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

Case No. 23/3 of 2023

Date of institution: 05.06.2023

Date of decision: 13.02.2024

Date of consignment:

State through Hassan Jan SHO Kurez Boya Police Station, District Orakzai
(complainant)

Versus

Saddam Khan (aged about 25/26 years) s/o Tor Khan/o Bara, Qaum Aka
Khel, District Khyber (accused facing trial)

**FIR No. 18 DATED 03.05.2023 U/S 9-D CNSA
KUREZ BOYA POLICE STATION, ORAKZAI**

JUDGMENT

1. Accused Saddam Khan is facing trial in the subject case registered under section 9-D CNSA of Kurez Boya Police Station, Orakzai.
2. Hassan Jan SHO, the complainant, along with police officials during patrolling received information about smuggling of the narcotics through red color Datsun registration no. BD-3148; that upon this information, they have arranged a barricade at place of occurrence, whereat about 1630 hours, the above detailed Datsun approached and stopped for checking; that driver of vehicle was deboarded and searched but nothing incriminating recovered from his possession; however, upon search of the vehicle, the complainant has recovered 75 packets of *chars* wrapped with yellow scotch tape from secret cavity made beneath the floor-pan of the vehicle; that each packet weighed 1100 grams of *chars* through digital scale making total quantity to be 82500 grams; that 10/10 grams of *chars* was separated from each packet for chemical analysis, which were sealed in parcels

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no. 1 to 75 while remaining 81750 grams *chars* was sealed in parcels no. 76 to 80, each parcel having 15 packets; that accused disclosed his name as Saddam Khan son of Tor Khan, who was arrested on the spot; that *murasila* was drafted at the place of occurrence and sent to the police Station for registration of case; hence, the FIR.

3. The complainant reduced the above facts in the shape of *murasila*, on the strength of which subject case was registered. On completion of investigation, complete challan u/s 9-D CNSA was put in court against the accused and sections 468 and 471 PPC were added later.
4. Accused facing trial was summoned through *zamima bay*. On his attendance, the copies of the case furnished to him u/section 265-C Cr.PC. The accused was charge sheeted u/s 9-DCNSA, 468 and 471 PPC, to which he pleaded not his guilt and claimed trial.
5. Prosecution produced following evidence in support of its case;
6. Ihsanullah, Muharrir of the police station was examined as PW-1, who has registered FIR, Ex.PA, on receipt of *murasila*. He also kept the case property in the *maalkhana* for safe custody vide register no. 19, Exh.PW-1/1. He also produced daily diaries, Exh.PW 1/2. PW-2 is the statement of Khayal Hassan, who has taken the parcels no. 1-75 to FSL Peshawar for chemical analysis. The statement of Hassan Jan SI (complainant) was recorded as PW-3. He confirmed the initial report Exh.PA to be true. Recovery of contraband and vehicle vide recovery memo, Exh.PW-3/1, was testified to be true. He arrested the accused and issued his card of arrest, Exh.PW-3/2. He drafted the *murasila* report, Exh.PW 3/3, and submitted complete challan, Exh.PW 3/4, against accused. He produced case property in parcel

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no. 76 to 80, Exh.P-1 to Exh.P-5, and recovered vehicle, Exh.P-6. One of the marginal witnesses to recovery memo was Syed Abbas Ali Shah Constable, who was examined as PW-4. 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. Hashim Khan, investigation officer of the case, appeared in witness box as PW-5. He has confirmed the preparation of site plan, Exh.PB, and examination of witnesses. He produced USB containing recovery proceedings, Ex.P-7, and recovery memo, Exh.PW 5/1. He had produced the accused before the Area Judicial Magistrate vide application, Exh.PW 5/2. Applications to FSL, Exh.PW 5/3, and for MVE report, Exh.PW 5/4, were followed by letters of SP Investigation, Exh.PW 5/5 and Exh.PW 5/6. FSL report of recovered vehicle is Exh.PW 5/7 and MVE report is Exh.PW 5/8. He issued *parwana* in respect of addition of charges, Exh.PW 5/9, against the accused. Application to FSL for chemical analysis of parcels 01 to 75 is Exh.PW 5/10 and transit receipt is Exh.PW 5/11. He produced accused for confessional statement vide application, Exh.PW 5/12. He produced FSL report regarding the parcels as Exh.PZ, and arrival and departure report of seizing party is Exh.PW 5/13. On completion of investigation, he handed over the case file to SHO for onward submission of complete challan against accused. Mohsin Ali, SI was examined as PW-6, who is marginal witness to recovery memo, already Exh.PW 5/1, vide which USB has been taken into possession by the investigation officer.

