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In the name of almighty Allah who has got unlimited jurisdiction over and beyond the universe.

BEFORE THE COURT OF
ADDITIONAL SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI

Special case No.6/III of 2021

Date of institution: 13.10.2020

Date of decision: 09.11.2021

The State **...Versus...**

Riaq Ali son of Muhammad Hassan, resident of Qaum Mani Khel, Tappa Ahmad Khel village Mamani, Tehsil Lower Orakzai and District Orakzai.

... (Accused facing trial)

**Case FIR No.27, Dated 10.04.2020 under Section 9-D of KP-CNSA, 2019
Registered at Police Station Kalaya Orakzai.**

JUDGMENT

Accused named above faced trial before this Court in case FIR No.27 dated 10.04.2020 u/s 9-D Khyber Pakhtunkhwa Control of Narcotics Substance Act, 2019, registered at Police Station Kalaya Orakzai.

2. The story of the prosecution's case is that; on 10.04.2020, complainant Muhammad Shafiq SHO along with other police officials were on their routine patrolling when received spy information about smuggling of chars from Kurez to Chapar Mishti through Motorcar, and on this information, they laid barricade on the spot of occurrence. A white colour motorcar bearing no. ICT.SB-211/Islamabad reached to spot from Kurez side which was signalled through torch to stop and upon stoppage of the motorcar, the local police de-boarded the driver of the motorcar who disclosed his name as Riaq Ali s/o Muhammad Hassan. The police officials started search of the vehicle. During search of the vehicle, Police Party recovered 42 packets chars garda from secret cavities made in the rear seat of the motorcar. Each packet of chars was weighed through digital scale on the spot which each packet was found 1100 grams (total 46,200 grams).

The police officials separated 10 grams from each packet of chars followed by

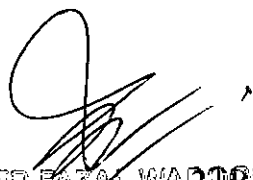
packing and sealing into parcels no. 1 to 42 for chemical analysis through Forensic Science Laboratory; whereas, remaining quantity of chars was packed and sealed in parcel no. 43. The accused was accordingly arrested by issuing his card of arrest Ex. PW 4/1. The local police took into possession the recovered chars along with the vehicle in question through recovery memo Ex. PC. Murasila Ex. PA/1 was drafted and sent to the Police Station which was converted into FIR Ex. PA. Consequently, instant criminal case has been given birth, which is under consideration for its final determination.

3. After conclusion of the investigation, complete challan against the accused facing trial was presented. He was summoned through "Zamima Bay" being in Judicial Lockup; on appearance, he was provided copies in line with Section 265-C (1) of the Code of Criminal Procedure-1898. Charge against the accused was framed to which he pleaded not guilty and claimed trial.

4. Prosecution was directed to produce its evidence. The prosecution in order to prove the case against the accused, produced and examined as many as six (06) witnesses. The essence of the prosecution evidence is given below:-

i. Libab Ali Moharrir testified as PW-1 regarding registration of FIR Ex. PA, drafted from the contents of Murasila. Besides, he deposed in respect of receipt of case property from the complainant that was duly packed and sealed which he thereafter deposited in Mal Khana for safe custody.

ii. Constable, Amir Nawaz in his statement recorded as PW-2 stated to have taken the separated samples of contraband to FSL Peshawar on 13th of April, 2020 but the Laboratory was closed due to Covid-19. He was told by the officials of the FSL Peshawar that Laboratory will reopen on 21st of the April, 2020. Hence, he returned back and handed over the parcels to the Investigation Officer.



iii. Aftab Hassan SI appeared before the court as PW-3 and deposed that he had taken parcels from S.No.1 to 42 containing 10 grams chars in each of the parcel as recovered contrabands from the accused to the FSL for chemical analysis on 5th of May, 2020. He transported the parcels under road permit certificate and obtained receipt from Laboratory that has been handed over to the Investigation Officer.

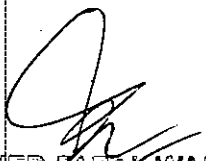
iv. Complainant, Muhammad Shafiq and eyewitness constable Shamshir Ali, in their evidence recorded as PW-4 and PW-5 respectively, repeated the story of FIR. It was added by PW-4 that he issued card of arrest and prepared recovery memo. He also extended assistance through pointation in preparing site plan by the Investigation Officer. PW-5 testified the carriage of case property to the Police Station and shown his presence at the time of preparing site plan.

v. PW-6 is the statement of Investigating Officer Shal Muhammad who testified regarding all the proceedings conducted during the course of investigation of the present case.

5. On closure of prosecution evidence, statement of accused was recorded u/s 342 of the Code of Criminal Procedure-1898; wherein, accused professed innocence and did not opt to produce defense evidence or to be examined on oath.

