

**IN THE COURT OF SYED ABBAS BUKHARI, JUDICIAL  
MAGISTRATE-II TEHSIL COURTS KALAYA, DISTRICT  
ORAKZAI**

**Case No.** 5/3 OF 2022  
**Date of Original Institution:** 02.12.2022  
**Date of Transfer In:** 08.03.2023  
**Date of Decision:** 23.12.2023

**State through:** Muhammad Younas SHO PS Mishti Mela.

.....**Complainant**

VERSES

HAJ MUHAMMAD S/O KAMAN KHEL, RESIDENT OF  
QOUM ZAKHA KHEL, DISTRICT KHYBER.

....**ACCUSED FACING TRIAL**

**Present:** Mr. Nisar Ahmad, Assistant Public Prosecutor for  
complainant.  
Sana Ullah Khan Advocate. for accused facing trial.

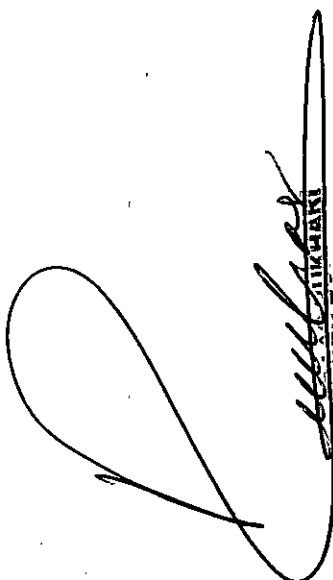
**JUDGMENT**  
**23.12.2023**

Through this judgement, I am going to dispose of the  
instant case registered against accused Haj Muhammad  
facing trial vide Case FIR No. 37, Dated: 02.10.2022  
U/S 11 A CNSA, PS Mishti Mela.

1. Brief facts as per contents of FIR are that, on 02.10.2022  
at about 14:30 hours, SHO/complainant Muhammad

Younas alongwith other police officials were present on the barricade. Meanwhile a person came on foot in suspicious condition, towards barricade. Who being suspect was engaged and upon his body search, a white plastic bag containing ice was recovered from his side pocket and after weighing the same through digital scale, it came out to be 40 grams in total. The police officials separated 01 gm ice from the packet packed and sealed the same in parcel no. 01 for chemical analysis of FSL, whereas, remaining 39 gram ice was packed and sealed in a separate parcel no. 02. The local police took into possession the recovered ice through recovery memo which is Ex. PC. Accused disclosed his name as Haj Muhammad S/O Kaman Khel. Accused was accordingly arrested vide card of arrest, which is Ex.PW-5/1. Murasila Ex. PA/1 was drafted and sent to the PS, which was converted into FIR which is Ex.PA. Hence, the case in hand.

2. After completion of investigation, complete challan was submitted by prosecution against the accused Haj Muhammad facing trial.



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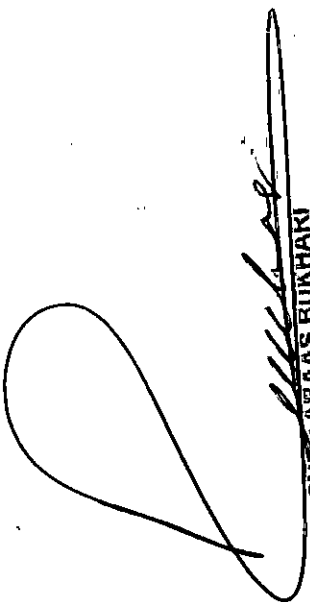
3. Accused was summoned. He appeared before the court and all the legal formalities under Section 241-A Cr. PC were complied. Accused was formally indicted. He pleaded not guilty and claimed trial, hence prosecution was directed to produce its evidence.

