

IN THE COURT OF SYED OBAIDULLAH SHAH
SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI
(AT BABER MELA)

SPECIAL CASE NO. : 27/3 OF 2023
DATE OF ORIGINAL : 05.06.2023
DATE OF DECISION : 09.01.2024

STATE THROUGH AFTAB AHMAD SHO POLICE STATION
KALAYA

.....(COMPLAINANT)

-VERSUS-

MIRAJ S/O CHAMAN GUL, AGED ABOUT 27 YEARS, R/O CASTE
ZAKHA KHEL, DISTRICT KHYBER

..... (ACCUSED FACING TRIAL)

Present : Umar Niaz, District Public Prosecutor for State.
: Hamad Hussain and Irfan Ullah Advocates, the counsel for
accused facing trial.

FIR No. 34 **Dated: 07.04.2023** **U/S: 9 (d) of the Khyber**
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Kalaya

JUDGEMENT
09.01.2024

The above-named accused faced trial for the offence
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR
No. 34, dated 07.04.2023 of Police Station Kalaya.

- (2). The case of the prosecution as per contents of
Murasila based FIR is; that on 07.04.2023, the complainant
Aftab Ahmad SHO along with Manzoor Ali HC and
constable Abdul Sattar during routine patrolling were
present on the spot where at about 1200 hours a motorcar
bearing Registration No. LED 184 on way from Syed Khalil
Bazar towards the picket was stopped. The driver of the
motorcar was made come down who disclosed his name as
Miraj s/o Chaman Gul and his person was searched but
nothing incriminating was recovered from him. Upon search


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of the motorcar, 08 packets of chars each wrapped with yellow colour scotch tape, weighing 1000 grams, making a total of 8,000 grams were recovered from one secret cavity and 07 packets of chars each wrapped with yellow colour scotch tape, weighing 1000 grams, making a total of 7,000 grams were recovered from the other secret cavity. The complainant separated 10 grams of chars from each of the 08 packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 8 whereas the remaining quantity of chars weighing 7920 grams were sealed in parcel no. 9. Similarly, the complainant also separated 10 grams of chars from each of the 07 packet for chemical analysis through FSL, sealed the same into parcels no. 10 to 16 whereas the remaining quantity of chars weighing 6930 grams were sealed in parcel no. 17. The screwdriver used for opening the secret cavities was sealed in parcel no. 18. All the parcels were affixed with monograms of 'AA' by the complainant. The complainant took into possession the recovered chars and the motorcar bearing Registration No. LED 184 vide recovery memo. The accused was arrested on the spot by issuing his card of arrest. Murasila was drafted and sent to Police Station through Manzoor Ali HC which was converted into FIR by Asmat Ali AMHC.


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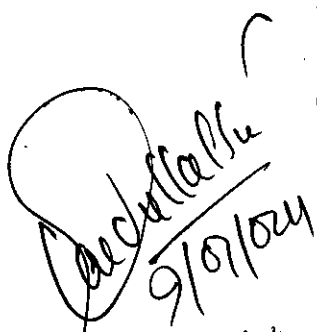
(3).

After registration of FIR, it was handed over to Investigating Officer Muhammad Hanif for investigation.

Accordingly, after receipt of FIR, he reached the spot, prepared site plan on pointation of the complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 08.04.2023, the IO sent the samples of chars for chemical analysis to FSL through constable Abdul Wadood, the result whereof was received and placed on file by him. The IO verified the motorcar from FSL by submitting an application to his high-ups. The result of which was received and placed on file by him which shows the chassis number of the motorcar welded and refitted, on the basis of which section 468/471 PPC were added in the instant case. After completion of investigation, he handed over the case file to SHO 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 through addendum-B, copies of the record were provided to him in line with section 265-C CrPC 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;

- I. Constable Abdul Wadood appeared as PW-1. He has taken the samples of chars in parcels no. 1 to 8 and 10 to 16 to the FSL for chemical analysis on


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08.04.2023 and after submission of the same, he has handed over the receipt of the parcels to the IO.

- II. Asmat Ali MHC appeared in the witness box as PW-2. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He has received the case property from the complainant duly packed and sealed which he had kept in mal khana in safe custody besides parked the motorcar in vicinity of the police station. The witness further deposed that he has recorded entry of the case property in Register No. 19, entries in the DDs and has handed over the samples of the case property to the IO for sending the same to FSL on 08.04.2023.
- III. Aftab Ahmad SHO is the complainant of the case. He as PW-3 repeated the same story as narrated in the FIR. He has submitted complete challan Ex. PW 3/3 against the accused facing trial in the instant case.
- IV. Constable Manzoor Ali appeared as PW-4. He besides being eyewitness of the occurrence is marginal witness of recovery memo Ex. PC as well vide which the complainant has taken into possession the recovered chars and the motorcar. He also reiterated the contents of FIR in his statement.


