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

Case no. 16/3 of 2023

Date of institution: 04.05.2023

Date of decision: 19.12.2023

Date of consignment:

State through Muhammad Younis SHO Central Mishti Mela Police Station  
Orakzai (complainant)

Versus

Masood (aged about 45 years) s/o Mastal Shah r/o Qaum Ali Khel, village  
Baghnak, District Orakzai (accused facing trial)

**FIR No. 10 DATED: 27.02.2023 U/S 9-D CNSA  
CENTRAL MISHTI POLICE STATION, ORAKZAI**

**JUDGMENT**

1. Accused Masood is facing trial in the subject case registered under section 9-D CNSA of Central Mishti Mela Police Station, Orakzai.
2. Muhammad Younis, the complainant, along with police officials during patrolling received information about smuggling of narcotics through black Motorcar No. KWB-999-Punjab towards Kohat. Upon that information, they arranged barricade, whereat, about 1100 hours the above detailed motorcar appeared and stopped by complainant for the purpose of search. The driver of motorcar was deboarded and searched but nothing incriminating was recovered from his personal search. Upon search of the motorcar, the complainant recovered 09 packets of chars wrapped with yellow scotch tape from secret cavity made near the tank of motorcar having weight of 1100 grams of each packet with total quantity of 9900 grams. Accused was arrested on the spot, hence, the FIR.

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3. The complainant reduced the above facts in the shape of Murasila, Ex.PA/1, on strength of which subject case was registered.
4. On completion of investigation, complete challan under section 9-D CNSA was put in court against the accused facing trial.
5. 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, to which he pleaded not his guilt and claimed trial.
6. Prosecution produced following evidence in support of its case;
7. The statement of star prosecution witness Muhammad Younis SHO (complainant) was recorded as PW-1. He confirmed the initial report Ex.PA to be true. Recovery of contraband and motorcar vide recovery memo, Ex.PW-1/1, was testified to be genuine. He arrested the accused and issued his card of arrest, Ex.PW-1/2. He drafted the murasila, Ex.PA/1, and submitted the complete challan, Ex.PW-1/3, against accused. One of the marginal witnesses to recovery memo was Fazal Hameed Constable, who was examined as PW-2. He has testified that recovery was made from accused and was documented vide recovery memo in his presence. He took the murasila and card of arrest to police station and handed over the same to the Muharrir for registration of FIR. Ihsan Ullah, Muharrir of the police station was examined as PW-3, who has registered FIR, Ex.PA, on receipt of murasila. He also kept the case property in the malkhana for safe custody vides register # 19, Ex.PW-3/1. Abdul Manaf, investigation officer of the case, appeared in witness box as PW-4. He prepared site plan, Exh.PB. He has confirmed the preparation of site plan and

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examination of witnesses. He had produced the accused before the Area Judicial Magistrate vide application, Ex.PW-4/1, and drafted applications Ex.PW-4/2 and Ex.PW-4/3 to SP Investigation for issuing letters to FSL Peshawar and ETO Punjab. Letters of the SP Investigation to FSL Peshawar and ETO Punjab are Ex.PW 4/4 and Ex.PW 4/5. Application for production of accused for the confession before the court of Judicial Magistrate is Ex.PW-4/6, application to FSL Peshawar is Ex.PW-4/7 and road permit certificate is Ex.PW-4/8, which all were written by the investigation officer. He exhibited daily diary regarding arrival and departure of SHO as Ex.PW-4/9 and FSL result as Ex.PZ-1. On completion of investigation, he handed over the case file to SHO for onward submission of complete challan against the accused. PW-5 is the statement of Ameen Khan, who has taken the parcels no. 1-9 and motorcar bearing registration No. KWB-999 to FSL Peshawar for chemical analysis.

8. Prosecution closed its evidence. The statement of accused facing trial was recorded under section 342 CrPC, wherein, he again denied from the charges and adhered to his innocence. In replies to the questions, he neither wished to be examined under oath nor to produce evidence in defense.

Arguments heard and record perused.

10. Learned APP for State argued that the prosecution has proved the case against accused facing trial beyond shadow of reasonable doubt; that recovery of contrabands is proved from the possession of the accused. The prosecution witnesses are consistent in their statements in respect of recovery of narcotics from accused facing

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trial. That FSL result in respect of the sample, separated from the chars recovered from the accused, is 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.

11. Counsel for the accused facing trial argued that prosecution has failed to prove its case against accused beyond reasonable shadow of doubt; that prosecution evidence contradicts & suffers from major inconsistencies; that the prosecution case is full of doubts because prosecution witnesses materially contradicted each other; that recovery is not effected from the immediate possession of accused facing trial; that the accused facing trial has not confessed his guilt; that the case against the accused facing trial is not proved and request is made for the acquittal of accused facing trial.

