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

Case No. 05/02 of 2023

Date of institution: 15.04.2023

Date of decision: 01.02.2024

Date of consignment:

State through Muhammad Shafiq SHO of the Kurez Boya Police Station
Orakzai (complainant)

Versus

Naveed Ali (aged about 30/31 years) s/o Ayan Ali Sect Mani Khel, Tappa
Sabzi Khel, resident of District Orakzai (accused facing trial)

FIR No. 25 DATED 23.11.2022 U/S 468/471 PPC
KUREZ BOYA POLICE STATION, ORAKZAI

JUDGMENT

1. Accused Naveed Ali is facing trial in the subject case registered u/s 420, 468 and 471 PPC of Kurez Boya Police Station, Orakzai.
2. Muhammad Shafeeq SHO, complainant, reported that he along with police officials had arranged barricade at place of occurrence, when at about 1430 hours silver color car registration no. LWG-3989-Punjab, engine no. F-383119 chasses no. SF310PK999973, to be referred the car, approached and intercepted by him for search; that driver of the car was deboarded, who was bodily searched but nothing incrementing recovered from his personal possession but search of the car led the complainant to the recovery of 13 packets of chars from secret cavity made beneath the driver seat and recovery of 12 packets of chars from secret cavity made beneath the front seat; that all the recovered 25 packets of chars were wrapped in yellow scotch tape, each packet having weight of 1000 grams with

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net quantity of 25000 grams; that 10 grams of chars each separated from each packet as test samples for chemical analysis, which were sealed in parcel no. 1 to 25, while, the remaining chars was sealed in parcels no. 26 to 50; that the recovered car was also taken into possession by police and accused disclosed his name as Naveed Ali son of Ayan Ali, who was arrested on the spot; that murasila was drafted at the place of occurrence 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 was put in court against the accused, who was summoned through *zamima bay*. On his attendance, copies of case were furnished to accused u/section 265-C Cr.PC. The accused was charge sheeted u/s 468 & 471 PPC, to which he pleaded not his guilt and claimed trial.
4. Prosecution produced following evidence in support of its case;
5. Ain Ullah Muharrir, was examined as PW-1, who on receipt of the murasila report, card of arrest and recovery memo registered the FIR, Exh.PA. He made entries regarding the case property in register no. 19, Exh.PW 1/1. PW-2 is the statement of Khayal Hussain, who has taken parcels 1-25 containing samples of chars to FSL Peshawar for chemical analysis. The statement of Muhammad Shafiq SHO (complainant) was recorded as PW-3, who confirmed the initial report, Exh.PA; recovery of contraband and the car vides recovery memo, Ex.PW-3/1, to be true. He arrested the accused and issued his card of arrest, Exh.PW-3/2. He drafted the murasila, Ex.PA/1. He exhibited parcels no. 26 to 50, Exh.P-1 to Exh.P-25, the car, Ex.P-26,

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and documents of car, Ex.P-27. After completion of investigation, he submitted complete challan, Exh.PW 3/3, against accused. One of the marginal witness to the recovery memo was Zulqaid Ali, who was examined as PW-4. He testified that recovery was made from car possessed by the accused, which was documented vide recovery memo. He took the murasila, recovery memo and card of arrest to the police station and handed over the same to the Muharrir of police station for registration of FIR. Investigation Officer of the case was Hashim Khan OII, who has entered in the witness box as PW-5. He prepared the site plan, Exh.PB, and confirmed the examination of prosecution witnesses. He had produced the accused before the Area Judicial Magistrate vide application, Exh.PW 5/1. He vide application, Exh.PW 5/2, and road permit certificate, Exh.PW 5/3, sent the parcels for FSL analysis. He exhibited FSL report, Exh.PZ. He addressed an application, Exh.PW 5/4, to Judicial Magistrate for confessional statement of accused; drafted application, Exh.PW 5/5, for FSL and application, Exh.PW 5/6, to ETO Lahore. He also exhibited application, Exh.PW 5/7, which was drafted by him for issuing docket/letter for information regarding motorcar. Letters issued by SP investigation to FSL, ETO and DD regarding arrival and departure of SHO and investigation officer are Exh.PW 5/8, Exh.PW 5/9 and Exh.PW 5/10. He produced photographs of the car, Exh.PW 5/11, FSL report of the car, Exh.PZ-1, summons, Exh.PW 5/12, and application for addition of sections 468/471 PPC. After the completion of investigation, he handed over the case file to SHO for onward submission of complete challan.

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6. Prosecution closed its evidence. Statement of accused was recorded under section 342 CrPC, wherein, he again denied from the charges and adhered to his innocence. In reply to a question, he neither wished to be examined under oath nor to produce defense evidence.

7. Arguments heard and record perused.

8. Learned Dy.PP for State argued that the prosecution has proved the case against accused beyond shadow of doubt; that recovery of tamperd car is proved from possession of accused; that prosecution witnesses are consistent in their statements; that FSL result is in positive; that there is no malafide on part of prosecution to falsely involve the accused in the case, therefore, he requested to award him maximum punishment.

