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

Case No. 26/3 of 2022

Date of institution: 15.12.2022

Date of decision: 12.01.2024

Date of consignment:

State through Shaal Muhammad SHO of the Kalaya Police Station Orakzai  
(complainant)

Versus

Sailab Khan (aged about 31 years) s/o Gulab Khan r/o Zao Din Afridi,  
Feroz Khel, District Orakzai (accused facing trial)

**FIR No. 111 DATED: 02.12.2022 U/S 9-D CNSA and 468/471 PPC  
KALAYA POLICE STATION, ORAKZAI**

**JUDGMENT**

1. Accused Sailab Khan is facing trial in the subject case registered under section 9-D CNSA and 468/471 PPC of Kalaya Police Station, Orakzai.
2. Shal Muhammad SHO, the complainant, along with police officials had arranged barricade at given place, where about 0830 hours an unnumbered black colored motorcycle Honda-125 having chasses no. U-90539 engine no. 223539 approached and intercepted by complainant for the purpose of search; that driver of motorcycle was deboarded and searched, who was wearing a *khaki* (خز) color waist-coat having four pockets; that the search of pockets of the said waist-coat led the police party recovery of 5 packets from each pocket with total of 20 packets of chars; that all the recovered 20 packets of chars were wrapped in yellow scotch tape having weight of 1000 grams of each packet with total quantity of 20000 grams; that 10 grams chars

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was separated from each packet for chemical analysis, packed and sealed in parcels no. 1-20, whereas, the balance chars of each packet packed and sealed in parcels no. 21-40; that the recovered waistcoat was also packed and sealed in packet no. 41; that accused was arrested on the spot, murasila was drafted at the place of occurrence and sent to police station for bringing criminal law into motion which was given effect in the stated FIR that culminated into present case; hence, the FIR.

3. On completion of investigation, complete challan under section 9-D CNSA was put in court against the accused. In light of the report of FSL Ex. PZ/1, the IO added section 468/471 PPC in the instant FIR.
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 and 468/471 PPC, to which he pleaded not his guilt and claimed trial.
5. Prosecution produced following evidence in support of its case;
6. Asmat Ali Muharrir, was examined as PW-1, who has registered the FIR, Exh.PW 1/1, on receipt of murasila. He made exit/entry report of police officials in daily diary, Exh.PW 1/2 to Exh.PW 1/5. The statement of Shaal Muhammad SHO (complainant) was recorded as PW-2. He confirmed the initial report, already Exh.PW 1/1, to be true. He has testified recovery of contraband and motorcycle vide recovery memo, Ex.PW 2/1, to be genuine. He arrested the accused and issued his card of arrest, Ex.PW 2/2. He drafted the murasila, Ex.PA/1, and submitted complete challan, Exh.PW 2/3, against the accused. One of the marginal witness to the recovery memo was

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Muhammad Rasool constable, who was examined as PW-3. He has testified that recovery was made from accused and was documented vide recovery memo in his presence. He took the murasila, recovery memo and card of arrest to the police station and handed over the same to the Muharrir for registration of FIR. Investigation Officer of the case Muhammad Haneef SI entered in the witness box as PW-4. He stated to have prepared site plan, Exh.PB, and examination of the witnesses. He has produced the accused before the Illaqa Magistrate vides applications Exh.PW 4/1 & Exh.PW 4/2. He has referred the application of FSL, Exh.PW 4/3, and road permit certificate, Exh. PW 4/4. He also exhibited arrival/departure reports of constable Gul Karim as Exh.PW 4/5 & Exh.PW 4/6. He has drafted two separate applications regarding the motorcycle in question, one to FSL, Exh.PW 4/7, and another to ETO, Exh.PW 4/8. He produced FSL reports in respect of chars, Exh.PZ, and motorcycle, Exj.PZ/1. After completion of investigation, he handed over the case file to SHO for onward submission of complete challan against the accused. PW-5 is Gul Karim, who has taken the parcels 1-20 containing samples of chars to FSL Peshawar for chemical analysis. Manzoor Ali appeared as PW-6, who on the directions of this Court, produced register no. 19, the copies of the relevant extracts of which are already Exh.PW 1/2 to Exh.PW 1/6 and Exh.PW 4/5 to 4/6.

