

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

CASE NO. : 18/2 OF 2023
DATE OF ORIGINAL : 05.12.2023
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
U/S: 468/471 PPC

Dated: 07.04.2023
Police Station: Kalaya

JUDGEMENT
09.01.2024

The above-named accused faced trial for the offence
u/s 468/471 PPC 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
of the motorcar, 08 packets of chars each wrapped with

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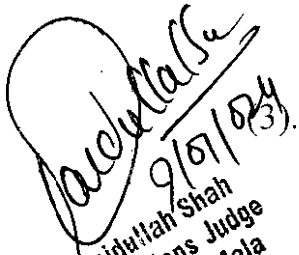
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yellow colour scotch tape, weighing 1000 grams, making a total of 8,000 grams were recovered from one secret cavity and 07 packets of chars each wrapped with yellow colour scotch tape, weighing 1000 grams, making a total of 7,000 grams were recovered from the other secret cavity. The complainant 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.

After registration of FIR, it was handed over to Investigating Officer Muhammad Hanif for investigation. Accordingly, after receipt of FIR, he reached the spot,


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


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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.

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.

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


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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.

VI. Lastly, Nasir Khan SHO appeared as PW-6. He has submitted challan u/s 468/471 PPC Ex. PW 6/1 against the accused facing trial in the instant case.

(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 chargs has been recovered from possession of the accused facing trial while transporting the same via motorcar bearing Registration No. LED 184, that as per report of FSL Ex. PK/1 the chassis sheet of the motorcar recovered from the possession of accused facing trial, is tempered which alone, is sufficient for conviction of the accused facing trial 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 prosecution has failed to prove that the motorcar has been recovered from possession of the accused facing trial, that there is nothing available on file as to show that the alleged tempering has been made by the accused facing trial, that the nexus of accused with the motorcar has not been proved facts and that the prosecution has failed to bring home the charge against the accused facing trial.

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:


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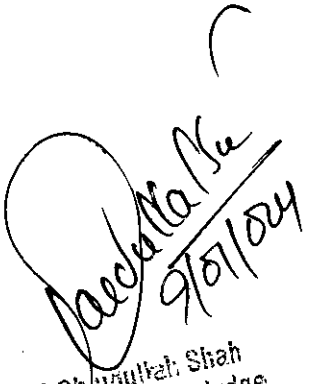
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- (i). Whether the recovery of motorcar is proved to have been made from possession of accused facing trial?
- (ii). Whether the tempering in the chassis sheet of the motorcar, if proved, has been made by the accused facing trial?
- (9). With respect to recovery of the motorcar from possession of the accused, 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 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


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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 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


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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 contents of Murasila Ex. PA/1, the recovery has allegedly been effected from secret cavities of the motorcar. 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


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been prepared on the day of 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 presence of the complainant party on the spot and the recovery of motorcar from possession of accused as alleged by the prosecution.

(10). With respect to tempering in the chassis sheet of the motorcar, as per report of FSL Ex. PK/1, the chassis sheet of the motorcar is welded and refitted, which alone is sufficient to hold that tempering has been made in the chassis sheet of the motorcar. But not an iota of evidence has been produced by the prosecution to hold that the motorcar was in the name of accused facing trial or the tempering has been made by him or even the accused was having any nexus with the alleged motorcar.

(11). In the light of aforementioned discussion, it is held that the prosecution has failed to prove the alleged recovery of the motorcar from possession of the accused facing trial

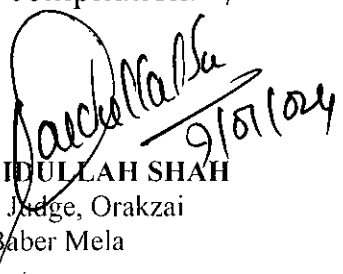
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in the mode and manner as detailed in the report. Therefore, the accused namely, **Miraj** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is in custody. He be released forthwith, if not required in any other case. Case property i.e., motorcar be confiscated to the State.

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

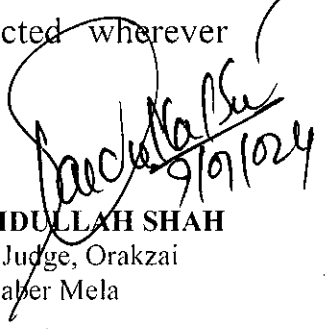
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Sessions Judge, Orakzai
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CERTIFICATE

Certified that this judgement consists of eleven (11) pages. Each page has been read, corrected wherever necessary and signed by me.

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SYED OBAIDULLAH SHAH
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at Baber Mela

