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

Case No. 26/3 of 2023

Date of institution: 07.09.2023

Date of decision: 19.12.2023

Date of consignment:

State through Aftab Ahmed SHO of the Kalaya Police Station Orakzai
(complainant)

Versus

Ibraheem (aged about 28 years) s/o Muhammad Iqbal Khan r/o Bara, Qaum
Afridi, District Khyber (accused facing trial)

**FIR No. 60 DATED: 06.06.2023 U/S 9-D CNSA and 15-AA
KALAYA POLICE STATION, ORAKZAI**

JUDGMENT

1. Accused Ibraheem is facing trial in the subject case registered under section 9-D CNSA and 15-AA of Kalaya Police Station, Orakzai.
2. Aftab Ahmed SHO, the complainant, along with police officials during patrolling arranged a barricade on the spot, where about 2150 hours motorcycle Honda-125 of black color approached and stopped by complainant for the purpose of search; that driver of motorcycle was deboarded who disclosed his name Ibraheem son of Muhammad Iqbal Khan; that his personal search led the police party to recovery of a .30 bore pistol no. A3276 alongwith fixed charger containing 14 live rounds of .30 bore; that upon search of the motorcycle, the complainant found a white color sack tied with red rope on the seat of motorcycle which contained 09 packets of chars wrapped with yellow scotch tape each having weight of 1000 grams with total quantity of 9000 grams; that samples of 10 grams chars separated

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from each packet for chemical analysis, which were packed in parcel no. 1-9, whereas, the remaining chars was packed in separate parcels no. 10-18; that pistol was also packed in parcel no. 19 and the white plastic sack was packed in parcel no. 20; that accused was arrested on the spot, recovery memo was prepared, the murasila was drafted on the spot 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 facing trial.
4. Accused facing trial 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 15 AA to which he pleaded not his guilt and claimed trial.
5. Prosecution produced following evidence in support of its case;
6. Muhammad Jamil, Muharrir appeared as PW-1, who has registered the FIR, Exh.PA, on receipt of murasila. He also kept the case property in the maalkhana for safe custody vides register No. 19, Ex.PW-1/1. He also exhibited register, Ex.PW-1/2, pertaining to the departure and arrival of the SHO. The statement of star prosecution witness Aftab Ahmed SHO (complainant) was recorded as PW-2. He has confirmed the initial report, Exh.PA; recovery of contraband and motorcycle vides recovery memo, Ex.PW-2/1, to be true. He arrested the accused and issued his card of arrest, Exh.PW-2/2. He drafted the murasila, Ex.PA/1. One of the marginal witness to the recovery memo was Muhammad Irshad, who was examined as PW-

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3. He testified that the recovery was made from accused, which was documented vide recovery memo. He took the murasila and card of arrest to the police station and handed over the same to the Muharrir for registration of FIR. PW-4 is the statement of Abdul Wadood, who has taken the parcels No. 1-9 containing samples of chars and parcel No. 19 containing .30 bore pistol to the FSL Peshawar for chemical analysis. Transit receipts with acknowledgements were exhibited by him as Exh.PW 4/1 and Exh.PW 4/2. Investigation Officer of the case was Minhaz Hussain OII, who has entered in the witness box as PW-5. He prepared site plan Exh.PB, prepared the site plan and confirmed the examination of prosecution witnesses. He produced USB No. V250W-HMT-02-23, Exh.P-12, containing videography of recovery proceedings. He alleged to have prepared recovery memo, Exh.PW 5/1, in presence of marginal witnesses and produced case property in parcel No. 19, Exh.P-13. He had produced the accused before the Area Judicial Magistrate vides application, Exh.PW 5/2. He vide application Exh.PW 5/3 and Exh.PW 5/4 requested for FSL analysis and E&T report of the recovered vehicle. He drafted 02 separate applications, Exh.PW 5/5 and Exh.PW 5/6, to In-charge FSL for chemical analysis of parcels no. 1 to 9 contained 10/10 grams chars and parcel no. 19 containing pistol alongwith fixed charger & 14 rounds. Another application was addressed to Area Judicial Magistrate with request of further 03 days custody of accused, which is Exh.PW 5/7. FSL reports were produced, which are Exh.PZ and Exh.PZ/1. After the completion of investigation, he

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handed over the case file to SHO for onward submission of complete challan, Exh.PW 5/8, against the accused.