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 reply to a question, he

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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 doubt; that recovery of contrabands is proved from possession of accused; that prosecution witnesses are consistent in their statements in respect of recovery of narcotics from accused; that FSL result in respect of the samples, separated from the chars recovered from accused, and motorcycle are in positive; that there is no malafide on part of the prosecution to falsely involve the accused in the case, therefore, he 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 complainant has not recorded the statement of any private person regarding recovery; that recovery is not effected from the immediate possession of accused; that the 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. Viewing the arguments advanced by learned counsel for parties, the evidence and record before the court, it is observed that the local police has alleged the arranging of barricade at place of occurrence, where the accused approached on motorcycle, who was intercepted

  
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and during his body search, 20 packets of chars weighing 20000 grams chars recovered from four pockets of waistcoat, the accused was wearing; therefore, he was arrested on the spot and criminal case was registered against him. It is bounden duty of prosecution to prove its case beyond shadow of reasonable doubt from the moment of the interception of accused, his body search, his transportation of contraband in waistcoat, taking of samples from contraband, sealing of chars, preparation of the recovery memo, drafting the murasila, witnessing of whole proceedings by marginal witnesses, registration of case, safe custody of recovered articles, investigation of the case and laboratory reports etc.

12. To prove this, prosecution led the evidence of many witnesses. So far safe custody of case property from the moment of its recovery from 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 chemical analysis and route certificate is related, it is held that complainant (PW-2)/seizing officer in his statement did not utter a single word that whether he had weighed the contraband on the spot or not. Likewise, he though stated that he has separated samples from each recovered packet, sewed and sealed in parcels no. 1-20, however, there is nothing on record that how did he manage to sew those parcels. This becomes clear in cross-examination, when in reply to a question, he stated that he has sewed the parcels through a tailoring

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machine; however, there is no detail of this fact in the whole record. On the other side, he has admitted the preparation of site plan by investigation officer on his pointation, wherein, he has given detail about series of stores along with medical stores right near to place of occurrence, however, he admitted that there was no tailor shop in the nearby area of the occurrence, which leads to inference that the seizing officer has taken these parcels to tailor shop, where the tailor master sewed the parcels. Statement of complainant (PW-3) is also silent about the fact that what he did with the parcels after sealing the same i.e. whether he had delivered the parcels to Muharrir of the police station himself or handed over to murasila carrier or investigation officer for onward transmission to police station for safe custody. Statement of complainant is not only silent in respect to time of occurrence but also with regard to shape of chars as to whether it was chars *pukhta* or *garda*. Statement of Muhammad Rasool (PW-3), marginal witness to the recovery memo, also just speaks about handing over of the murasila report, recovery memo and card of arrest of accused by complainant to him and does not speak about the delivery of case property. Even, statement of Asmat Ali (PW-1), the one who has allegedly received the parcels of contraband, is also silent about seals of received packets. Likewise, statement of investigation officer (PW-4) further doubts genuineness of prosecution case because he has also not mentioned in his statement that whether he had seen the case property on the spot or not, or whether it has been shown to him or not, or whether it was sealed in his presence or not. So much so, Gul Karim (PW-5)

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allegedly took the test samples to laboratory for chemical analysis, however, he has also not stated a single word that whether the case property delivered to him was in a sealed condition or not. If we rely daily diary no. 7 dated 02.11.2022, Exh.PW 1/4, and hold that the case property was handed over by complainant to Muharrir of the police station and the latter after entering in register 19 of the police station has kept it in *maalkhana*, then, this is of a sheer surprise to note that the investigation officer (PW-4) has admitted the custody of case property with him for two days, which not only doubts seizure of contraband by complainant but also its safe custody and onward transmission to laboratory for chemical analysis as well, which facts do not rule out possibility of planting a false case against the accused.