9. Counsel for the accused argued that prosecution has failed to prove its case against accused beyond reasonable shadow of doubt; that prosecution evidence contradicts & 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 the accused has not confessed his guilt; that the case against the accused is not proved and request is made for acquittal of accused.

Viewing the arguments advanced by learned counsel for parties, the evidence and record before the court, it is observed that the local police has alleged that they had arranged a barricade at place of occurrence when at given time they have intercepted the car and during its search, recovered chars from the secret cavities of the car, which was later on found to be tampered having been deciphered

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with different chassis number; therefore, accused was charged with cheating and forgery. Now, prosecution is duty bound to prove the allegation against accused beyond shadow of reasonable doubt from the moment of their presence on the spot, approaching the car to that place, their interception of accused, recovery of car, preparation of recovery memo, drafting murasila, witnessing of the proceedings by marginal witnesses, registration of case, safe custody of recovered articles, investigation of the case and positive laboratory report etc.

11. Record provides that complainant has failed to mention in murasila report that as to who has made search of car. Likewise, complainant (PW-3) has mentioned that at the time of arrest and seizure of car, constables Tanveer Ali and Mehtab Ali were also accompanying him at the barricade, which fact is not only endorsed by Zulqaid Ali (PW-4), marginal witness to recovery memo, and the investigation officer (PW-5) in their statements but Zulqaid Ali also deposed that those two police officials have also assisted the complainant in the proceedings; therefore, they were also important witnesses of the case but this is strange to note that they have neither been cited as witnesses of the case nor their positions have been marked/shown in the site plan, which proves the whole proceedings of prosecution to be doubtful. Similarly, complainant deposed that he has prepared all the documents on spot while sitting on road side, whereas, Zulqaid Ali negated him stating that complainant has prepared the documents inside the check-post that creates doubt about accompanying the marginal witness to the recovery memo with complainant to the spot or at least his presence there at the time of occurrence.

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12. Complainant (PW-3) also deposed that on preparation of recovery memo, card of arrest and the murasila, he has delivered it to Zulqaid Ali, who took it to police station and after handing over the same to Muharrir of police station, he has returned to spot at 1730 hours, which is also endorsed by Zulqaid Ali (PW-4) but Ainullah (PW-1) negated them stating that murasila carrier remained with him in the police station having availed that he did not return to the spot.
13. The presence of complainant and marginal witness to the recovery memo at same time on the spot is also doubtful from the fact that complainant stated that In-Charge of Tazi Khel Police Check Post was Tahir Khan, however, he was on leave on that day, nevertheless, Zulqaid Ali (PW-4) contradicted him saying that when they had reached to the spot, two police officials along with In-Charge Tahir Khan were present there and they had also taken tea with him, which infers that either complainant had not gone to spot or the marginal witness has not accompanied the complainant or both of them had not gone to the spot and completed the proceedings in the police station. The conducting the whole proceedings in the police station can further be envisaged from the point that when investigation officer (PW-5) was questioned as to whether he had gone to Tazi Khel check-post, he straightaway answered that he did not visit the Tazi Khel check-post i.e. the place in front of which the occurrence has taken place. All this further reflects that if investigation officer has not visited the spot, then, how he conducted the investigation without going there; therefore, whatever, the investigation officer or the witnesses have deposed cannot be relied on this score alone.

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14. Similarly, in reply to a question, complainant deposed that only Tanveer Ali and Mehtab Ali remained on the spot i.e. check-post, whereas, they had returned to the police station, which means that all police officials, who have accompanied the complainant from police station to spot, including Zulqaid Ali have returned to police station after the proceedings were concluded on the spot, which is also evident from daily diary report no. 12, however, Zulqaid Ali first stated that on completion of proceedings they returned from the spot and he was sitting beside the accused but on recollection of facts added that he did not accompany the accused at the time of leaving the spot. On the other side, investigation officer (PW-5) contradicted both of them stating that complainant along with police officials including Tanveer Ali and Mehtab Ali has left the spot for police station at about 1840 hours in the official vehicle, which further creates doubt in the prosecution story that if Tanveer Ali and Mehtab Ali had also left the spot for police station then who was left behind in the check-post.

15. Above all, contents of murasila report provides transporting of the recovered contraband through secret cavities of the car but complete record is silent as to what happened to the car after the complainant and the police party returned to police station because complainant (PW-3) stated that they had returned from the spot to police station through official vehicle, whereas, he was occupying the front seat with the driver and Tanveer Ali and Mehtab Ali had remained in the check-post. Even, investigation officer (PW-5) of the case did not bother to investigate nor still in knowledge of fact that as to who has

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brought the car in question from spot to police station and handed over to Muharrir of police station. Investigation officer, however, then contradicted complainant stating that latter has brought the car to police station, which not only questions the safe shifting of the car from spot to the police but also creates doubt about tampering of car by someone else during the intervening period.