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7. 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.
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 contrabands is proved from possession of accused; that prosecution witnesses are consistent in their statements in respect of recovery of narcotics from accused; that FSL result in respect of the samples, separated from contraband recovered from accused and Excise report in respect of vehicle are in positive; that there is no malafide on part of the prosecution to falsely involve the accused in the case, therefore, he requested to award him maximum punishment.
10. 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 recovery is not effected from the immediate possession of accused; that register no. 19 is not printed one; that the accused has not confessed his guilt; that the case against the accused is not proved and request is made for the acquittal of accused.

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11. Viewing the arguments advanced by learned counsel for parties, the evidence and recovered before the court, it is observed that the local police during patrol duty has allegedly received spy information about transportation/smuggling of contraband in red color vehicle, whereat, they reached to the spot and arranged a barricade, where the accused approached in the vehicle and 82500 grans *chars* recovered from secret cavities of the vehicle he was driving. In order to substantiate its plea, the prosecution recorded the statement of complainant as PW-3, 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 private witnesses at the time of recovery of the contraband, however, non-association of the private witnesses at the time of recovery of contraband does not vitiates the 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 the appropriate cases with necessary changes, if any required. The relevant provision of law is reproduced below as ready reference;


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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 secret cavity of the vehicle he was driving and not from his dwelling house; therefore, non-association of private witnesses by the police is not damaging to the case nor it vitiates the proceedings.

12. Besides, it is evident from record that complainant (PW-3) has made personal search of accused and nothing recovered from his personal possession, however, when he checked the floor of the vehicle, there he found a secret cavity, which he opened with the help of pickaxe and recovered therefrom 75 packets of *chars*, weighed it, separated 10 grams *chars* from each packet as sample, sealed each 10 grams *chars* in separate parcels no. 1-75 for chemical analysis, sealed the balance contraband i.e. 81750 grams *chars* in parcels no. 76-80, 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 Syed Abbas Ali Shah. The complainant himself has handed over the parcels to Muharrir of police station, whereas, made the recording of whole recovery proceedings, saved it in USB, which he has handed over to investigation officer in the police station. All these facts are fully corroborated by Syed Abbas Ali Shah, marginal witness to recovery memo, including the time of

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arrival of the vehicle on the spot, its interception by the complainant, the whole recovery proceedings and recovery of huge contraband from secret cavity of the vehicle. Nothing contrary as such could have been brought on record by defense while cross-examining them. Likewise, they have remained consistent in respect of recovery of contraband, numbers of packets recovered, test samples prepared and sealing of the balance contraband in five parcels, each parcel having 15 packets.

13. In like manner, investigation officer (PW-5) 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 1440 hours and were on patrol duty of the area; thus, when they received information, they rushed to the place of occurrence, arranged barricade there, where the accused approached in vehicle and complainant has recovered from his possession the contraband at 1630 hours, whereat, prepared the recovery memo, issued the card of arrest of the accused and drafted the murasila, which were handed over to Abbas Ali Shah, who took these to the police station & the instant case was registered. In same manner, Moharrir of the Police Station (PW-1) 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, who visited the spot at 2020 hours, where he found the complainant and other police officials present there and conducted the investigation, prepared the site plan on the pointation of complainant, recorded the statements of

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all the prosecution witnesses, produced the accused before the court, and applied for remand of the accused from the court of learned Judicial Magistrate-I, Orakzai, who on 04.05.2023 granted him physical remand of the accused for two days and on next date, the accused was remanded to the judicial lock-up.

14. The Muharrir Police Station (PW-1) has produced the extract of register no. 19, Ex.PW 1/1, 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-5) stated that he has drafted the application for FSL on 05.05.2023 and sent samples of parcels no. 1-75 through Khayal Hasan along with route certificate, Exh.PW 5/11, to forensic laboratory for chemical analysis. Khayal Hasan (PW-2) appeared in the witness box and has confirmed the receipt of 75 parcels of samples from investigation officer on 05.05.2023 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 Khayal Hasan, who took samples to laboratory, handed over to the authorized officer and submitted the route certificate as an acknowledgment receipt. Admittedly, parcel carrier has received the parcels on 05.05.2023 and took to the laboratory for chemical analysis on 07.05.2023, which provides two days delay in sending the parcels to laboratory, however, the defense failed to put a single

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question to him that why he took those samples to the laboratory with such a delay. Undoubtedly, the defense tried to cover this lacuna by putting this question to the investigation officer, however, he explained that the parcel carrier informed him that since he had fallen ill, thus, the delay was caused, which also appeals to mind and natural. On the other side, it is observed that in order to satisfy himself, the defense side put a question to sample carrier about the safe custody of the samples, to which sample/parcel carrier answered that during that intervening period, the parcels remained with him in his safe custody.