12. Viewing the arguments advanced by learned counsel for parties, the evidence and record before the court, it is observed that the local police during patrol duty has allegedly received spy information about transportation/smuggling of contraband in black color motorcar towards Kohat, whereat, they reached to the spot and arranged a barricade, where the accused approached in the car at about 1100 hours and 9900 grams chars was recovered from secret cavities of the motorcar he was driving. The prosecution, in order to substantiate its plea, recorded the statement of complainant as PW-1, who reiterated facts of the case without any deviation. Though he was subjected to lengthy cross-examination, however, defense counsel failed to bring on record any substance to favour the accused. Undoubtedly, the local police did not associate any private witness at the time of

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recovery of the contraband, however, non-association of the private witnesses at the time of recovery of contraband from the possession of accused does not vitiates recovery proceedings because it is settled law that the police officials are as good witnesses as are the public witnesses. On the other side, the public also avoids becoming witness in criminal cases due to enmity factor. Importantly, section 31 of The Khyber Pakhtunkhwa Control of Narcotics Substances Act, 2019 provides that provisions of section 103 CrPC in the narcotics cases are mandatory only when the search of a dwelling house is intended, whereas, in rest of the cases, the local police may follow it in appropriate cases with necessary changes, if any required. The relevant provision of law is reproduced below as ready reference;

*31. Mode of making searches and arrest. The provisions of the Code, except those of section 103, shall, mutatis mutandis, apply to all searches and arrests. Provided that section 103 of Code shall, in case of search of dwelling house, be strictly observed.*

In this case, the accused was arrested and recovery was affected from his motorcar he was driving and not from his dwelling house; therefore, non-association of private witnesses by the police is not damaging to case nor it vitiates the proceedings.

13. Besides, it is evident from record that complainant (PW-1) has made personal search of the accused, the car from the inside, however, nothing recovered therefrom, however, when he removed the back seat, there he found the steel shield affixed beneath the tank of said

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motorcar with the bolts, which he opened with the help of wrench and recovered therefrom 9 packets of chars, weighed it, separated 10 grams chars from each packet as sample, sealed it in separate parcels for chemical analysis, sealed the balance contraband i.e. 9810 grams in another parcel, prepared the recovery memo, took into possession the vehicle, issued card of arrest of accused, drafted the murasila and dispatched the murasila report, recovery memo, and card of arrest to police station through Constable Fazal Hameed. The complainant himself handed over the parcels to Muharrir of police station at 1500 hours. All these facts are fully corroborated by Fazal Hameed, marginal witness to recovery memo, including the fact that accused did not accelerate the speed of car in order to run from the spot to escape his arrest, which though click to one's mind that a person carrying huge quantity of contraband would definitely run instead of putting the brakes, however, at the same time, the fact of designing a steel sheet/shield beneath the motorcar to transport the contraband in secret cavities also gives confidence/courage to dodge the police but prosecution was fortunate enough to evade the cheating of accused, caught him red-handedly and recovered huge contraband from the secret cavities. Nothing contrary as such could have been brought on record by defense while cross-examining them. Even, complainant was asked as to whether they had laid any material etc. while making *nakabandi*, to which he replied in negative and when same question was put to marginal witness, he also answered it negative, which not only shows consistency in the statements of both witnesses but also shows their presence on the spot at that time and recovery of chars.

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14. Admittedly, the complainant (PW-1) did not mention the total weight of contraband in murasila report nor in the recovery memo, however, it is clearly mentioned in the murasila report and recovery memo that each packet weighed 1100 grams and after deducing 10 grams chars from each packet, the balance contraband came to be 9810 grams, which impliedly means that total weight of recovered contraband was 9900 grams.

15. In like manner, investigation officer (PW-4) produced the extract of register of daily diary about the departure & arrival of complainant and himself, according to which complainant along with witnesses to the recovery memo and other police officials have left the police station at 0820 hours and were on patrol duty of the area; thus, when they received information, they rushed to the place of occurrence, where confronted the accused and the complainant has recovered from his possession the contraband at 1300 hours, whereat, prepared the recovery memo, issued the card of arrest of the accused and drafted the murasila, which were handed over to Fazal Hameed, who took these to the police station & the instant case was registered. In same manner, Moharrir of the Police Station (PW-3) on receipt of murasila, incorporated the contents of report into FIR, where after, copies of FIR & murasila were handed over to investigation officer for investigation at 1320 hours, who visited the spot at 1335 hours, where he found the complainant and other police officials already present there and conducted the investigation, prepared the site plan on the pointation of complainant, recorded the statements of all the prosecution witnesses, produced the accused before the court, and

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applied for remand of the accused from the court of learned Judicial Magistrate, Kalaya, who on 28.02.2023 granted him physical remand of the accused for two days and on next date, the accused was remanded to the judicial lock-up.