7. Prosecution closed its evidence. The statement of accused facing trial recorded under section 342 CrPC, wherein, he again denied from the charges & adhered to his innocence. In reply to a question, he neither wished to be examined under oath nor to produce any evidence in his defense.
8. Arguments heard and record perused.
9. Learned Dy. PP for State argued that the prosecution has proved the case against accused beyond shadow of doubt; that recovery of the contrabands is proved from possession of accused. The prosecution witnesses are consistent in their statements in respect of recovery of narcotics from accused facing trial. That FSL result in respect of samples, separated from the chars recovered from the accused, and pistol are in positive; that there is no malafide on the part of the prosecution to falsely involve the accused in the case, thus, requested to award him maximum punishment.
10. Counsel for accused facing trial argued that prosecution has failed to prove its case against accused beyond reasonable shadow of doubt; that prosecution evidence contradicts each other and 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 facing trial; that the accused facing trial has

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not confessed his guilt; that 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 on eventful day, the local police was allegedly on patrol duty and had arranged a barricade at place of occurrence, where accused approached on a motorcycle, who was intercepted by the police and during search, the local police recovered .30 bore pistol from his possession and 9000 grams chars from the rear seat of the motorcycle so the accused was charged with the commission of offence. It is bounden duty of the prosecution to prove its case beyond shadow of reasonable doubt from the moment of patrolling of local police to the confrontation of accused, his body search, recovery of pistol, his transportation of contraband on motorcycle, taking of samples from the recovered contraband, preparation of recovery memo, drafting of the murasila, witnessing of the whole proceedings by the marginal witnesses, registration of case, safe custody of recovered articles, investigation of the case and laboratory reports etc. To prove its case, prosecution led the evidence of many witnesses. Complainant deposed that they had reached to the spot at 08.30 pm, however, deviated from his stance of timing by first stating that the accused had approached to the spot after one hour and fifty minutes but when he realized that his told time would conflict with time of occurrence and the time of report, then, he stated that accused had attracted to the spot after about one hour and thirty minutes. Though, he has managed to cover the timing of arrival of accused and time of the occurrence, however,

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in reply to a question, he deposed that he has drafted the murasila and prepared the card of arrest of the accused in 15 minutes (jointly) and handed over the murasila to Muhammad Irshad, who left the spot at 11.00 pm, which fact is also confirmed by murasila carrier (PW-3) stating that complainant had handed over him the murasila at 11.00 pm and he took it to police station; therefore, if it is presumed that complainant has started drafting the murasila and card of arrest at 11.00 pm and took around 15 minutes to draft these, then, how it is possible that he would have delivered the murasila to Muhammad Irshad at 11.00 pm, which not only reflects that the murasila carrier was either not present on spot or the proceedings have been carried out in a mode and manner different from the stated one and thus creates reasonable doubt in genuineness of the prosecution story.

12. As per direction of the superior courts, videography of making the seizure of contraband from accused by the seizing officer right from the moment, when the recovery is reported in the mode and manner, is made compulsory so as to make it belief that it has actually been made from such accused or from his dwelling house or from the vehicle so that every recovery of proceedings of narcotics, especially when the quantity of narcotics is considerably huge, shall be made available before the court. In the instant case, murasila report does not provide any detail about the preparation of video recording by the complainant, whereas, this fact is also not mentioned by the latter in his statement recorded as PW-2. Although, in cross-examination he has alleged the delivery of USB to investigation officer on his return from police station, however, the entry of USB is admittedly

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not mentioned in the register no. 19 by Muharrir (PW-1) of the police station. If it is presumed that he has inadvertently left to enter in the register no. 19, even then, extract of register no. 19, Exh.PW 1/1, produced before the court does not bear the date and time in column no. 2. This is strange to note that two different recovery memos have been prepared in the instant case; the first pertained to alleged recoveries etc. from accused, whereas, the second pertains to taking of USB by investigation officer from the complainant, which is allegedly witnessed by marginal witnesses. Muhammad Irshad (PW-3), however, plainly denied witnessing the recovery memo, Exh.PW 5/1, which straightaway questions the preparation of video recording of the occurrence, its taking through the recovery memo and signature of the witnesses on it. If it is presumed that the seizing officer has made the video recording of the whole proceedings, even then, it was a late night occurrence and no source of light has been shown there because the complainant admitted that there was no lamp on the road, where they had made barricade, which facts above lead to inference that either no video recording of the occurrence has been made or if made it was fictitious and infers that the offence has been allegedly committed in a mode and manner different from the reported one.

