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STATE VS TAUQEER ALI
FIR No. 13 | Dated: 03.07.2022 | U/S: 9 (d) of Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Kurez Boya

IN THE COURT OF SHAUKAT AHMAD KHAN
SESSIONS JUDGE/JUDGE SPECIAL COURT,
ORAKZAI (AT BABER MELA)

SPECIAL CASE NO. : 29/3 OF 2022
DATE OF INSTITUTION : 20.09.2022
DATE OF DECISION : 27.10.2022

STATE THROUGH HASSAN JAAN SHO, POLICE STATION KUREZ
BOYA

.....(COMPLAINANT)

-VERSUS-

TAUQEER ALI S/O NAWAB KHAN, AGED ABOUT 32 YEARS, R/O
BAR MUHAMMAD KHEL, TAPPA TERAYI, DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL)

Present: Umar Niaz, District Public Prosecutor for state.

: Sana Ullah Khan Advocate for accused facing trial.

FIR No. 13 **Dated: 03.07.2022** **U/S: 9 (d) of the Khyber**
Pakhtunkhwa Control of Narcotic Substances Act, 2019

Police Station: Kurez Boya

JUDGEMENT

27.10.2022

The accused named above faced trial for the offence
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR
No. 13, dated 03.07.2022 of Police Station Kurez Boya.

- (2). The case of the prosecution as per contents of Murasila
based FIR is; that on 03.07.2022, complainant Hassan Jaan
SHO along with constables Yakhiad Ali, Syed Israt Hussain,
Kareem Ali and other police officials laid a picket on main
road Kadda Bazar leading to Kohat near Police Station Kurez
Boya, where at about 1030 hours a Flying Coach of white
colour on way from Terah was stopped for the purpose of
checking. A person boarding the last seat of the vehicle was
deboarded but nothing incriminating was recovered from his


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personal search. He was having a plastic bag in his hand, the search of which led to the recovery of 03 packets of chars, each weighing 800 grams, making a total of 2400 grams with the empty plastic bag weighing 05 grams. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 3 whereas the remaining quantity of chars weighing 790/790 grams were sealed in parcels no. 4 to 6 and the plastic bag was sealed in parcel no. 7 by affixing monograms on all the parcels. The accused disclosed his name as **Tauqeer Ali** s/o Norab Khan who was accordingly arrested by issuing his card of arrest. The complainant took into possession the recovered chars vide recovery memo Ex. PC. Murasila was drafted and sent to the PS through constable Syed Israt Hussain which was converted into FIR by Intikhab Ali AMHC.

(3). After registration of FIR, it was handed over to Hashim Khan SI for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan Ex. PB on pointation of complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 04.07.2021, the IO sent the samples for chemical analysis to FSL vide application Ex. PW 5/3 through constable Akseer Ali, and road permit certificate Ex. PW 5/4, the result whereof Ex. PK was received and placed on file by him. After completion of investigation, he handed over the case file to


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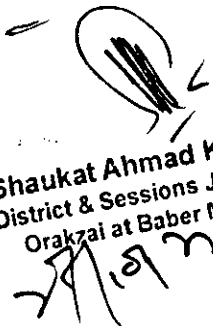
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SHO who submitted complete challan against the accused facing trial.

(4). Upon receipt of case file for the purpose of trial, the accused was summoned, copies of the record were provided to him in line with section 265-C Cr.P.C 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. Moharrir Intikhab Ali appeared in the witness box as PW-1. He has registered the FIR Ex. PA by incorporating the contents of Murasila Ex. PA/1 therein. He also deposed in respect of the case property received by him from the complainant duly packed and sealed which he had kept in mal khana in safe custody. The witness further deposed that he has recorded entry of the case property in register no. 19 and handed over the samples of the case property to the IO for sending the same to FSL on 04.07.2022.

II. Hassan Jaan SHO is the complainant of the case. He appeared in the witness box as PW-2. In his statement he repeated the story narrated in the FIR.