4. Prosecution produced seven (06) witnesses to prove its case against the accused and thereafter closed its evidence.

5. **PW-01** is the statement of Constable Saeed Khan, which is reproduced as under;

Stated that on the day of occurrence, I was posted as constable PS Mishti Mela, L/Orakzai. On 03.10.2022 I was present with OII namely Abdul Manaf, the accused pointed out the place of occurrence and the IO prepared the pointation memo in my presence which is Ex. PW-1/1. I signed the same. IO recorded my statement u/s 161 Cr. PC on the spot. Stated in his cross examination that he did not visit the spot with IO while Mad no. 02 shows that IO accompanied with PW-01 constable Saeed Khan.

6. **PW-02**, is the statement of Constable Muhammad Khalil, which reproduced as under;




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Case FIR No. 37, Dated 02.10.2022 U/S 11 A CNSA, PS Mishti Mela.

Stated that on the day of occurrence, I was posted as constable PS Mishti Mela, L/Orakzai. On 04.10.2022 the IO handed over to me one application, road certificate and one parcel of ICE for FSL. I went to the FSL and handed over the same to in FSL. The road certificate was duly stamped by the official of FSL and I came back to the PS and handed over the same to IO. IO recorded my statement u/s 161 Cr. PC.

7. **PW-03**, is the statement of Muhammad Saeed, MHC, which is reproduced as under;

Stated that on the day of occurrence, I was posted as Moharrir of PS Mishti Mela, L/Orakzai. On 02.10.2022 I was present in the PS. I received the Murasila, card of arrest and recovery memo form the constable Haj Wali Khan sent by SHO Muhammad Younas and chalked out the FIR as per contents of Murasila which is Ex. PA. I handed over the same to the IO for investigation. The SHO handed over to me the accused and two parcels of ICE which was duly sealed and stamped with monogram MY and I kept the same in Maal Khana of the PS and entered in Register no. 19 which is Ex. PW-3/1(STO, the register no. 19 is copy and it is not admissible nor in

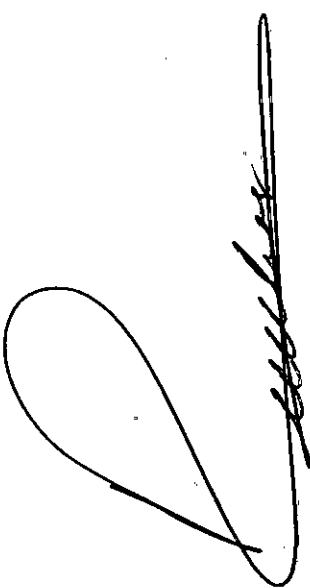
  
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evidence). I also drafted the Naqal mad no. 11 which is Ex. PW-3/2, and mad no. 10 & 14 regarding the exit and entrance of the SHO to the PS which is Ex. PW-3/3. I also made entry in exit and entrance of IO in DD which is Ex. PW-3/4. I handed over the parcel no. 1 to IO for FSL examination. IO recorded my statement u/s 161 Cr. PC.

8. PW-04, is the statement of SI Abdul Manaf, which is reproduced as under;

Stated that on the day of occurrence, I was posted as OII of PS Mishti Mela, L/Orakzai. After registration of the present case I was entrusted with the investigation of present case I went to the spot and prepared the site plan which is Ex. PB on the pointation of the complainant. I recorded the statements marginal PWs on the spot. I checked the case property on the spot. On 03.10.2022 I produced the accused before the Illaqa Magistrate for obtaining 03 days custody vide application is Ex. PW-4/1, one day custody was granted and interrogated the accused in the PS. During investigation the accused admitted his guilt before me. On 03.10.2022 the accused led the police party to the spot and rightly and identified