6. Learned APP for the State argued that accused is directly charged in the FIR and evidence available on the file is sufficient to connect him with the commission of offence. He added that the offence is heinous in nature and prosecution has proved its case beyond doubt entailing conviction of the accused.

7. On the contrary, learned counsel for the accused contended that evidence available on the file is deficient and the story advanced by the prosecution is not appealable to prudent mind. It was added that there is no independent witness of



the occurrence and the evidence available on the file is full of contradictions. He submitted that prosecution has not been able to prove the case beyond shadow of doubt and requested for acquittal of the accused. Learned counsel representing accused while concluding the arguments was of the stance it is the quality of evidence that is to be looked into rather quantity of contraband.

8. Perusal of case record reveals that the incident has occurred on 20:30 hours that has promptly been reported on 21:20 hours of the 10th day of April, 2020. The Murasila was incorporated in FIR Ex.PA on the same date at 23:30 hours; whereas, the distance between place of occurrence and the Police Station is 40 to 45 Kilometers. In the mountainous terrain of District Orakzai, the distance of 40 to 45 Kilometers is considerable remoteness and the given time is reasonable with reference to completing proceedings at the spot and travelling to Police Station. Meaning thereby that the occurrence has promptly been reported and criminal law was timely brought into motion without any unreasonable and unexplained delay.

9. Accused Riaz Ali has directly been nominated in the contents of FIR as a single accused that had ousted the chances of substitution or wrong implication. Accused was arrested red handed and therefore, the question of misidentification of accused is also out of question at all.

10. The recovery of contraband (chars) is effected from non-custom paid vehicle with fake number plate of ICT.SB-211/Islamabad which was being driven and in the sole control as well as possession of the accused. The quantity of recovered chars is 46,200 grams which is obviously a huge quantity, the fabrication of which is out of the ambit of secure degree of cogency, for being not appealing to prudent mind. As much as, 42 packets have been recovered from the Motorcar driven by the accused with no other person sharing the ride of the

Car. On weighing the contrabands on digital scale, each packet was of 1100 grams with total of 46,200 grams. A quantity of 10 grams from each packet of smuggled items have been separated for the purpose of examination through FSL, duly packed in Parcels No.1 to 42; whereas, rest of the contraband measuring 45,780 grams has been sealed into Parcel No. 43, which has also been sealed on the spot. It has been testified by Muhammad Shafiq SHO examined as PW-4 that sealing monograms have been affixed on each parcel while dealing with the recovered articles. Recovery memo Ex. PC, card of arrest Ex.PW-4/1 and Murasila Ex.PA/1 have been prepared on the spot that has been testified by other witnesses including seizing officer and witness of the recovery memo. Muhammad Shafiq SHO deposed as PW-4 is testifying the recovery, packing into parcels and carrying the case property to the Police Station till handing taking over of the recovered articles by Muharrir of the Police Station. PW-5 Shamshir Ali is the witness to recovery proceedings who testifies recovery from the spot till handing taking over of case property in the Police Station. Amir Nawaz constable of Police Station lower Orakzai was examined as PW-2 stating therein that he has transported the samples to Forensic Science Laboratory Peshawar on 13th of April, 2020; but, the Laboratory was closed due to Covid-19 pandemic. He added that samples have been returned to Muharrir of the Police Station as the FSL Peshawar was yet to be opened in the last decade of the month of April, 2020. Aftab Hassan SI deposed as PW-3 who testified transportation of the samples to FSL Peshawar on its re-opening when the ratio of patients decreased in pandemic, that too, under proper road permit certificate. He added that the receipt of FSL Peshawar was handed over to Investigation Officer and recorded his statement before him as well. Libab Ali is Muharrir of Police Station and was examined as PW-1. He confirmed the safe custody of case property as well as entry in Register concerned followed by deposit in the

Malkhana. Investigation Officer Shal Muhammad SI recorded his statement as PW-6. He confirmed the fact of closure of FSL Laboratory, Peshawar due to Covid-19 pandemic and re-sending the samples for examination when the Laboratory was re-opened. He produced the FSL report as Ex.PZ-1 which speaks that the recovered contraband was chars. He produced his departure and arrival recorded in the daily diary which is Ex.PW-6/10. Chain of custody of the case property starts from the spot till exhibition of the same in the Court in the first instance and that is crucial for final Judicial Determination. In present case, the prosecution has established recovery from the rear seat of the Motorcar driven by the accused. Its scaling on the spot, packing and sealing the case property, transportation to FSL Peshawar, road permit certificate, receipt of receiving the case property, entry in register, production before the Court and report of the FSL Peshawar regarding the contraband (chars) have been proved in the mode and manner reflected in Murasila, FIR and site plan. The defence has focused cross examination on the qualification of the seizing officer and investigation officer by ignoring other areas like scaling, arrest on the spot and the contents of recovered material. This objection can easily be ruled out on the score that District Orakzai is one of the merged districts where Orakzai Levies has been amalgamated in Police Force and Naib Subedar has been declared as Sub-Inspector. The statements of complainant, seizing officer and witness of recovery memo clubbed with the statement of Muharrir of Police Station are in consonance with each other except minor ignorable contradictions, shows the presence, mode and manner as well as the chain of custody of the case property which is examined as chars by the Forensic Science Laboratory, in its report.

