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**IN THE COURT OF ABDUL BASIT  
ADDITIONAL SESSIONS JUDGE-II/JUDGE SPECIAL COURT,  
ORAKZAI**

Case No. 1/3 of 2022

Date of institution: 06.01.2022

Date of decision: 10.01.2024

Date of consignment:

State through Akhtar Munir ASHO of the Mishti Mela Police Station  
Orakzai (complainant)

Versus

Abdul Kareem (aged about 45/46 years) s/o Dilawar Khan r/o Qaum  
Mishti, Shaho Khel, District Hangu (accused facing trial)

**FIR No. 37 DATED 27.10.2021 U/S 9-D CNSA  
MISHTI MELA POLICE STATION, ORAKZAI**

**Judgment**

1. Accused Abdul Kareem is facing trial in the subject case registered under section 9-D CNSA of Mishti Mela Police Station, Orakzai.
2. Akhtar Munir ASHO, the complainant, along with police officials upon receiving spy information regarding the smuggling of narcotics through white color Suzuki vehicle arranged a barricade at place of occurrence, where at about 0930 hours, the above mentioned Suzuki approached and stopped by complainant for search; that search of the Suzuki led the complainant to the recovery of six packets chars from secret cavity made under the sheet of rear portion of Suzuki, having weight of 1000 grams each packet with total quantity of 6000 grams; that 10 grams chars from each packet were separated for FSL which were sealed into parcels no. 1-6 and the remaining chars was sealed into parcel no. 7; that the case property along with Suzuki were taken into possession and accused was arrested on the spot, hence, the FIR.

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3. On completion of investigation, complete challan under section 9-D CNSA was put in court against the accused.
4. Accused was summoned through *zamima bay*. On his attendance, the copies of the case furnished to accused under section 265-C Cr.PC. The accused was then charge sheeted u/s 9-D CNSA, to which he pleaded not his guilt and claimed trial.
5. Prosecution produced following evidence in support of its case;
6. Muhammad Saeed, Muharrir of PS was examined as PW-1, who on receipt of *murasila* registered the FIR, Exh.PA, and also kept the case property in *maalkhana* for safe custody vide register no. 19. PW-2 is the statement of Abdullah constable, who has taken the parcels 1-6 containing samples of chars to FSL Peshawar for chemical analysis through application for FSL, Exh.PW 2/1, and road permit certificate, Exh.PW 2/2. This PW also took the Suzuki vehicle to FSL Peshawar for analysis through application; Exh.PW 2/3, from DPO to FSL In-charge. The statement of star prosecution witness Akhtar Munir ASHO (complainant) was recorded as PW-3, who confirmed the initial report, Ex.PA; recovery of the contraband and Suzuki vide recovery memo, Ex.PW 3/1, to be true. He arrested the accused and issued his card of arrest, Exh.PW 3/2. He produced Suzuki vehicle, Exh.PA, and remaining chars excluding samples for FSL weighing 5940 in parcel no. 7, Exh.P-1. He has also drafted the *murasila* report, Exh.PW 3/3. One of the marginal witness to the recovery memo was Yaseen Ullah Constable, who was examined as PW-4. He testified that the recovery was made from accused and was documented vide recovery memo. He added that constable

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Murad Gul took the murasila, recovery memo and card of arrest to the police station for registration of FIR. Muhammad Naseem SHO appeared as PW-5, who submitted complete challan against accused for trial before the court. Asif Wazeer SI was investigation officer of the case, who entered in the witness box as PW-6. He prepared site plan, Exh.PB. He has confirmed the preparation of site plan and examination of witnesses. He had produced the accused before the Area Judicial Magistrate vides application, Exh.PW 6/1 and drafted the application to FSL, Exh.PW 2/1. He referred the FSL result, Exh.PZ, and application through which all District Police Officers were intimated regarding seizing of vehicle, Exh.PW 6/2. He exhibited extracts of register no. 19, Exh.PW 6/3, daily diary of arrival and departure of seizing officer, Exh.PW 6/4. He produced 02 photos of vehicle, Exh.PW 6/5 and Exh. PW 6/6, which were taken at the time of recovery. After completion of investigation, he handed over the case file to SHO for onward submission of complete challan against the accused.