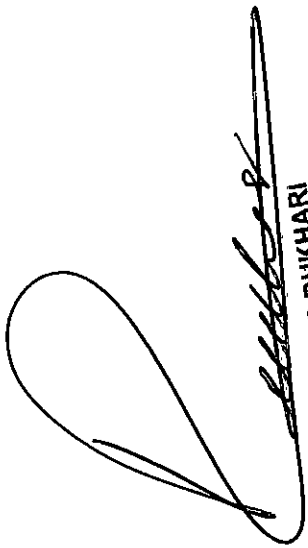


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the spot and in this respect I prepared the pointation memo on the presence of marginal witnesses to the pointation memo which also thumb impressed by the accused, the pointation memo already exhibited as Ex. PW-1/1. I recorded statement of accused u/s 161 Cr. PC. I produced the accused before the court concerned for recording confessional statement vide application is Ex. PW-4/2, but he refused and sent to judicial lock up. I sent the sample of parcel to the FSL through the hand of constable Khalil vide application is Ex. PW-4/3 and road certificate is Ex. PW-4/4 and also received the FSL result which is Ex. PZ. I have also place on file register no. 19 which is already Ex. PW-3/1. I annexed the DD in respect of my departure and arrival which is already Ex. PW-3/4. I have also place on file the DD regarding departure and arrival of SHO and Naqal Mad 11 regarding Murasila which are already Ex. PW-3/1 and Ex. 3/2 respectively. I recorded statement of PWs u/s 161 Cr. PC. After completion of investigation I handed over the complete challan to SHO against the accused.

9. PW-05, is the statement of SHO/complainant Younas Khan, which is reproduced as under;

  
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Stated that on the day of occurrence, I was posted as SHO of PS Mishti Mela, L/Orakzai. On 02.10.2022 at 14:30 hours I alongwith the constable Fazal Hameed, Haj Wali Khan under the supervision of NET Incharge SDPO Lower were present on the spot of occurrence at barricade and in the meanwhile one person was coming on foot and was stopped for the purpose of checking. During the checking I recovered one plastic shopper of white color from the site pocket of the shirt/Qamees of the accused which containing ICE which came out 40 grams after weighment through digital scale. I separated one gram for the FSL and sealed the same in parcel no. 1 and remaining were sealed in parcel no. 2 which is Ex. P-2. 3/3 monogram in the name of MY were affixed on each parcel while 1/1 monogram were put inside the parcel. The accused disclosed his name is Haj Muhammad. I charge him for the commission of offence. I took the above contraband vide recovery memo which is Ex. PC in the presence of marginal witnesses. I also issued the card of arrest of accused which is Ex. PW-5/1. I also drafted the Murasila which is Ex. PA. I sent the card of arrest, Murasila and recovery

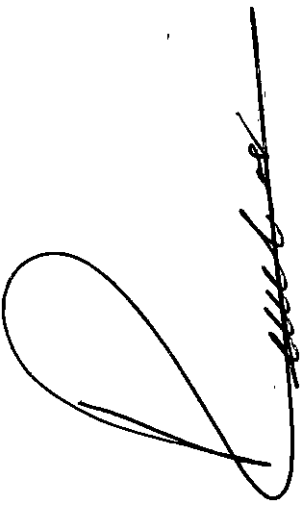
  
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Civil Judge/JM-II  
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memo through constable Haj Wali Khan for registration of the case to the PS. I have also shifted the case property and accused to the PS from the spot and hand over the same to Moharrir of the PS for safe custody. IO also prepared site plan on my pointation.

10. PW-06, is the statement of Constable Haj Wali Khan, which is reproduced as under;

Stated that on the day of occurrence, I was posted as Constable of PS Mishti Mela, L/Orakzai. On 02.10.2022 at 14:30 hours I alongwith SHO, constable Fazal Hameed under the supervision of NET Incharge SDPO Lower were present on the spot of occurrence at barricade and in the meanwhile one person was coming on foot and was stopped for the purpose of checking by the seizing officer. During the checking SHO recovered one plastic shopper of white color from the side pocket of the shirt/Qamees of the accused which containing ICE which came out 40 grams after weighment through digital scale. The SHO separated one gram for the FSL and sealed the same in parcel no. 1 and remaining were sealed in parcel no. 2 which is already Ex. P-2. 3/3 monogram in the name of MY were affixed on each



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parcel while 1/1 monogram were put inside the parcel by the SHO. The accused disclosed his name is Haj Muhammad to SHO. The SHO charge the accused for the commission of offence. SHO took the above contraband vide recovery memo which is already Ex. PC in my presence as well as the in the presence of co-marginal witness. SHO also issued the card of arrest of accused which is already Ex. PW-5/1. SHO also drafted the Murasila which is already Ex. PA. SHO handed over to me the card of arrest, Murasila and recovery memo and I took the same from spot of occurrence to the PS and handed over the same to Muharrir of the PS. The SHO also shifted the case property and accused to the PS and handed over to Muharrir of the PS. The site plan was prepared by the IO on the pointation of seizing officer. IO recorded my statement u/s 161 Cr. PC.