11. As is discussed above, the report is prompt, the nomination as single accused with no misidentification and recovery of huge quantity of chars, when proved, the question of mode and manner of the crime committed loses its value;



however, the complainant examined as PW-4, recovery witness examined as PW-5, witness of transportation of samples examined as PW-2 and PW-3, statement of Muharrir regarding safe custody of case property and the statement of Investigation Officer as PW-6 are consistent about the mode and manner of the crime committed which is ocular account of evidence with sufficient degree of cogency. The recovery memo Ex. PC, card of arrest Ex.PW-4/1, case property (chars) Ex.P-1, case property (Motorcar) Ex.P-2, key of Motorcar as Ex.P-3, site plan Ex. PB, road certificate Ex.PB-4, MRA report of vehicle as Ex. PZ, the pictures of vehicle as Ex.PW-6/6 to Ex.PW-6/8 and diaries of departure and arrival as Ex.PW-6/9 to Ex. PW-6/10 are documentary evidence of the mode and manner of the crime that corroborates the prosecution case.

12. The vehicle has been reported not tempered as reflected in MRA report Ex. PZ but admittedly being non-custom paid, the ownership of the same cannot be established in the name of accused. The motorcar in question was in sole possession of the accused facing trial at the time of occurrence and was used for the commission of offence. The portion of examination in chief of the complainant, Muhammad Shafiq PW-4 wherein it was alleged that the accused facing trial owned the recovered contraband and vehicle was never subjected to cross examination, hence would be deemed admitted on the part of accused facing trial. Similarly, when the record suggests that the vehicle is not tempered and non-custom paid, the Customs Act 1969 requires the same to be handed over to Local Office of Federal Board of Revenue (FBR) for further proceedings in accordance with law.

13. It is objected by the defence that another case bearing FIRNo.26 dated 10.04.2020, u/s 9 (d) CNSA of PS Lower Orakzai is registered against Shahid Ali, who happens to be the cousin of present accused; that too, on the same day, which is based on political victimization. This objection is not appealing to mind

because the accused while recording his statement under Section 342 of the Code of Criminal Procedure 1898 exhibited his service card Ex.X-1 that reflects his service as Pump Operator in Public Health Engineering Department and this itself negates his own version of political victimization. Neither accused is candidate of any political party nor can participate in political activities for being civil servant; thus, mere objecting case of huge quantity on score of alleged political victimization is nothing except lending light to the sun.

14. The ocular account of evidence supported by corroborating evidence; that too, in absence of any malafide on part of police and prosecution is thus confidence inspiring, trustworthy and reliable. There exist no material contradictions in between the statements of the ocular account or the formal witnesses and the story of Murasila incorporated into the FIR is fully corroborated by documentary evidence including scientific evidence.

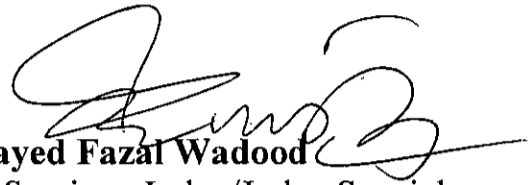
15. For what has been discussed above, it is just and reasonable to lead to the conclusion that the prosecution has successfully proved its case against the accused without any shadow of doubt. Consequently, the accused facing trial, Riaq Ali s/o Muhammad Hassan is convicted and sentenced u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019, for having in his possession 46,200 grams chars, to suffer rigorous imprisonment for life and also to pay fine of Rs. 700,000/- (0.7 million). In case of default, the accused shall further suffer simple imprisonment for 6 months. The benefit of Section 382-B of the Code of Criminal Procedure, 1898 is extended in his favour. The case property i.e., chars be destroyed while the motorcar in question stand confiscated to the State (to be handed over to regional/local authority of FBR for being non-custom paid) 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 shall be sent to the Office of District Public Prosecutor Orakzai as postulated in Section-373 of the Code of Criminal Procedure, 1898.

16. File be consigned to District Record Room, Orakzai after its necessary completion and compilation within the span allowed for.

ANNOUNCED

09.11.2021



Sayed Fazal Wadood
Additional Sessions Judge/Judge Special
Court Orakzai

CERTIFICATE:

Certified that this Judgment consists of (09) pages; each page has been read over and signed by me after making necessary corrections therein.



Sayed Fazal Wadood
Additional Sessions Judge/Judge Special
Court Orakzai