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13. There are few contradictions noted in the statements of prosecution witnesses; the complainant (PW-2) deposed that In-charge of Check Post Mandra Khel was Libas Khan, who has accompanied them, whereas, the Muhammad Irshad (PW-3) deposed that the In-charge of said check post was Abdul Malik. Likewise, PW-3 deposed that

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the investigation officer of the case was Minhaj Ali, however, record provides name of investigation officer as Minhaz Hussain. Similarly, PW-3 stated that the investigation officer has recorded his statement on the spot and not in the police station, whereas, the investigation officer (PW-5) stated that he has recorded the statements of marginal witnesses in the police station. So much so, the complainant (PW-2) deposed that Muhammad Irshad (PW-3) left the spot on motorcycle, which was presumably the one rode by accused but investigation officer (PW-5) admitted that the motorcycle of the accused was removed to the police station in official vehicle, wherein, constables Muhammad Irshad and Wajidullah were also sitting. On same footings, PW-3 deposed that after handing over the murasila report to Muharrir in the police station, he has come back to the spot in official motorcycle, nevertheless, the investigation officer (PW-5) contradicted him saying that when he has reached to the spot, there he found the complainant with police officials and he has observed only one motorcycle on the spot, which belonged to the accused and there was no other motorcycle present on the spot, which raises a doubt that if the investigation officer has witnessed the only motorcycle of accused on the spot, then, where has Muhammad Irshad has parked the official motorcycle, which all above discussed facts are not only glaring contradictions but leads to inference that Muhammad Irshad was not accompanying the complainant at the time of alleged occurrence and his name was entered later on to fill up the lacunae.

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14. 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 the investigation officer for production before the learned Judicial Magistrate, the delivery of samples to police official for taking those to FSL Peshawar for the chemical analysis and route certificate are related, it is held that Muharrir of the police station admitted that when he receives or delivers the case properties, he makes entries in register no. 19 of the police station maintained for said purpose, however, he has also admitted that he has not mentioned the fact of handing over the case property to the investigation officer for production before the Area Judicial Magistrate and thus questions the safe custody of the case property in the *maalkhana* and raises an eye brow to the fact that the case property produced before the court might be different from the one allegedly kept in the *maalkhana*.

15. This is also important to note that the occurrence has allegedly committed on 06.06.2023 late night, whereas, investigation officer (PW-5) has reached to the spot for investigation after 0015 hours on 07.06.2023, however, he has admittedly mentioned the date on recovery memo, Exh.PW 5/1, and *zimni* no. 1 pertaining to recording the statements of marginal witnesses and site plan as 06.06.2023. Even the investigation officer did not remember the names of police officials, who have accompanied him to the spot. Likewise, he earlier stated that he has recorded the statements of the prosecution witnesses on the spot but in cross-examination deviated stating that

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he has recorded the statements of marginal witnesses to the recovery memo in police station. This is surprising to note that being police official and investigation officer of the case, he did not know that what for the abbreviations CNSA and AA stand for, which facts are unbelievable and not expected from a responsible person, who had been authorized the investigation of a serious and heinous offence that carries severe punishments.

16. This is also surprising to note that investigation officer (PW-5) has admitted his departure from the police station and in this respect information is mentioned in the daily diary no. 13, Exh.PW 1/2, according to which Abdul Wadood has also accompanied him, nevertheless, Abdul Wadood (PW-4) has nowhere stated that he has accompanied the investigation officer to the spot for the purpose of investigation. Likewise, complainant (PW-2) admitted that recovery memo and card of arrest of the accused were in the same form as he had prepared then and no addition has been made, however, perusal of both these documents provides that these contain the FIR number, which apprehends that recovery memo and card of arrest of the accused were prepared in the police station and not on the spot, which puts serious dent to the prosecution version.

From above appreciation of evidence it is held that the proceedings of making arrest of accused and seizure of narcotics had become doubtful. Moreover there are many major discrepancies and contradictions in the case of prosecution as discussed above. In view of above discussed facts of the case, the prosecution failed to prove the guilt against the accused, hence, while extending the benefit of doubt, accused Ibraheem

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is acquitted from the charge leveled against him. He is behind the bars; therefore, he be released forthwith if not required in any other case.

18. Case property i.e. chargs be destroyed, while, motorcycle in question 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.



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CERTIFICATE

It is certified that my judgment consists of eleven (11) pages and each page is duly signed by me after necessary corrections.



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19.12.2023

Abdul Basit
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