

(47)

STATE VS JAHANZEB KHAN
FIR No. 10 | Dated: 27.03.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

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

SPECIAL CASE NO. : 32/3 OF 2022
DATE OF INSTITUTION : 26.09.2022
DATE OF DECISION : 23.12.2022

STATE THROUGH IMTIAZ KHAN SHO, POLICE STATION DABORI

.....(COMPLAINANT)

-VERSUS-

JAHANZEB KHAN S/O AJMIR KHAN, AGED ABOUT 39 YEARS, R/O
CASTE ALI KHEL, DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL)


Present: Umar Niaz, District Public Prosecutor for state.
: Noor Karim Advocate for accused facing trial.

FIR No. 10 **Dated: 27.03.2022** **U/S: 9 (d) of the Khyber**
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Dabori

JUDGEMENT
23.12.2022

The accused named above faced trial for the offence u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 vide FIR No. 10, dated 27.03.2022 of Police Station Dabori.

- (2). The case of the prosecution as per contents of Murasila based FIR is; that on 27.03.2022, the complainant, Imtiaz Khan SHO along with Head Constables Naveed Khan, Talib Khan, Muhammad Asim and other police officials laid a picket on a mettled road leading from District Khyber to Dabori, where at about 1230 hours a Flying Coach of blue colour on way from District Khyber was stopped for the purpose of checking. A person boarding the second seat of the vehicle was deboarded, whose personal search led the complainant/SHO Imtiaz Khan to the recovery of 01 packet of


Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela

23/12/22

48

STATE VS JAHANZEB KHAN
FIR No. 10 | Dated: 27.03.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

chars weighing 1050 grams wrapped with yellow colour scotch tape from his trouser-fold. The complainant separated 10 grams of chars from the packet for chemical analysis through FSL, sealed the same into parcel no. 1 whereas the remaining quantity of chars weighing 1040 grams were sealed in parcel no. 2 by affixing monograms of 'DB' on both the parcels. The accused disclosed his name as **Jahanzeb Khan** s/o Ajmir 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 Police Station through constable Muhammad Asim which was converted into FIR by Muhammad Jaan ASHO.

- (3). After registration of FIR, it was handed over to Muhammad Ishaq 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 12.04.2022, the IO sent the sample of chars for chemical analysis to FSL vide application Ex. PW 6/4 through constable Abdullah and road permit certificate Ex. PW 6/5, the result whereof Ex. PK was received and placed on file by him. After completion of investigation, he handed over the case file to SHO who submitted complete challan against the accused facing trial.

Shaukat Ahmad Khan
District & Sessions Judge
Prakazai Baber Meia
23/1/22


- (4). Upon receipt of case file for the purpose of trial, the accused was summoned, copies of the record were provided to

49

STATE VS JAHANZEB KHAN
FIR No. 10 | Dated: 27.03.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

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. Head Constable Abdullah is PW-1. He has taken the sample of recovered chars in parcel no. 1 to the FSL for chemical analysis on 12.04.2022 and after submission of the same, he has handed over the receipt of the parcel to the IO.
- II. AMHC Abdullah appeared in the witness box as PW-2. He 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 sample of the case property to the IO for sending the same to FSL on 12.04.2022.
- III. Imtiaz Khan SHO is the complainant of the case. He appeared in the witness box as PW-3. In his statement he repeated the story narrated in the FIR.
- IV. Head Constable Naveed Khan is PW-4. He besides being eyewitness of occurrence is marginal witness of recovery memo Ex. PC as


Shaukat Ahmad Khan
District & Sessions Judge,
Orizai at Fabor Miza
20/12/22

50

STATE VS JAHANZEB KHAN

FIR No. 10 | Dated: 27.03.2022 | U/S: 9 (d) of the Khyber Pakhtunkhwa CNSA 2019 | Police Station: Dabori

well vide which the complainant has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement.

V. Constable Muhammad Asim, who has transmitted the Murasila and other documents to police station, is PW-5. He besides being transmitting the Murasila and other documents to police station is the eyewitness of occurrence. He is marginal witness of recovery memo Ex. PC as well vide which the complainant has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement.