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V. Investigating Officer Muhammad Hanif 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 pointation of the complainant, recorded the statements of witnesses on the spot, sent the representative samples to FSL along with application addressed to the incharge FSL Ex. PW 5/1 and road permit certificate Ex. PW 5/2 and result of the same Ex. PK was placed on file by him, produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 5/3 and Ex. PW 5/4, drafted an application Ex. PW 5/5 to his high-ups for verification of the motorcar and the result whereof received and placed on file by him as Ex. PK/1, added section 468/471 PPC in the instant case, placed on file copy of Register No. 19, copies of daily diaries and submitted the case file to SHO for onward proceedings.

(5). Prosecution closed its evidence whereafter the statement of accused was recorded u/s 342 Cr.P.C but the accused neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of learned DPP for the State and learned counsels for the accused facing trial heard and case file perused.


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(6). Learned DPP for the State submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars has 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 have been transmitted to the FSL within the prescribed period and the same have been found positive for chars vide report of FSL Ex. PK. The complainant, the witnesses 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 witness of the prosecution and that the prosecution has proved its case beyond shadow of any doubt.

(7). Learned counsels for the defence argued that though the accused facing trial is directly nominated in the FIR and the report of FSL supports the case of prosecution; however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his possession. They 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. They concluded


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that there are various dents in the case of prosecution leading to its failure to bring home the charge against the accused facing trial.

(8). In the light of arguments advanced by learned DPP for the State, arguments of learned counsels for the defence and the available record, following are the points for determination of charge against the accused facing trial:

- (i). Whether the occurrence has taken place in the mode and manner as alleged by the prosecution?
- (ii). Whether the investigation has been carried out in the mode and manner as alleged by the prosecution?
- (iii). Whether the case of prosecution is substantiated through report of FSL?

(9). The case of prosecution, as per contents of Murasila Ex. PA/1, court statements of Aftab Ahmad SHO as PW-3 and HC Manzoor Ali as PW-4 is, that the complainant Aftab Ahmad SHO/PW-3 along with Manzoor Ali HC/PW-4 and constable Abdul Sattar during routine patrolling were present on the spot where at about 1200 hours a motorcar bearing Registration No. LED 184 on way from Syed Khalil Bazar towards the picket was stopped. The driver of the motorcar was made come down who disclosed his name as **Miraj** s/o Chaman Gul and his person was searched but nothing incriminating was recovered from him. Upon search of the motorcar, 08 packets of chars each wrapped with

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yellow colour scotch tape, weighing 1000 grams, making a total of 8,000 grams were recovered from one secret cavity and 07 packets of chars each wrapped with yellow colour scotch tape, weighing 1000 grams, making a total of 7,000 grams were recovered from the other secret cavity. The complainant/PW-3 separated 10 grams of chars from each of the 08 packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 8 whereas the remaining quantity of chars weighing 7920 grams were sealed in parcel no. 9. Similarly, PW-3 separated 10 grams of chars from each of the 07 packet for chemical analysis through FSL, sealed the same into parcels no. 10 to 16 whereas the remaining quantity of chars weighing 6930 grams were sealed in parcel no. 17. The screwdriver used for opening the secret cavities was sealed in parcel no. 18. All the parcels were affixed with monograms of 'AA' by the complainant/PW-3. The complainant/PW-3 took into possession the recovered chars and the motorcar bearing Registration No. LED 184 vide recovery memo Ex. PC. The accused was arrested on the spot by issuing his card of arrest Ex. PW 3/1. The Murasila Ex. PA/1 has been transmitted by Head Constable Manzoor Ali/PW-4 to police station where, after registration of FIR by Asmat Ali AMHC/PW-2, it has been handed over to Muhammad Hanif/PW-5, the IO of the case. The IO has visited the spot and conducted investigation by making a site

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plan Ex. PB on pointation of Aftab Ahmad SHO/PW-3 and recorded the statements of marginal witnesses u/s 161 CrPC.

The prosecution in order to prove its case in the mode and manner as alleged, has examined Aftab Ahmad SHO, the complainant of the case, as PW-3 who has reiterated the contents of Murasila Ex. PA/1 and Head Constable Manzoor Ali, the eyewitness witness of the occurrence and marginal witness of recovery memo Ex. PC as PW-4 who besides repeating the same story as narrated in the FIR, has stated to have taken the documents to the police station for registration of FIR and handed over the documents to Asmat Ali AMHC/PW-2 who has registered the FIR.

As per Murasila Ex. PA/1, the complainant/PW-3 was accompanied by police officials, namely Manzoor Ali HC and constable Abdul Sattar. However, it is noteworthy that the name of Manzoor Ali HC/PW-4 is not mentioned in the daily diary Ex. PW 2/1 rather Shabbir Khan No. 413 has been mentioned. If Manzoor Ali HC/PW-4 had been present at the spot with the complainant for patrolling, his name would have been mentioned in the daily diary Ex. PW 2/1.

The Investigation Officer failed to acknowledge this particular aspect of the case and could not produce any documentary evidence in this regard. The complainant in his statement as PW-3 has stated that the name of constable Manzoor Ali was inadvertently not mentioned in the DD


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available on file; however, when he was cross examined while producing original DD, he stated that;

"There is some overwriting in the original DD with the name of Mansoor Ali constable."

The credibility of the complainant/PW-3 is compromised when he contradicts his own account, particularly regarding the manner in which he left the spot.

With respect to process of drafting of the documents and sending the same to the police station, the version of prosecution is, that the documents i.e., the recovery memo Ex. PC, card of arrest Ex. PW 3/3 and Murasila Ex. PA/1 were sent to the police station through PW-4/Manzoor Ali HC. But, as per cross examination of PW-4, he has left the spot at about 01:00 pm for the police station and reached there at about 01:25 pm. He further stated that he returned to the spot via his own motorcycle at about 1345 hours (01:45 pm). The Murasila report Ex. PA/1 shows that the distance between the place of occurrence from the police station is 10/15 km and no evidence has been brought on record to corroborate the factum of covering 10/15 km distance in 25 minutes without disclosing the source of travelling. Moreover, the Moharrir as PW-2 stated that he, after receiving the documents, consumed 20 minutes upon registration of FIR which means that the FIR must be registered at about 01:45 pm and almost the same time has



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been mentioned in the FIR i.e., 1340 hours (01:40 pm); however, it is not appealable to a prudent mind that after registration of FIR at about 1340 hours, how can Manzoor Ali HC/PW-4 reaches the spot at about 1345 hours, covering the distance of 10/15 km within a span of 05 minutes.

With respect to process of search and recovery on the spot, as per contents of Murasila Ex. PA/1, the recovery has allegedly been effected from secret cavities of the motorcar but not on pointation of the accused facing trial. The particulars of the motorcar as mentioned in the Murasila Ex. PA/1 are: motorcar bearing Registration No. LED 184, Chassis No. NZE120-6059383 and Engine No. ZNZ-FE-1293. The same particulars are noted in the recovery memo Ex. PC. The registration book of the motorcar has also been shown recovered from possession of the accused. Asmat Ali AMHC/PW-2 stated to have received the case property by making its entry in register no. 19 Ex. PW 1/1. To justify the stance of the prosecution, the register no. 19 is gone through; however, the details of the motorcar and parcel no. 18 prepared by the complainant/PW-3 wherein the screwdriver was sealed, are not entered. Moreover, the copy of register no. 19 available on file does not bear the signature of the Moharrir while the original produced before the court bears his signature which means that the aforesaid copy of register no. 19 Ex. PW 1/1 has not been prepared on the day of

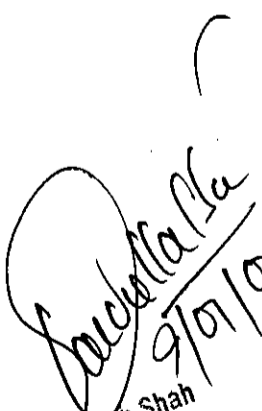

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occurrence. Furthermore, the occurrence has taken place at Mandra Khel check-post and PW-4 has admitted the fact that the official of Mandra Khel check-post along with FC officials had also laid a barricade at some distance, but being natural witnesses, no official from them has been associated by the complainant with the occurrence. Similarly, the IO has also not recorded the statement of any of the police officials, at least to the extent of the presence of complainant party on the spot. The aforementioned statements of PW-2, PW-3 and PW-4, create doubt regarding the mode and manner of the occurrence as alleged by the prosecution.

- (10). With respect to process of investigation on the spot, as per contents of Murasila Ex. PA/1, the IO has visited the spot and prepared site plan Ex. PB on pointation of the complainant. Nevertheless, careful examination of the site plan Ex. PB shows that Shabbir Khan No. 413 who, according to the daily diary Ex. PW 2/1 has left the police station with the complainant, has nowhere been shown in the site plan. Similarly, as discussed above, the motorcar allegedly recovered from the accused and the parcel no. 18 prepared by the complainant, have not been documented in register no. 19 Ex. PW 1/1. It is also evident from the site plan Ex. PB coupled with the statement of complainant as PW-3 that the place of occurrence is a straight road leading from Kalaya Headquarter to Kohat but how come it possible



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that a person having huge quantity of chars in his possession would straightaway proceed towards the police party despite being visible to him. The site plan Ex. PB also shows that a point has been allotted to one Muhammad Ayaz, the driver of the official vehicle, having belt no. 1348 but the said driver has not been mentioned in the Murasila. The Moharrir in his cross examination stated that the official who has taken the samples of chars to the FSL was constable Abdul Wadood No. 1348 and his name is also mentioned in daily diary Ex. PW 2/2 wherein his departure and arrival has been mentioned. The IO failed to produce any documentary evidence to prove the discrepancy in the belt numbers of two police officials. These contradictions regarding the spot of occurrence as told by the complainant/PW-3 and eyewitness/PW-4 in their statements and that of the site plan Ex. PB shows that either the occurrence has not taken place on the spot or the IO has not visited the spot at all.

- (11). With respect to safe custody of transportation of case property from the spot to the police station, entry of the same in register No. 19 and later on sending the same to the FSL for chemical analysis, the case of prosecution is, that the complainant/PW-3 transported the case property from the spot to the police station and handed over the same to Moharrir who makes its entry in register no. 19 and the IO on 08.04.2023 sent the representative samples in parcels no.


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1 to 8 and 10 to 16 to the FSL through constable Abdul Wadood/PW-1. In order to prove its case, the prosecution relied upon the statements of Aftab Ahmad SHO as PW-3, Asmat Ali AMHC as PW-2, constable Abdul Wadood as PW-1 and Muhammad Hanif OII as PW-5.

The testimonies of Aftab Ahmad SHO/PW-3 and Asmat Ali AMHC/PW-2 show that Asmat Ali AMHC has received the case property i.e., parcels no. 1 to 18 and the motorcar in question and he has made entry of the same in register no. 19 but an inconsistency arises as register no. 19 contradicts this assertion, lacking any entry for parcel no. 18 and the motorcar. The Moharrir/PW-2 admitted that these entries have later on been added in the original register no. 19 which casts a shadow of doubts regarding safe custody of the case property. Moreover, during cross-examination, PW-2 acknowledged naming the witness who transported the samples to the Forensic Science Laboratory (FSL) as 'Abdul Wadood No. 1348' in DD Ex. PW 2/1; however, the application Ex. PW 5/1 and the road permit certificate Ex. PW 5/2 bear the name of constable Abdul Wadood No. 1438. Though the FSL report Ex. PK regarding chars is positive but these glaring contradictions between the statements of prosecution witnesses and the record significantly undermine the strength of the prosecution's case and the FSL


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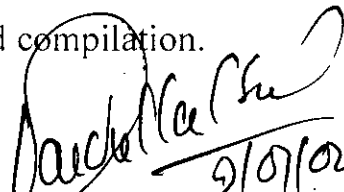
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report alone cannot be taken into consideration for conviction of the accused.

(12). In the light of aforementioned discussion, it is held that the prosecution has failed to prove the alleged recovery of chars from possession of the accused facing trial in the mode and manner as detailed in the report. Similarly, the prosecution has also failed to prove the alleged mode and manner of the investigation carried out by the IO on the spot. The prosecution also failed to prove the safe custody of case property. All these facts lead to the failure of prosecution to prove the case against the accused beyond shadow of doubt. Therefore, the accused namely, **Miraj** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is in custody. He be released forthwith, if not required in any other case. Case property i.e., chars be destroyed after the period provided for appeal/revision.

Judgment announced. File of this court be consigned to record after its necessary completion and compilation.

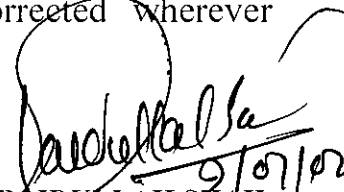
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CERTIFICATE

Certified that this judgement consists of fifteen (15) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 09.01.2024


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