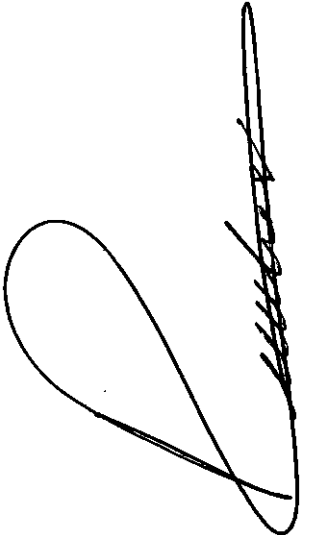
11. Afterwards, statement of accused U/S 342 Cr. PC was recorded, wherein he pleaded not his guilt and did not wish to be examined on oath. He did not opted to produce defense evidence.
12. Thereafter arguments were heard from both the sides.

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13. Now on perusal of the available record, valuable assistance of learned APP for the state and learned counsel for the accused facing trial, this court is of the humble view that as for as visit of the IO to the spot is concerned it is pertinent to mention here that PW-01 had stated in his cross examination that he visited to the spot alongwith IO on 03.10.2022 and had further stated that he did not visited the spot with IO on 02.10.2022 while on the other hand when IO in the instant case appeared as PW-04, had deposed in his cross examination that he was accompanied with constables Naveed and Saeed Khan on the day of occurrence. i.e. 02.10.2022 during spot inspection. Furthermore, this fact has also been narrated by the IO in his examination in chief. Similarly, complainant in the instant case is appeared as PW-05 had also deposed in his cross examination that IO visited to the spot on the day of occurrence.

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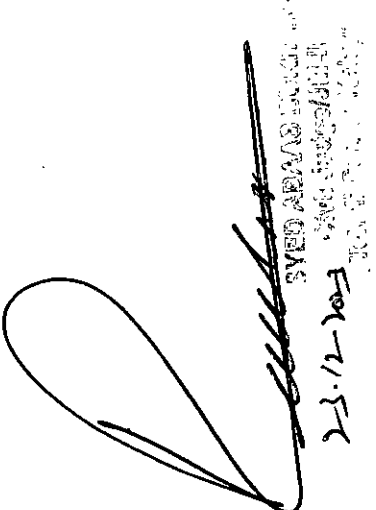


As for as time of occurrence is concerned, same has been mentioned in the FIR as 14:30 hours while eyewitness of the occurrence when appeared as PW-06, had stated in his cross examination that accused came to the spot at 13:10 hours. This statement of PW-06 creates

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serious doubts regarding the occurrence. It is also worth mentioning here that complainant has disclosed time of occurrence as 14:30 hours in his examination in chief as PW-05 while on the other hand he had stated in his cross examination that bearer of Murasila left the spot for the PS at about 14:30 hours alongwith Murasila. This contradictory statement of complainant in his respective examination in chief and cross examination make the case of prosecution one of the further inquiry, for the reason that when occurrence took place at 14:30 hours how it is possible that at the same time Murasila was sent to the PS:

As for as presence of SDPO on the spot after the occurrence is concerned, PW-04 (IO in the instant case) has deposed in his cross examination that SDPO had already left the spot before his arrival while on the other hand PW-05 (complainant in the instant case) had deposed in his cross examination that at the time of arrival of IO to the spot SDPO was present with him on the spot. This contradictory statement of PW-04 & PW-05 also make the occurrence doubtful and creates serious doubts in the prosecution case.

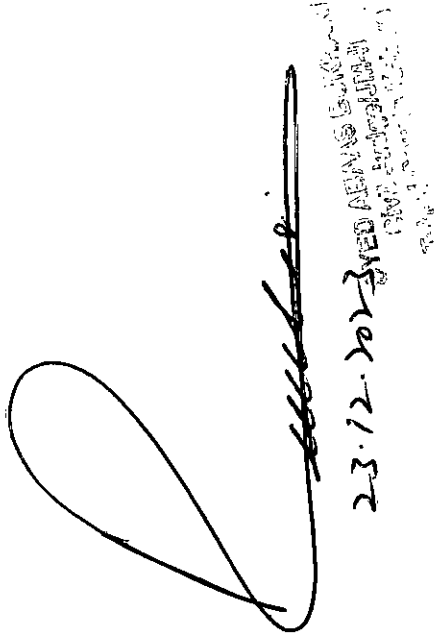
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As for as allotment of specific point to one constable Makeel is concerned, IO has deposed in his cross examination that he has given point B to constable Makeel in the site plan. However, IO was confronted with the site plan and thus no such point was given to constable Makeel rather point B has been given to police vehicle.

As for as the number of police official accompanied with SDPO is concerned, PW-04 has deposed in his cross examination that SDPO was accompanied by four officials while on the other hand PW-05 has deposed that SDPO was accompanied with three officials. Moreover, local police also failed to comply with mandatory provisions of Section 103 Cr. PC and thus no private person has been cited as witness of the occurrence.

14. In light of the evidence produced by the prosecution to establish its case against accused facing trial, it has been noticed that there exist a vast contradiction in the statements of PWs and the witnesses were contradicted in material particulars. Furthermore, there exist dents in the prosecution case, which make the same one of further inquiry and thus, the prosecution miserably



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failed to bring home the charge against the accused facing trial.

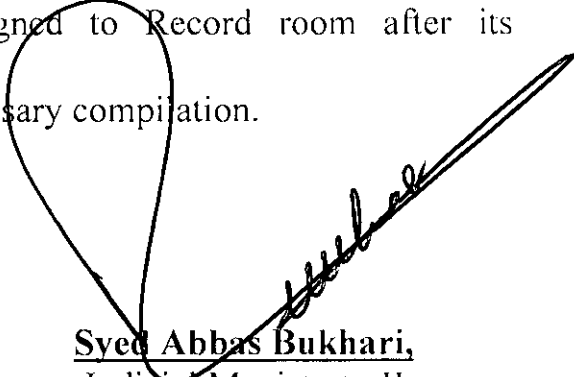
15. As prosecution failed to prove its case against the accused facing trial beyond the shadow of doubt, therefore, by extending the benefit of doubt to the accused facing trial namely Haj Muhammad, he is hereby acquitted from the charges leveled against him.

As he is on bail, his Sureties are discharged from the liability of bail bonds.

16. Case property stands confiscated in favor of State.

17. Case file be consigned to Record room after its completion and necessary compilation.

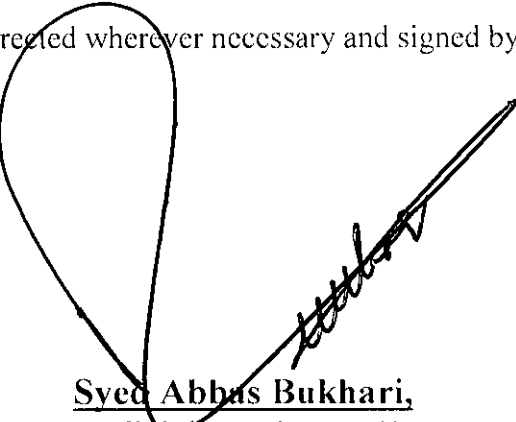
Announced  
23.12.2023

  
Syed Abbas Bukhari,  
Judicial Magistrate-II  
Tehsil Courts, Kalaya, Orakzai

CERTIFICATE

Certified that this order consists of thirteen (13) pages, each page has been read, corrected wherever necessary and signed by me.

Dated: 23.12.2023.

  
Syed Abbas Bukhari,  
Judicial Magistrate-II  
Tehsil Courts, Kalaya, Orakzai