7. Prosecution closed its evidence. The statement of accused was recorded under section 342 CrPC, wherein, he again denied from the charges and adhered to his innocence. In his replies to questions, he neither wished to be examined under oath nor to produce evidence in defense.

8. Arguments heard and record perused.

9. Learned APP for State argued that the prosecution has proved the case against accused beyond shadow of reasonable doubt; that recovery of contrabands is proved from the possession of the

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accused. The prosecution witnesses are consistent in their statements in respect of recovery of narcotics from accused. That FSL result in respect of the sample, separated from the chars recovered from the accused, is in positive; that there is no malafide on the part of the prosecution to falsely involve the accused in the case, therefore, requested to award him maximum punishment.

10. Counsel for the accused argued that prosecution has failed to prove its case against accused beyond reasonable shadow of doubt; that prosecution evidence contradicts & suffers major inconsistencies; that prosecution case is full of doubts because prosecution witnesses materially contradicted each other; that recovery is not effected from the immediate possession of accused; that accused has not confessed his guilt; that the case against the accused is not proved and request is made for the acquittal of accused.

11. The record available before the court and arguments advanced by learned counsel for parties led me to the conclusion that the local police on spy information arranged a barricade and intercepted a white color Suzuki, wherefrom, recovered 6000 grams chars placed under its secret cavities, which were taken into possession and the accused was arrested on the spot. It is bounden duty of prosecution to prove its case beyond shadow of a reasonable doubt from the moment of receiving the spy information by the local police to the interception of accused, his body search, his transportation of contraband in vehicle, taking of samples from recovered contraband, preparation of recovery memo, drafting the murasila, witnessing of the whole proceedings by marginal witnesses, registration of case,

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safe custody of recovered articles, investigation of the case and laboratory reports etc. To prove this, prosecution led the evidence of many witnesses.

12. So far safe custody of case property from the moment of its recovery from vehicle driven by accused, separation of samples from packets, its sealing, its delivery to Muharrir police station for safe custody, his keeping the same in the *maalkhana*, its delivery to investigation officer for production before the learned Judicial Magistrate, the delivery of samples to police official for taking to FSL Peshawar for the chemical analysis and route certificate is related, it is held that as per statement of complainant (PW-3), he has handed over the recovered contraband and Suzuki to Muharrir of the police station for safe custody. When, however, Muharrir of the police station was asked about sealed packets, he mentioned that he had received six parcels no. 1-6 in sealed condition but did not say a single word about receiving or seal of the 7<sup>th</sup> parcel i.e. the one which contained six packs, from which test samples were separated. Similarly, it is an admitted fact that Asif Wazir was investigation officer of the case and according to Muhammad Saeed (PW-1), complainant has delivered him the recovered contraband and he has handed over the parcels no. 1-6 containing samples of chars and route certificate to Asif Wazir only, however, Abdullah (PW-2) deposed that those parcels were handed over to Muharrir of the police station by investigation officer in his presence and Muharrir had delivered him those parcels for onward submission to FSL Peshawar. On the other side, the sealed packets borne the seals of WA, which as per

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evidence on file stands for Asif Wazir, the one who has been entrusted with investigation of the case, which above facts coupled with statement of Abdullah (PW-2) shows that these parcels were handed over by investigation officer to Muharrir and leads to inference that those packets were actually prepared, sealed and delivered by investigation officer to the Muharrir of the police station and not by complainant of the case and therefore not only questions the seizure of the contraband by complainant but also the safe custody of the contraband as well. There is no second opinion that when case property is handed over to Muharrir of the police station, he enters it in register no. 19 of the police station maintained for said purpose, however, there is no daily diary produced on record showing delivery of case property by Muharrir of the police station to the investigation officer for its production before the Area Judicial Magistrate nor about handing over of the test samples by Muharrir of police station to investigation officer, who has allegedly delivered to Abdullah for transmission to Peshawar for chemical analysis, which facts above raises question about safe custody of the case property in *maalkhana* and safe transmission to Peshawar.