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- III. Constable Syed Israt Hussain is PW-3. He besides being eyewitness of occurrence is marginal witness of recovery memo Ex. PC as well vide which the complainant/PW-2 has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement.
- IV. Constable Shamshir Ali is PW-4. He deposed that he has taken the samples of recovered chars in parcels no. 1 to 03 to the FSL for chemical analysis on 04.07.2022 and after submission of the same, he was given the receipt of the parcels which he handed over to the IO.
- V. Lastly, Investigating Officer Hashim Khan SI 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 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 5/2, sent the representative samples to FSL along with application addressed to the incharge FSL Ex. PW 5/3 and road permit certificate Ex. PW 5/4 and result of the same Ex. PK was placed on file by him, annexing copy of


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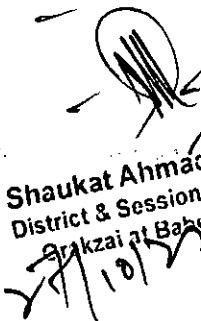
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register no. 19 Ex. PW 5/5 as well as copies of daily diaries Ex. PW 5/6 regarding departure and return of the complainant and submitted the case file to SHO for its onward submission.

(5). Prosecution closed its evidence whereafter statement of the 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 the learned DPP for the State and 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, the recovered chars are sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, the samples for chemical analysis have been transmitted to the FSL within the prescribed period which have been found positive for chars vide report of FSL Ex. PK. The complainant, the witness of the recovery, the official transmitted the samples to the FSL and the IO have been produced by the prosecution as witnesses, whom have fully supported the case of the prosecution and their statements have been lengthy cross examined but nothing contradictory could be extracted from the mouth of any of the witness of the


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prosecution 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, the alleged charrs have been shown recovered from his possession and the report of FSL support the case of prosecution; however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his possession. He argued that the prosecution has failed to prove the mode and manner of recovery and the mode and manner of investigation allegedly conducted by the IO on the spot, as detailed by the prosecution on the case file. He concluded that there are various dents in the case of prosecution leading to its failure to bring home the charge against the accused facing trial.

In the light of arguments advanced by the learned DPP for the State, arguments of the 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 is proved to have been made from possession of accused facing trial in the mode and manner as detailed in the Murasila?
- (ii). Whether the occurrence has taken place and the investigation have been conducted in the mode and manner as detailed in the file?

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(iii). Whether the recovered substance is proved through
report of FSL as chars?

(9). As per contents of Murasila Ex. PA/1, the complainant,
Hassan Jaan SHO/PW-2 along with constables Yakhiad Ali,
Syed Israt Hussain, Kareem Ali and other police officials laid
a picket on main road Kadda Bazar leading to Kohat near
Police Station Kurez Boya, where at about 1030 hours a Flying
Coach of white colour on way from Terah was stopped for the
purpose of checking. A person boarding the last seat of the
vehicle was deboarded but nothing incriminating was
recovered from his personal search. He was having a plastic
bag in his hand, the search of which led to the recovery of 03
packets of chars, each weighing 800 grams, making a total of
2400 grams from possession of the accused with the empty
plastic bag weighing 05 grams. The complainant/PW-2 on the
spot has shown himself separated 10 grams of chars from each
packet for chemical analysis through FSL, sealed the same into
parcels no. 1 to 3 whereas the remaining quantity of chars
weighing 790/790 grams have been shown sealed in parcels
no. 4 to 6 and the plastic bag have been shown sealed in parcel
no. 7, affixing monograms on all the parcels. The accused
disclosing his name as **Tauqeer Ali** s/o Noorab Khan, has
been shown arrested on the spot by issuing his card of arrest
Ex. PW 2/1. The complainant/PW-2 has shown taken into
possession the recovered chars vide recovery memo Ex. PC.

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Murasila Ex. PA/1 has also been shown drafted and sent to the PS through constable Syed Israt Hussain/PW-3 which has been converted into FIR Ex. PA by Intikhab Ali AMHC/PW-1.

The prosecution in order to prove the recovery of chars in the mode and manner as detailed in the Murasila Ex. PA/1 and recovery memo Ex. PC, examined the complainant, Hassan Jaan SHO as PW-2. In his examination in chief, he has reiterated the story detailed in the Murasila Ex. PA/1. The stance of the prosecution has further been supported by the statement of constable Syed Israt Hussain as PW-3 who besides being eyewitness of the occurrence is a marginal witness of the recovery memo Ex. PC as well. He has narrated the same story as narrated by the complainant in his statement as PW-3. The Investigation Officer Hashim Khan in his statement as PW-5 has further supported the case of prosecution as to the fact that after receipt of the copy of FIR along with other documents, he went to spot and conducted investigation over there.

