


ORDER NO. 07  
29.01.2022

DPP, Umar Niaz for the State and Jabir Hussain Advocate for accused present. The accused Muhammad Imran charged for the offence u/s 9 (d) of Khyber Pakhtunkhwa CNSA, 2019 vide FIR no. 134, dated 01.11.2021 of PS Kalaya, District Orakzai, present. PWs Khan Muhammad SI and Zia Ul Haq constable present and examined as PW-2 and PW-3 respectively. Counsel for the accused submitted application u/s 265-K CrPC. Notice of the same is given to learned DPP and arguments heard.

- (2). The case of the prosecution as per contents of Murasila Ex. PA/1 converted into FIR Ex. PA is; that on 01.11.2021, complainant/PW-2, Khan Muhammad SI alongwith other police officials having laid a picket, was present at Gerej check-post where at about 1000 hours, a motorcycle riding by a person on way from Feroz Khel side towards the picket, was stopped for checking. The person was deboarded from the motorcycle who disclosed his name as Muhammad Imran s/o Din Badshah. The personal search of the person led the complainant to the recovery of 02 packets of chars wrapped with yellow colour adhesive tape, each weighing 800 grams, a total of 1600 grams of chars. The complainant/PW-2 separated 10 grams of chars from each packet for chemical analysis of FSL, packed and sealed the same into parcels no. 1 & 2 whereas the remaining quantity of chars weighing 790/790

  
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grams were packed and sealed in separate parcels no. 3 & 4, affixing monograms of 'MS' on all the parcels. The accused was arrested by issuing his card of arrest Ex. PW 2/1. The complainant/PW-2 took into possession the recovered charrs vide recovery memo Ex. PC. Murasila Ex. PA/1 was drafted and sent to the PS through constable Zia Ul Haq, PW-3 which was converted into FIR Ex. PA by PW-1/Asmat Ali.

(3). After registration of FIR, it was handed over to Mehdi Hassan OII for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan at the pointation of complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 03.1.2021, the IO sent the samples for chemical analysis to FSL vide his application and road permit certificate through constable Syed Abbas Ali Shah Ali, the result whereof was received and placed on file by him. After completion of investigation, the IO handed over the case file to SHO Muhammad Shafiq who submitted complete challan against the accused facing trial.

(4). Upon receipt of the 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 witnesses were summoned and examined. The gist of the evidence is as follow;

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- I. AMHC Asmat Ali is PW-1. He has registered FIR Ex. PA by incorporating the contents of Murasila Ex. PA/1 therein. He also deposed in respect of the case property received by him from the complainant duly packed and sealed which he had kept in mal khana in safe custody. The witness further deposed in respect of recording of entry of the case property in register 19 as well as handing over of samples of the case property for sending the same to FSL to the IO on 03.11.2021.
- II. Khan Muhammad SI is the complainant of the case. He appeared in the witness box as PW-2. In his statement he repeated the story narrated in the FIR.
- III. Constable Zia Ul Haq appeared in the witness box as PW-2. He besides being eyewitness of occurrence, is marginal witness of recovery memo Ex. PC as well vide which the complainant/PW-2 has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement. The witness deposed in respect of taking the copies of Murasila, card of arrest and recovery memo to PS.

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(5). Thereafter, counsel for the accused submitted application for acquittal of the accused u/s 265-K CrPC for the reasons mentioned therein.


(6). I heard arguments and perused the record.

(7). Perusal of the case file shows that as per contents of Murasila Ex. PA/1 the occurrence has taken place at 1000 hours, the Murasila, card of arrest and recovery memo are prepared by complainant PW-2 at 1040 hours and the FIR has been registered at 1300 hours. As per cross examination of PW-2, the complainant and both the witnesses shown present with him, are illiterate. They can neither read nor write. In order to cover the lacuna that being illiterate as to how he was

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able to scribe Murasila, recovery memo and card of arrest, PW-2 made improvement in his court statement and stated that constable Murtaza, the Moharrir of the police post Gerej, has scribed the document upon his dictation. But this fact has neither been brought on record nor his statement has been recorded. Moreover, no certificate with respect to signing of the document by the complainant and witness after being read to them, has been given. Furthermore, the mode and manner of recovery and the mode and manner of investigation allegedly conducted on the spot also seem doubtful. As per record after scribing of recovery memo and the Murasila, FIR has been registered which has been handed over to the IO who, after the receipt of copy of FIR, has proceeded to the spot. As

against this, PW-2, the complainant, in his cross examination has told that after the arrest of the accused he called the IO via telephone who came on the spot and prepared the site plan. Similarly, he was confronted with the parcels of case property produced in the court which bear the particulars of the case FIR and told that these particulars have been scribed by constable Murtaza on his dictation. But there is no explanation of the fact that as to how the complainant came to know about the particulars of FIR prior to its registration. Similarly, PW-1 AMHC Asmat Ali who has received Murasila, recovery memo and card of arrest from the complainant through PW-3 constable Zia-ul-Haq, has also told in his cross examination that the number of FIR was already entered on the recovery memo at the time of handing over to him. Moreover, with respect to safe custody of the case property, the statement of PW-2 is also not consistent. In this respect in his cross examination, he stated that he reached the PS at 14:00 PM where he handed over the accused to the Moharrir and then left, omitting the handing over of the case property to the Moharrir.

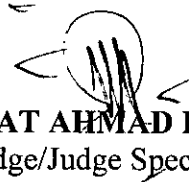
  
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(8). In view of what is discussed above, it is held that the evidence of prosecution recorded so far, creates serious doubts regarding the mode and manner of recovery, the proceeding conducted on the spot and the alleged transmission of the case property from the spot to the PS; therefore, there seems no

probability of the conviction of the accused facing trial even if the prosecution is given opportunity to produce further evidence.

- (9). Hence, on acceptance of application of accused Muhammad Imran s/o Din Badshah, he is acquitted from the charges levelled against him u/s 265-K Cr.P.C. The accused is on bail. His sureties are absolved of the liability of bail bonds. The case property i.e., chargs be destroyed after expiry of period provided for appeal/revision while motorcycle alongwith registration documents be returned to its lawful owner. Consign.

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