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13. As per contents of murasila, complainant had the spy information about smuggling/transportation of the alleged contraband through white color Suzuki, whereat, they went to the spot and arranged a barricade, however, statement of complainant (PW-3) and copies of daily diary no. 3 brought on record transpires that the complainant had already left the police station and was on patrolling of the area when received spy information about the transportation of alleged

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contraband, which questions the veracity of prosecution version. Even otherwise, despite recovery of huge quantity of chars, the complainant did not bother to note down the chassis and engine number of the vehicle nor took the photographs of vehicles. This is strange to note that the vehicle was intercepted and searched by complainant, remained present in front of them and was removed to police station after the arrival of investigation officer but despite that not a single witness, except the investigation officer, know that who has taken the photographs of the vehicle. Even, the pictures taken by the investigation officer do not show the presence of accused, seizing officer and the other police witnesses.

14. There are also contradictions noted in prosecution witnesses since marginal witness (PW-4) deposed that they remained on the spot for about 40 minutes, whereas, complainant (PW-3) stated that they had remained on the spot for about 2/3 hours, which is a huge difference in respect of time they had spent on the spot and speaks volume about the presence of witnesses together at the place of occurrence. Likewise, marginal witness (PW-4) deposed that Murad Gul, the murasila carrier returned to the spot before the investigation officer, who recorded their statements on the spot, however, investigation officer (PW-6) contradicted him saying that when he reached to the spot, the murasila carrier had not reached there and he recorded his statement later on in the police station, which transpires that one of these witnesses have deposed falsely.

15. This is also strange to note that despite seeing the police standing on the road side, accused being conscious of carrying the contraband in

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secret cavities of the vehicle did not attempt to flee away from the spot having open road in front of him. Likewise, the recovery was not affected from direct possession of the accused but from the secret cavities of the vehicle; whereas, neither complainant nor the investigation officer has brought on record that who was the actual owner of the vehicle in question that raises a question that as to whether accused was in active knowledge of the contraband in the secret cavities of the vehicle. More so, daily diaries placed on record are hand written and not the extracts from the relevant register.

16. It is known to all that when recovery is effected from the accused, the seizing officer prepares the recovery memo, card of arrest and murasila report on the spot, where after, murasila is sent to police station for registration of the case and an FIR is registered. In the instant case, perusal of recovery memo and card of arrest of the accused provide that it contains the FIR number, which is not possible before registration of the case and therefore apprehends that recovery memo and card of arrest of the accused were prepared in the police station and not on the spot and creates doubt about the mode and manner of transportation of alleged contraband by the accused.

17. From above appreciation of evidence it is held that the proceedings of making arrest and seizure of narcotics from accused by the police had become doubtful. Moreover there are many major discrepancies and contradictions in the case of prosecution as discussed above, which creates reasonable doubt about the commission of offence by accused and in no way suggests the conviction of accused. In view of above discussed facts, it is held that the prosecution has failed to bring home the guilt against the accused, hence, while extending the benefit of

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doubt, the accused Abdul Kareem is acquitted from the charge leveled against him. As accused is on bail, therefore, his sureties are discharged from liabilities of the bail bonds. Zamima bay issued in the instant case is cancelled.

18. Case property i.e. chargs be destroyed, while, vehicle having being not deciphered with any other chasses number as per chemical examiner report be returned to lawful owner subject of his furnishing the registration documents or ownership proof both after expiry of period provided for appeal/revision.
19. File consigned to record room after completion and compilation.

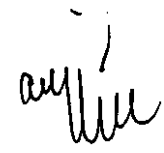


**Announced**  
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**CERTIFICATE**

It is certified that this judgment of mine consists of nine (09) pages and each page is duly signed by me after necessary corrections.



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10.01.2024

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