13. Complainant (PW-2) has allegedly recovered a huge quantity of chars from possession of accused, however, he has not given any detail as to whether the recovered chars was in *pukhta* or *garda* form. Moreover, he has allegedly recovered only twenty (20) packets from possession of accused and separated test samples from each packet, however, when the case property was produced before him in the court, it was found to be in different shapes and sizes. On contrary, marginal witness to recovery memo at one place stated that twenty packets of chars have been recovered from possession of accused but in cross-examination alleged the recovery of only four packets from pockets of the waistcoat of the accused, which is a wide difference. Besides above, marginal witness (PW-3) stated that he used to sign the documents, however, when the recovery memo, Exh.PW 2/1,

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was shown to him, he admitted that the recovery memo did not bear his signature against his name i.e. column of witnesses and signature made in Urdu did not belong to him, which leads to inference that neither the recovery memo was prepared in his presence nor he has signed it and thus spoils the whole prosecution case.

14. Likewise, there is also difference of time spent by complainant and police official on the spot noted because the complainant (PW-2) stated that they had spent 70 minutes on the spot, marginal witness (PW-3) to recovery memo deposed to have spent 50 minutes on the spot, whereas, record provides that occurrence has allegedly made at 08.30 am, the FIR was chalked at 09.45 am, investigation officer proceeded to the spot at 09.55 am and reached there in 20 minutes, where after, prepared site plan, recorded statements of prosecution witnesses and thereafter the complainant and his police party returned from the spot, which means that they must have spent more than two hours on the spot. Their spending of more than two hours on the spot is evident from daily diary no. 7 of even date, wherein, he has shown his return to the police station at 11.40 am and thus makes one believe that all the proceedings in the case are based on false foundation.

15. Complainant has also admitted that they were in police uniform at the time of occurrence and they have witnessed the accused coming towards them straight from a far distance and was stopped in their front, which does not appeal to prudent mind because it is hardly possible to believe that a person carrying 20 packets chars in four pockets of his waistcoat on seeing the police from a considerable distance will dare to forward towards the police barricade.

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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 FIR number, which is not possible before registration of 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 specially when Muharrir of the police station denies any tampering (addition etc.) in recovery memo and card of arrest and thus creates doubt about the mode and manner about the recovery of contraband from accused.

17. More so, investigation officer has admitted that daily diary, Exh.PW 1/6, does not bear any information as to which police station it belongs. Likewise, Manzoor Ali (PW-6) admitted that the relevant documents/exhibits of register no. 19 do not bear any information with regard to police station, to which it belonged and thus further puts dent in prosecution story.

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18. Admittedly, the motorcycle is found to be deciphered with different chasses number as per the forensic laboratory report, Exh.PZ/1, however, the investigation officer badly failed to bring on record any proof of fact that the motorcycle was actually the ownership of accused. Likewise, he has also not taken any driving license of the accused to establish the fact that he was actually riding the motorcycle. There is also no witness on record to establish that accused has actually tampered the number or some has seen him doing so.

- 19. From above appreciation of evidence and lacunae noted above, it is evident that the proceedings of making arrest of accused and seizure of narcotics had become doubtful. Moreover there are many major discrepancies and contradictions in prosecution case, which have been discussed in detail above. In view of collective discussion of facts of the case, it is held that the prosecution has failed to bring home the guilt against accused beyond shadow of doubt, hence, while extending the benefit of doubt, the accused Sailab Khan is acquitted from the charges leveled against him. He is behind the bars; therefore, he be released forthwith if not required to be detained in any other case.
- 20. Case properties i.e. chars be destroyed, while, motorcycle having been deciphered with different chasses number as per chemical examiner report is confiscated to the State and be dealt with law in accordance both after expiry of period provided for appeal/revision.
- 21. File consigned to record room after completion and compilation.

**Announced**  
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**Abdul Basit**  
Additional Sessions Judge-II/JSC,  
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**CERTIFICATE**

It is certified that this judgment of mine consists of ten (10) pages and each page is duly signed by me after necessary corrections.

**Announced**  
12.01.2024

**Abdul Basit**  
Additional Sessions Judge-II/JSC,  
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