shadow of doubt. Hence, the accused facing trial, Jaan Akbar is held guilty for having in his possession 7200 grams of chars. He is convicted u/s 9

(d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 and accordingly sentenced to suffer rigorous imprisonment for four (04) years and also to pay fine of Rs. 500,000/- (five lac). In case of default of the payment of fine, the accused shall further suffer simple imprisonment for three (03) months. The benefit of section 382-B Cr.P.C is, however, extended in his favour. The case property i.e., charrs be destroyed while the motorcar in question stand confiscated to the state being used in the commission of offence but after the expiry of period provided for appeal/revision. Copy of the judgement delivered to the accused today free of cost and his thumb impression to this effect obtained at the margin of the order sheet besides the copy of judgement also be issued to the District Public Prosecutor u/s 373 of the Cr.P.C free of cost. Consign.

**Pronounced**  
08.10.2021



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**CERTIFICATE**

Certified that this judgement consists of sixteen (16) pages. Each page has been read, corrected wherever necessary and signed by me



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Sessions Judge/Judge Special Court,  
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