16. Admittedly, the car is found to have been deciphered with different chasses number as per the forensic laboratory report, Exh.PZ/1, however, the investigation officer badly failed to bring on record any proof of fact that the car was actually the ownership of accused. Likewise, he has also not taken any driving license of accused to establish the fact that he was actually driving the car. There is also no witness on record to establish that accused has actually tampered the chasses number or someone has seen him doing so.

17. It is known to all that when recovery is effected from the accused, the seizing officer prepares the recovery memo, card of arrest and murasila report on the spot, where after, murasila is sent to police station for registration of the case and the FIR is registered. In the instant case, perusal of recovery memo and card of arrest of the accused provide that it contains FIR number, which is not possible before registration of case and therefore apprehends that recovery memo and card of arrest of the accused were prepared in the police station and not on the spot specially when Muharrir of the police station denies any tampering (addition etc.) in recovery memo and card of arrest and thus creates doubt about the mode and manner about the recovery of car from possession of accused.

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18. More so, investigation officer has admitted that there is no detail mentioned on top of register no. 19, Exh.PW 1/1, to show that as to which police station it belongs. Importantly, the investigation officer has though brought on record extracts of daily diaries and register no. 19 in his evidence; however, those were photocopies and were objected by learned defense counsel on ground that original registers of the same were not produced before the court. Even, PW-1 also admitted non production of original daily diary register and register no. 19 before the court and this failure of prosecution to produce the register no. 19 before the court infer that the case property was never received and kept in the *maalkhana* of police station. The wisdom is drawn from judgment passed by august Peshawar High Court in Criminal Appeal No. 1253-P of 2019.

19. It is also on record that one of the prosecution witnesses namely, Shakeel Khan Constable, who was second marginal witness to the recovery memo, was abandoned by the prosecution for reasons best known to them on the pretext that he was also witness of the same facts. Likewise, non-citing the names of Tanveer Ali and Mehtab Ali as witnesses of the occurrence and recovery proceedings also not only leads to adverse inference under Article 129 (g) of The Qanun-e-Shahadat Order, 1984 in respect of withholding the best available evidence but the legal inference could also be drawn that if the said witnesses had entered into the witness box then they would not have supported the prosecution case. In this regard wisdom is derived from case laws reported in NLR 2015 SCJ 121, PLD 2016 SC 17 and the judgment passed by august Peshawar High Court.

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20. Record provides that accused was arrested for trafficking twenty five kilograms of chars in his car, however, the evidence revealed that neither the motorcar was registered in his name nor a driving license was taken into possession from him. Besides, registration documents of the car had allegedly been recovered from the car in question but it had not been clarified that from which place of the car, it was recovered and who was owner of the vehicle as per the registration documents. Even, no driving license had been recovered from the direct possession of accused; so in absence of any diving license, it could not be stated with certainty that who was on driving seat of the car at the relevant time, therefore, mere disclosing the accused as driver of the vehicle was not sufficient qua corroboration of version of prosecution particularly when no recovery had been effected from the immediate possession of the accused. Likewise, there is no receipt through which the car was given to him on rent. Material discrepancies existed in the statements of prosecution witnesses, which also gave a hint that the prosecution case was not free from doubt, the benefit of which is to be extended to accused, the wisdom is drawn from case law reported in 2022 MLD 1612 and 2023 PCrLJ 154 [Peshawar]. Likewise, though application has been addressed to Excise Taxation Officer, Lahore for providing full particulars of the car in question, however, till date no reply has been received.

21. It is by now a settled principle of law that it is not necessary that there should be many circumstances creating doubts rather a single circumstance, creating reasonable doubt in prudent mind about guilt of accused makes him entitled to its benefit, not as a matter of grace

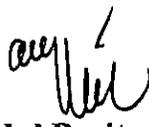
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or concession but as a matter of right, the wisdom is drawn from case law reported in 2023 YLR 2579 of august Peshawar High Court [Mingora Bench].

22. From above appreciation of evidence and lacunae noted above, it is evident that the prosecution has badly failed to prove that the car in question was the ownership of accused and he has made tampering in it or used the forged document as genuine; therefore, in light of my detailed discussion above, it is held that prosecution has failed to bring home the guilt against accused beyond shadow of reasonable doubt, hence, accused Naveed Ali is acquitted from the charges leveled against him. He is behind the bars; therefore, he be released forthwith if not required in any other case.
23. Case property i.e. the car having been deciphered with different chasses number as per chemical examiner report is confiscated to the State and be dealt with in accordance with law after expiry of period provided for appeal/revision.
24. File consigned to record room after completion and compilation.

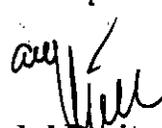
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CERTIFICATE

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

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