

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

SESSIONS CASE NO. : 9/2 OF 2023  
DATE OF ORIGINAL : 05.06.2023  
DATE OF DECISION : 23.01.2024

STATE THROUGH AFTAB AHMAD SHO POLICE STATION  
KALAYA

.....(COMPLAINANT)

-VERSUS-

MUHAMMAD ISRAR AFRIDI S/O MUHAMMAD KHAN, AGED  
ABOUT 19 YEARS, R/O CASTE SHALOBAR QAMBAR KHEL,  
BARA, DISTRICT KHYBER

..... (ACCUSED FACING TRIAL)

**Present** : Umar Niaz, District Public Prosecutor for State.  
: Hamid Sarfaraz Advocate, the counsel for accused facing  
trial.

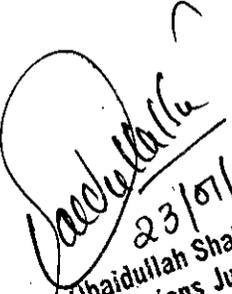
**FIR No. 24**  
**U/S: 468/471 PPC**

**Dated: 12.03.2023**  
**Police Station: Kalaya**

**JUDGEMENT**  
**23.01.2024**

The above-named accused faced trial for the offence  
u/s 468/471 PPC vide FIR No. 24, dated 12.03.2023 of  
Police Station Kalaya.

- (2). The case of the prosecution as per contents of  
Murasila based FIR is; that on 12.03.2023, the complainant  
Aftab Ahmad SHO along with constables Abdul Sattar,  
Amir Ullah and Muhammad Rasool, acting on information  
regarding smuggling of narcotics via Carry Daba from  
District Khyber through Orakzai, laid a picket on main road  
near Utman Khel Petrol Pump where at about 0830 hours a  
white colour Carry Daba bearing Registration No. LXB  
3248 on way from Feroz Khel Bazar towards the picket was

  
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stopped for the purpose of checking. The driver of the motorcar was made come down who disclosed his name as Muhammad Israr Afridi s/o Muhammad Khan. Upon search of the vehicle, 20 packets of chars each wrapped with yellow colour scotch tape, each weighing 1000 grams, making a total of 20,000 grams were recovered from a secret cavity. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 20 whereas the remaining quantity of chars weighing 990 grams each were sealed in parcels no. 21 to 40, by placing/affixing of monograms of 'AA' on all parcels. The complainant took into possession the recovered chars and the vehicle in question 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 Constable Muhammad Rasool which was converted into FIR by Muhammad Jameel MHC.

(3). After registration of FIR, it was handed over to Investigating Officer Muhammad Hanif for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan on pointation of the complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 15.03.2023, the IO sent the samples of chars for chemical analysis to FSL through constable Gul Karim, the result

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whereof was received and placed on file by him. The IO sent the vehicle to FSL for its examination. The result of which was received and placed on file by him which shows its chassis number 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 Gul Karim appeared as PW-1. He has taken the samples of chars in parcels no. 1 to 20 to the FSL for chemical analysis on 15.03.2023 and after submission of the same, he has handed over the receipt of the parcels to the IO.

II. Muhammad Jameel 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

  
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duly packed and sealed which he had kept in mal khana in safe custody besides parked the vehicle in vicinity of the police station. The witness further deposed that he has recorded entry of the case property in Register No. 19 Ex. PW 2/1, entries in the DDs which are Ex. PW 2/2 & Ex. PW 2/3 and has handed over the samples of the case property and the vehicle to the IO for sending the same to FSL.

- III. Aftab Ahmad SHO is the complainant of the case. He as PW-3 repeated the same story as narrated in the FIR. He has submitted complete challan Ex. PW 3/2 against the accused facing trial in the instant case.
- IV. Constable Muhammad Rasool 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 vehicle. He also reiterated the contents of FIR in his statement.
- V. 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, produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 5/1 and Ex. PW 5/4, sent the representative samples to FSL along with application addressed to the incharge FSL Ex. PW 5/2 and road permit certificate Ex. PW 5/3 and result of the same Ex. PK was placed on file by him, sent the vehicle to the FSL 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 Ex. PW 2/1, copies of daily diaries and submitted the case file to SHO for onward proceedings.

(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 counsel for the accused facing trial heard and case file perused.

(6). Learned DPP for the State submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars has been recovered from possession of the accused facing trial while transporting the same via Carry Van bearing Registration No. LXB 3248, that as per report of FSL

  
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Ex. PK/1 the chassis sheet of the vehicle recovered from possession of the 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.

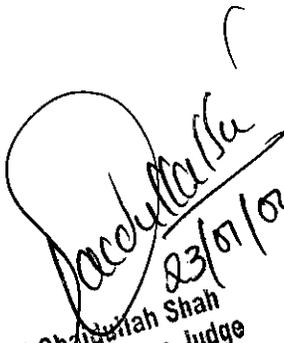
(7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR and the report of FSL supports the case of prosecution; however, the prosecution has failed to prove that the vehicle has been recovered from possession of the accused facing trial, that 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 vehicle has not been proved facts and that the prosecution has failed to bring home the charge against the accused facing trial.

(8). In the light of arguments advanced by learned DPP for the State, arguments of 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 of Carry Van is proved to has been made from possession of the accused facing trial?
- (ii). Whether the tempering in the chassis sheet of the vehicle, if proved, has been made by the accused facing trial?

  
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(9). With respect to recovery of the Carry Van 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 Constable Muhammad Rasool as PW-4 is, that the complainant Aftab Ahmad SHO/PW-3 along with Constables Abdul Sattar, Amir Ullah and Muhammad Rasool/PW-3 acting on information regarding smuggling of narcotics via Carry Daba from District Khyber through Orakzai, laid a picket on main road near Utman Khel Petrol Pump where at about 0830 hours a white colour Carry Daba bearing Registration No. LXB 3248 on way from Feroz Khel Bazar towards the picket was stopped. The driver of the vehicle was made come down who disclosed his name as **Muhammad Israr Afridi** s/o Muhammad Khan. Upon search of the vehicle, 20 packets of chars each wrapped with yellow colour scotch tape, each weighing 1000 grams, making a total of 20,000 grams were recovered from a secret cavity. The complainant/PW-3 have shown himself to have separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 20 whereas the remaining quantity of chars weighing 990 grams each were sealed in parcels no. 21 to 40 by placing/affixing monograms of 'AA' on all parcels. The complainant/PW-3 have taken into possession the recovered chars and the vehicle in question vide recovery memo Ex.

  
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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 Constable Muhammad Rasool/PW-4 to police station where, after registration of FIR by Muhammad Jameel MHC/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 contents of Murasila Ex. PA/1 and Constable Muhammad Rasool, the eyewitness 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 Muhammad Jameel MHC/PW-2 who has registered the FIR Ex. PA.

As per contents of Murasila Ex. PA/1, the recovery has not been made from personal possession of the accused rather it was made from the secret cavity in the vehicle and the registration card of the vehicle was taken into possession by the complainant vide recovery memo. But the recovery

  
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has not been made on pointation of the accused. Neither the vehicle was registered in the name of accused nor there was any document which could show any nexus with him nor there was any receipt through which the vehicle was given to him on rent. Moreover, a driving license was not taken into possession from the accused which is repellent to the common sense that without driving license a person would drive a vehicle or whether he is able to drive or not, which aspect of the case has created reasonable doubt in the prosecution case. Furthermore, the particulars of the vehicle as mentioned in the Murasila Ex. PA/1 are: Registration No. LXB 3248, Chassis No. 841562 and Engine No. T.725037. The same particulars are noted in the recovery memo Ex. PC. The complainant, after returning to the PS, has handed over the case property including the vehicle to Muhammad Jameel MHC/PW-2 who has received the same by making its entry in register no. 19 Ex. PW 2/1. The record is silent regarding handing over of the registration card and the key of the vehicle besides no entry has been recorded in register no. 19, a copy of which is placed on file.

It is also evident from the record that no registration plate was displayed on the vehicle produced before the court at the time of its exhibition during the statement of Constable Muhammad Rasool/PW-4 and no explanation has either been given by this PW or by the IO/PW-5. According to the

  
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statements of PW-2 and PW-5, Muhammad Jameel MHC/PW-2 has handed over the vehicle on 17.03.2023 to the IO/PW-5 for sending it to the FSL but no oral or documentary evidence has been produced before the court to show that who has taken the vehicle for chemical analysis. In addition, the register no. 19 is silent regarding handing over of the vehicle for its examination from FSL Peshawar. These glaring contradictions between the statements of PWs create serious doubts regarding the mode and manner of the occurrence and the mode and manner of the recovery as alleged on the record.

(10). With respect to tempering in the chassis sheet of the vehicle, as per report of FSL Ex. PK/1, its chassis sheet of is welded and refitted, which alone is sufficient to hold that tempering has been made in the chassis sheet of the vehicle. But not an iota of evidence has been produced by the prosecution to hold that the vehicle 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 vehicle.

(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 in the mode and manner as detailed in the report. Therefore, the accused namely, **Muhammad Israr Afridi** is acquitted

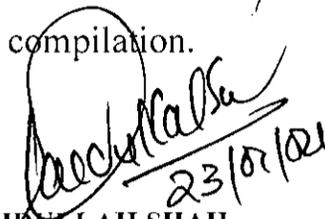
  
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of the charge levelled against him by extending him the benefit of doubt. Accused is in custody. He be released forthwith, if not required in any other case. Case property i.e., Carry Van be confiscated to the State.

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

Dated: 23.01.2024

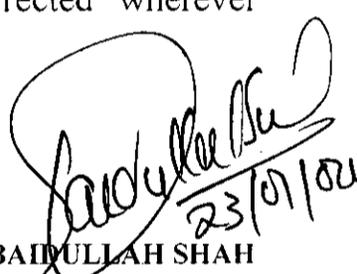
  
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**CERTIFICATE**

Certified that this judgement consists of eleven (11)

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

Dated: 23.01.2024

  
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