As discussed above the stance of the prosecution is, that on 03.07.2022 the occurrence took place at 1030 hours whereafter the complainant/PW-2 weighed each packet, prepared 07 parcels, scribed the recovery memo, issued card of arrest and prepared the Murasila which were sent to the Police Station through constable Syed Israt Hussain/PW-3


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where at 1100 hours the FIR Ex. PA was chalked. The documents along with the copy of FIR were handed over to PW-5/Hashim Khan SI who visited the spot, prepared the site plan Ex. PB on the pointation of the complainant and recorded the statements of marginal witnesses of recovery memo Ex. PC. However, when the complainant/PW-2 was cross examined on these points, he stated that after the occurrence he prepared 07 parcels, consuming 05 minutes on each parcel and thereafter he prepared recovery memo, card of arrest and Murasila, consuming 10, 10 and 15 minutes on each document respectively. When he was put a suggestion that as per aforementioned calculation of time after the occurrence at 1030 hours, if he has consumed 01 hour and 10 minutes upon preparation of parcels and the documents, the time of report should be 1140 hours instead of 1040 hours, he answered the same in affirmative. Similarly, he stated that the recovery memo, card of arrest and Murasila are not in his own handwriting and these documents have been prepared by constable Syed Israt Hussain/PW-3 on his dictation, but in that respect neither any note has been given at the end of any of the document nor the said constable Syed Israt Hussain in his statement as PW-3 has spoken a single word rather in his examination in chief he has categorically stated that the SHO has prepared recovery memo, issued card of arrest and drafted the Murasila. This factum was further confirmed by him in


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his cross examination where he stated that these documents were prepared by the SHO on the spot while sitting on the ground.

The said constable as PW-3 when cross examined regarding the investigation conducted on the spot, he stated that the parcels were prepared in the Investigation Room in the presence of OII, SHO, Moharrir and two other constables.

The aforementioned glaring contradictions between the statements of PWs as compared to record regarding the time of occurrence, the time of report and the time of registration of FIR, the preparation of parcels, scribing of documents and the proceedings conducted on the spot, show that the proceedings/investigation have not been conducted and the occurrence has not taken place in the mode and manner as detailed on the file as per version of the prosecution.

With respect to transmission of the case property from the spot to the Police Station and sending the representative samples to the FSL, the case of prosecution is, that after sampling and sealing of case property in parcels on the spot, these were brought by the complainant/PW-2 to the Police Station and handed over the same to Moharrir Intikhab Ali/PW-1 who deposited the same in Mal khana. The representative samples on 04.07.2022 were handed over by Moharrir of the Police Station to the IO who transmitted the


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same to FSL through constable Shamshir Ali/PW-4 vide road permit certificate.

In order to prove its case, the prosecution produced Moharrir Intikhab Ali as PW-1, constable Shamshir Ali as PW-4 and IO as PW-5. They have supported the case of prosecution in their examinations in chief. However, as discussed above, according to cross examination of PW-3/Syed Israt Hussain, the parcels have been prepared in the Police Station as compared to the version of prosecution that the parcels have been prepared on the spot and thereafter handed over by the complainant/PW-2 to Moharrir Intikhab Ali/PW-1. This contradiction makes the case of prosecution doubtful as regards the safe custody of the case property.

Hence, in view of what is discussed above, though the representative samples, as per report of FSL Ex. PK, have been found positive for Chars but keeping in view the failure of the prosecution to prove the safe custody of the case property and its transmission and deposit of the same by Moharrir/PW-1 Intikhab Ali in mal khana in the mode and manner as detailed on the file, it is held that FSL report Ex. PK cannot be counted as supportive of the case of prosecution.

- (10). In the light of aforementioned discussion, it is held that the prosecution has failed to prove the alleged recovery of chars from possession of the accused facing trial. It also failed to prove the mode and manner of recovery and the mode and


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manner of proceedings conducted on the spot as alleged by the prosecution. Similarly, the prosecution has also failed to prove the safe custody of case property and transmission of the representative samples to the Police Station in the mode and manner as alleged by the prosecution. All these facts lead to the failure of prosecution to prove the case against the accused beyond shadow of doubt. Therefore, the accused namely, **Tauqeer Ali** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is on bail, his bail bonds stand cancelled and his sureties are released of the liabilities of bail bonds. The chargs be destroyed after the expiry of period provided for appeal/revision in accordance with law.

Consign.

Pronounced
27.10.2022





SHAUKAT AHMAD KHAN
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

CERTIFICATE

Certified that this judgement consists of twelve (12) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 27.10.2022


SHAUKAT AHMAD KHAN
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela