

48

STATE VS MUHAMMAD AMEEN
FIR No. 03 | Dated: 24.01.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Mishti Mela

IN THE COURT OF SHAUKAT AHMAD KHAN
SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI
(AT BABER MELA)

SPECIAL CASE NO. : 9/3 OF 2022
DATE OF INSTITUTION : 04.04.2022
DATE OF DECISION : 25.06.2022

STATE THROUGH MUHAMMAD NASEEB KHAN SHO, POLICE
STATION MISHTI MELA

.....(COMPLAINANT)

-VERSUS-

MUHAMMAD AMEEN S/O MINAR SHAH, AGED ABOUT 38
YEARS, R/O CASTE MISHTI, SUB TRIBE DARWI KHEL, VILLAGE
SHAL ZARA DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL)

Present: Muhammad Zubair, Assistant Public Prosecutor for State.
: Sana Ullah Khan Advocate for accused facing trial.

FIR No. 03 **Dated:** 24.01.2022 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Mishti Mela

JUDGEMENT
25.06.2022

The above-named accused faced trial for the offence
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR
no. 03, dated 24.01.2022 of Police Station Mishti Mela.

(2). The case of the prosecution as per contents of Ex. PA/1
Murasila based FIR Ex. PA is; that on 24.01.2022 the
complainant, Muhammad Naseeb Khan SHO/PW-2 along
with other police officials at about 10:00 hours during
patrolling, stopped a person having white colour bag on his
shoulder. The person disclosed his name as Muhammad
Ameen s/o Minar Shah. Nothing incriminating was recovered
from him upon his personal search; however, the
complainant/PW-2 recovered the bag from his possession, the

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
25/06/22

search of which led the complainant to the recovery of 10 packets of chars, each weighing 1000 grams, a total of 10,000 gram of chars. The complainant/PW-2 separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same in parcels no. 1 to 10 whereas the remaining quantity of chars weighing 9900 grams along with white colour bag were sealed in parcel no. 11 by affixing monogram of 'AR' on all the parcels. The accused was accordingly arrested by issuing his card of arrest Ex. PW 2/1. The complainant/PW-2 took into possession the recovered chars vide recovery memo Ex. PC. Murasila Ex. PA/1 was drafted and sent to the Police Station through Muhammad Shafiq HC which was converted into FIR Ex. PA by PW-1, Muhammad Ayyub AMHC.

(3). After registration of FIR, it was handed over to PW-3, Riaz Khan SI for investigation. Accordingly, after receipt of FIR, PW-3 reached on the spot, prepared site plan Ex. PB on the pointation of complainant, sent the samples for chemical analysis to FSL vide his application Ex. PW 3/3 through constable Jamshid Ullah/PW-4, the result whereof Ex. PK was received and placed on file by him. 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 case file for the purpose of trial, the accused was summoned, copies of the record were provided to

Shaukat Ahmad Khan
District & Sessions Judge,
Drakzai at Bahar Mela
25/06/22

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 of prosecution is as follow;

- I. AMHC Muhammad Ayyub is PW-1. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He has also received the case property in sealed condition which he has kept in mal khana of the Police Station in safe custody.
- II. Muhammad Naseeb Khan SHO, the seizing officer, appeared in the witness box as PW-2 and repeated the story as narrated in the FIR.
- III. Investigating Officer Muhammad Riaz SI was examined as PW-3. He has prepared site plan Ex. PB on pointation of complainant, recorded the statements of witnesses on the spot, produced the accused along with case property before the court of Judicial Magistrate vide his applications Ex. PW 3/1 & Ex. PW 3/2, sent the representative samples to FSL vide his application Ex. PW 3/3 & road permit certificate Ex. PW 3/4 and result of the same Ex. PK was placed on file by him, placed on file extract of naqal mad no. 3 and 9 Ex. PW 3/5 and copy of register 19 Ex. PW 3/6 and submitted the case file to the SHO for onward proceedings.

Shaukat Ahrar Khan
District & Sessions Judge,
Prakzai at Baber Mela
25/06/22

IV. Constable Jamshid Ullah is PW-4. He has taken the samples of recovered chars in parcels no. 1 to 10 to the FSL alongwith application Ex. PW 3/3 and road permit certificate Ex. PW 3/4 for chemical analysis on 01.02.2022 and after submission of the same, he was given the receipt of the parcels which he handed over to the IO upon his return.

V. Head Constable Muhammad Shafiq appeared in the witness box as PW-5. He stated that he had not accompanied the SHO at the time of occurrence and no proceedings were carried out in his presence besides he had not given any statement to the IO u/s 161 CrPC.

VI. Head Constable Muhammad Waseem appeared in the witness box as PW-6. He also stated that he had not accompanied the SHO at the time of occurrence and no proceedings were carried out in his presence besides he had not given any statement to the IO u/s 161 CrPC.


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


Shaukat Ahmad Khan
District & Sessions Judge
Orakzai at Baber Mela
25/01/22

(81)

STATE VS MUHAMMAD AMEEN
FIR No. 03 | Dated: 24.01.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Mishti Mela

(6). Learned APP for the State submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars have 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 has been transmitted to the FSL which have been found positive for chars vide report of FSL Ex. PK, the complainant, the official transmitted the sample to the FSL and the IO have been produced by the prosecution as witnesses, whom have fully supported the case of prosecution and their statements have been lengthy cross examined but nothing contradictory could be extracted from the mouth of any of the witness. So far statements of marginal witnesses of recovery memo are concerned, they have been pressurized by the accused, therefore retracted from their statements; however, after being declared by the court as hostile, they have been cross examined by the prosecution wherein they have admitted authenticity of daily diary vide which they have been shown left the Police Station in the company of SHO. Learned APP for state submitted that both the eyewitnesses have been examined by prosecution but they categorically denied any occurrence in their presence. He further submitted that besides acquittal of the accused, the complainant and IO may be proceeded in


Shaukat Ahmad Khan
District & Sessions Judge,
Faisalabad Baher Mela
25/06/22

52

STATE VS MUHAMMAD AMEEN
FIR No. 03 | Dated: 24.01.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Mishti Mela


accordance with law for falsely implicated the accused and the eyewitnesses in the instant case.

(7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR, the alleged chars have been shown recovered from possession of the accused facing trial and the report of FSL support the case of prosecution; however, the accused facing trial is falsely implicated in the instant case. He 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. He concluded 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 the learned DPP for the State and learned counsel for the defence and the available record, following are the points for determination of charge against the accused facing trial:

(i). Whether the recovery is proved to have been made from possession of accused facing trial and the investigation have been conducted in the mode and manner as detailed in the file?

(ii). Whether the recovered substance is proved through report of FSL as chars?


Shaukat Ahmad Khan (ji)
District & Sessions Judge,
Orakzai at Baber Mela

25/06/22

83

STATE VS MUHAMMAD AMEEN
FIR No. 03 | Dated: 24.01.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Mishti Mela

(9). With respect to mode and manner of the recovery and mode and manner of the investigation conducted on the spot, the case of prosecution is, on 24.01.2022 the complainant, Muhammad Naseeb Khan SHO/PW-2 along with other police officials at about 10:00 hours during patrolling, stopped a person having white colour bag on his shoulder. The person disclosed his name as Muhammad Ameen s/o Minar Shah. Nothing incriminating was recovered from him upon his personal search; however, the complainant/PW-2 recovered the bag from his possession, the search of which led the complainant to the recovery of 10 packets of chars, each weighing 1000 grams, a total of 10,000 gram of chars. The complainant/PW-2 separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same in parcels no. 1 to 10 whereas the remaining quantity of chars weighing 9900 grams along with white colour bag were sealed in parcel no. 11 by affixing monogram of 'AR' on all the parcels. The accused was accordingly arrested by issuing his card of arrest Ex. PW 2/1. The complainant/PW-2 took into possession the recovered chars vide recovery memo Ex. PC. Murasila Ex. PA/1 was drafted and sent to the Police Station through Muhammad Shafiq HC which was converted into FIR Ex. PA by PW-1, Muhammad Ayyub AMHC.

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Fater Mela
20/01/22

The prosecution in order to prove its case, produced complainant Naseeb Khan SHO as PW-2, Muhammad Riaz SI

54

STATE VS MUHAMMAD AMEEN
FIR No. 03 | Dated: 24.01.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Mishti Mela

as PW-3, HC Muhammad Shafiq and constable Muhammad Saleem who besides marginal witness of recovery memo, are also the eyewitnesses of the occurrence, were examined as PW-5 and PW-6 respectively. Muhammad Ayyub AMHC was examined as PW-1. The complainant as PW-2 and Muhammad Riaz SI, the IO of the case as PW-3 have supported the stance of prosecution in their examination-in-chief but the eyewitnesses PW-5 and PW-6 have categorically denied their presence on the spot or the happening of occurrence in their presence. Both the witnesses as per request of learned DPP have been declared hostile and both have been cross examined by prosecution but both remained strict to their statements in their examination-in-chief.

In view of aforementioned discussion, it is held that the prosecution even failed to prove the recovery, what to talk of proving the mode and manner of the occurrence as detailed on file and the mode and manner of recovery and the investigation conducted on the spot.

- (10). With respect to transmission of the case property from the spot to the Police Station and sending of the representative samples to the FSL, the case of prosecution is, that after sampling and sealing of case property in parcels on the spot, these were brought by the complainant/ PW-2 to the Police Station and handed over the same to AMHC Muhammad Ayyub/PW-1, who deposited the same in Mal khana. The

Shaukat Ahmad Khan
District & Sessions Judge
Gakhal at Baber Mela
25/01/22

SS

STATE VS MUHAMMAD AMEEN
FIR No. 03 | Dated: 24.01.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Mishti Mela

representative sample on 01.02.2022 was handed over by Moharrir of the Police Station to the IO who transmitted the same to FSL through constable Jamshid Ullah vide road permit certificate.

In order to prove its case, the prosecution produced Muhammad Ayyub AMHC as PW-1, constable Jamshid Ullah as PW-4 and IO as PW-3. PW-3, though in his examination in chief stated that he had received case property from the complainant, made entry of same in register no. 19, handed over parcels no. 1 to 10 to the IO and an extract of the same as Ex. PW 3/6 has been placed on file but the original register no. 19 has not been produced before the court despite being objected to by the defense. Similarly, the occurrence has taken place on 24.01.2022 while as per report of the FSL Ex. PK the representative sample has been transmitted to FSL on 01.02.2022 with a delay of 09 days.

Hence, in view of what is discussed above, though the representative sample, as per report of FSL Ex. PK, has been found as chars but keeping in view the failure of the prosecution to prove the safe custody of the case property, its transmission to the Police Station and transmission of the representative sample to the FSL, it is held that the report of FSL cannot be relied for recording conviction.

Shaukat Ahir
District & Sessions Judge
Orakzai
24/01/2022

(11). In the light of aforementioned discussion, it is held that the prosecution has failed to prove the alleged recovery of


56

STATE VS MUHAMMAD AMEEN
FIR No. 03 | Dated: 24.01.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Mishti Mela

chars from possession of the accused facing trial. Similarly, the prosecution has also failed to prove the safe custody of case property and transmission of the representative sample to FSL. All these facts lead to the failure of prosecution to prove the case against the accused beyond shadow of doubt. Therefore, the accused namely, Muhammad Ameen 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. The case property i.e., chars be destroyed after the expiry of period provided for appeal/revision in accordance with law. Consign.

Pronounced
25.06.2022





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

CERTIFICATE

Certified that this judgement consists of ten (10) pages.

Each page has been read, corrected wherever necessary and signed by me.

Dated: 25.06.2022


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