16. The Muharrir Police Station (PW-3) has produced the extract of register no. 19, Ex.PW 3/1, according to which the parcels containing the contraband were received by him in the police station and kept it in safe custody by depositing the same in *malkhana* of the police station. Investigation officer (PW-4) stated that he has drafted the application for FSL on 02.03.2023 in the police station, collected the samples of parcels no. 1-9 along with motorcar from Muharrir of the police station and delivered to Ameen Khan for taking to forensic laboratory for chemical analysis. Ameen Khan (PW-5) appeared in the witness box and has confirmed the receipt of 9 parcels of samples along with motorcar from investigation officer on 02.03.2023 and submitted the acknowledgment receipt along with route certificate, which not only corroborates the prosecution story but also establishes the safe custody of the contraband from the moment of its recovery, separation of samples, its sealing, delivery to Muharrir, his keeping in the *maalkhana*, its collection by the investigation officer, his delivery to Ameen Khan, who took samples to laboratory, handed over to the authorized officer and submitted the route certificate as an acknowledgment receipt.

17. Authorized officer subjected the sample to chemical analysis and submitted the report in positive; thus, chain of the recovery of contraband is fully proved. Report of the Government Analyst for

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Narcotics, Forensic Science Laboratory, Peshawar dated 15.03.2023, Exh.PZ, also provides that parcels no. 1-9 sent for the chemical analysis were received by the testing laboratory with intact seals of MY, which were opened, subjected to the physical and chemical test/analysis, which revealed the samples contained to be the "chars"; therefore, this can safely be concluded that contraband so recovered from the secret cavities of the vehicle driven by accused was nothing but the dangerous article i.e. chars.

18. The only flaw, the learned defense counsel succeeded to bring on file was that the investigation officer (PW-4) did not mention the factum of production of chars in his application when the accused was produced before the learned Judicial Magistrate. No doubt, production of case property is statutory requirement within the meaning of section 33 of the narcotics Act, 2019 and the application of investigation officer does not provide any detail about the production of case property before the learned Judicial Magistrate, however, order dated 28.02.2023 of the learned Judicial Magistrate clearly provides that case property in sealed condition was produced to him, which he returned to the investigation officer on very day, which infers that although investigation officer has failed to mention the fact of production of case property in his application at the time of production of the accused before the learned Judicial Magistrate, Orakzai, however, order of the learned Judicial Magistrate provides that the case property was produced before him in sealed condition, which he has returned to investigation officer and thus mandatory provisions of the Act was complied.

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19. In view of above, it is held that prosecution has proved its case against accused beyond shadow of reasonable doubt and successfully established the recovery and transportation of 9900 grams chars by accused in the secret cavities of motorcar bearing registration no. KWB-999-Punjab. Likewise, prosecution has also proved the safe custody and transmission of the case property from point of recovery to until its chemical examination through the laboratory, hence, I hold the accused Masood s/o of Abdul Baqi guilty for transporting the 9900 grams contraband (chars) in vehicle, convict and sentence him to simple imprisonment for fourteen (14) years and fine of rupees half a million (500,000/-) under section 9-D of The Khyber Pakhtunkhwa Control of Narcotics Substances Act, 2019.

20. The amount of fine so paid shall be deposited in the government exchequer against the proper receipt. In default of payment of fine, the accused has to undergo further simple imprisonment for one year. Benefit under section 382-B CrPC is extended to the accused/convict.

21. Attested copy of this judgment is furnished to the convict free of cost and to this effect his thumb impression is obtained on margin of order sheet as acknowledgment receipt with further direction that he can prefer appeal against this judgment & order before august Peshawar High Court, Peshawar as per law. Another copy be sent to The District Public Prosecutor, Orakzai within the meaning of section 373 of The Criminal Procedure Code, 1898.

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22. Case property i.e. chargs be destroyed, whereas, motorcar in question is confiscated to the State and be dealt with in accordance with law after both expiry of period provided for appeal/revision.
23. File consigned to record room after completion and compilation.



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**Abdul Basit**  
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**CERTIFICATE**

It is certified that this judgment of mine consists of eleven (11) pages. Each page is duly signed by me after necessary corrections.



**Announced**  
19.12.2023

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