15. 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 Narcotics, Forensic Science Laboratory, Peshawar dated 07.05.2023, Exh.PZ, also provides that parcels no. 1-75 sent for the chemical analysis were received by the testing laboratory with intact seals of HK, which were opened, subjected to the physical and chemical test/analysis, which revealed that 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*.

16. Although, there appears to be a clash of time in daily diary and the statements of complainant and marginal witness about their leaving the police station for the patrolling, however, it is of a trivial nature having no serious effect on the recovery proceedings because on the other side, prosecution has proved the recovery of *chars*. Likewise,

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the learned counsel for accused alleged that the complainant has visited the spot in official vehicle, however, in reply to a question, he stated that he was having pickaxe/tool kit in his car, which though provides the sense of personal vehicle, however, when the reply is taken into consideration in line with the question put on him, it construes that by his car, he meant the official vehicle. In same way, complainant has admittedly not mentioned in the murasila report the kind of *chars* i.e. garda or pukhta, however, he has explained that its color was black brown, which is also confirmed from the FSL report, which provides that the physical appearance of the contraband was brown solid i.e. blackish brown. More so, asking about the nature of *chars* or its color at the time of recovery from accused itself leads to admission of fact that accused was transporting the case property in the secret cavities of the vehicle irrespective of its kind/nature.

17. It is also evident from extract of register no. 19, Exh.PW 1/1, that the case property was initially handed over to investigation officer on 05.05.2023 and it was onward handed over to Khayal Hasan along with route certificate on very date by investigation wing and in this respect the entries were also made in the register.

18. So far registration documents of the vehicle is related, admittedly, no other number has been deciphered during the chemical examination of the vehicle in question, however, documents so recovered from possession of accused were sent to the Excise, Taxation & Narcotics Control, Kohat for verification vide letter, Exh.PW 5/6. The report of the Excise Officer of the concerned department received, Exh.PW 5/8, according to which the original registration certificate in respect

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of the vehicle so recovered from the possession of accused was found fabricated/self-made and not issued by the said office, which provides that accused has also committed the offence of forgery for the purpose of cheating as well produced a forged and fabricated registration certificate fraudulently and dishonestly to use it as genuine and committed the offence.

19. In view of above, it is held that prosecution has proved its case against accused beyond shadow of reasonable doubt & successfully established the recovery and transportation of 82500 grams *chars* by accused in the secret cavities of vehicle registration no. BD-3148. Prosecution has also proved safe custody and transmission of case property from point of recovery to until its chemical examination through laboratory, hence, I hold the accused Saddam Khan son of Tor Khan guilty for transporting the 82500 grams contraband (*chars*) in the vehicle, convict and sentence him to rigorous imprisonment for life and fine of rupees half a million (500,000/-) u/s 9-D of The Khyber Pakhtunkhwa Control of Narcotics Substances Act, 2019.
20. Prosecution has also proved the forgery by accused in respect of registration certificate of the vehicle, hence, I hold accused Saddam Khan son of Tor Khan guilty for forgery, convict and sentence him to simple imprisonment for two years under section 468 PPC.
21. Likewise, prosecution has also proved the fraudulent production of the forged registration certificate by accused in respect of the vehicle to defraud the police to use it as genuine, hence, I hold accused Saddam Khan son of Tor Khan guilty, convict and sentence him to simple imprisonment for two years under section 471 PPC.


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22. 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. All the punishments shall run concurrently.
23. 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 and order before august Peshawar High Court, Peshawar as per law. Another copy is sent to The District Public Prosecutor, Orakzai within the meaning of section 373 of The Criminal Procedure Code, 1898.
24. Case property i.e. *chars* be destroyed, whereas, vehicle in question is confiscated to the State and be dealt with in accordance with law both after expiry of period provided for appeal/revision.
25. File consigned to record room after completion and compilation.


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CERTIFICATE

It is certified that this judgment of mine consists of twelve (12) pages. Each page is duly signed by me after necessary corrections.

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