VI. Lastly, Investigating Officer Muhammad Ishaq SI was examined as PW-6 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 application Ex. PW 6/1, placed on file naqal mad no. 3 Ex. PW 6/2 and naqal mad no. 9 Ex. PW 6/3, sent the representative sample to FSL along with application addressed to the incharge FSL Ex. PW 6/4 and road permit certificate Ex. PW 6/5 and result of the same Ex. PK was placed on file

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Saper Meta
23/12/22


(51)

STATE VS JAHANZEB KHAN
FIR No. 10 | Dated: 27.03.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

by him, annexing copy of register no. 19 Ex. PW
2/1 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 sample for chemical analysis, though has not
been transmitted to the FSL within the prescribed period but


Shaukat Ahmad Khan
District & Sessions Judge,
Muzrai at Baber Meia
23/1/22

the same has been duly explained by IO in his statement and
that the representative sample has been found positive for
chars vide report of FSL Ex. PK. The complainant, the
witnesses of the recovery, the official transmitted the sample
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 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 chars 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 further submitted that in fact the recovery has been made from trunk of flying-coach by the FC officials whereafter the accused facing trial, being driver of the flying-coach, has been handed over to police. That registration number of the flying-coach is not mentioned. That no witness from the public has been associated with the process of search or recovery. That the representative sample has been sent to FSL with a delay of about more than 15 days. 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.

(8). 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:

Shaukat Ahmad Khan
District & Sessions Judge,
Dabori, FATA
23/12/22

(53)

STATE VS JAHANZEB KHAN
FIR No. 10 | Dated: 27.03.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

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

(9). As per contents of Murasila Ex. PA, the complainant, Imtiaz Khan SHO/PW-3 along with Head Constables Naveed Khan/PW-4, Talib Khan, constable Muhammad Asim/PW-5 and other police officials laid a picket on a mettled road leading from District Khyber to Dabori, where at about 1230 hours a Flying Coach of blue colour on way from District Khyber was stopped for the purpose of checking. A person boarding the second seat of the vehicle was deboarded, whose personal search led the complainant to the recovery of 01 packet of chars weighing 1050 grams wrapped with yellow colour scotch tape from his trouser-fold. The complainant/PW-3 on the spot has shown himself separated 10 grams of chars from the packet for chemical analysis through FSL, sealed the same into parcel no. 1 whereas the remaining quantity of chars weighing 1040 grams have been shown sealed in parcel no. 2, affixing monograms of 'DB' on both the parcels. The accused disclosing his name as **Jahanzeb Khan** s/o Ajmir Khan, has been shown arrested on the spot by issuing

Shaukat Ahmad Khan
District & Sessions Judge,
Dera Ismail Khan
23/3/22


54

STATE VS JAHANZEB KHAN
FIR No. 10 | Dated: 27.03.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

his card of arrest Ex. PW 3/1. The complainant/PW-3 has shown taken into possession the recovered chars vide recovery memo Ex. PC. Murasila Ex. PA/1 has also been shown drafted and sent to the Police Station through constable Muhammad Asim/PW-5 which has been converted into FIR Ex. PA by Muhammad Jaan ASHO.

The prosecution in order to prove its case against the accused, in the mode and manner as detailed in the Murasila Ex. PA, has examined Imtaiz Khan SHO, the complainant of the case as PW-3. The head constable Naveed Khan and the constable Muhammad Asim are the eyewitnesses of the occurrence. Both the witnesses are also marginal witnesses of recovery memo Ex. PC. They have been produced and examined by the prosecution as PW-4 and PW-5 respectively.

All the three witnesses have narrated the same story regarding the mode and manner of the occurrence and the mode and manner of recovery i.e., laying a picket on the spot, arrival of the flying-coach, deboarding the accused facing trial, boarding a second seat of flying-coach, on the basis of suspicious, recovery of chars from trouser-fold of the accused facing trial, weighing of chars on the spot, separation of sample of 10 grams with packing and sealing of the sample and remaining chars in parcels no. 1 and 2 respectively, by affixing of monogram of "DB" on the parcels, drafting of recovery memo, card of arrest and Murasila by Imtiaz Khan SHO/PW-3 on the spot and handing over of the documents to Muhammad Asim/ PW-5 for


Shaukat Ahmad Khan
District & Sessions Judge,
Tarakzai at Baber

SS

STATE VS JAHANZEB KHAN
FIR No. 10 | Dated: 27.03.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

transmitting the same to police station for registration of FIR.

All the three witnesses are cross examined regarding their presence on the spot and recovery of chars. They are unanimous on all the material points and not a minute contradiction could be extracted from the mouth of any of the witness i.e., all the three witnesses have been cross examined regarding their number at the time of departure from the police station, the areas which they have patrolled after leaving the police station, the time of arrival of flying-coach, search of other vehicles prior to the present occurrence, the number of other passengers boarding in the flying-coach, presence of female passengers in the flying-coach, the existence of any *Abadi* near the spot of occurrence and the existence of crops in nearby fields. All the three witnesses have not contradicted each other on any of the aforementioned questions put to them in cross examinations.

Shaukat Ahmad Khan
District & Sessions Judge
Prakazai
23/12/22

They have also been cross examined regarding the separation of representative sample, the availability of digital scale with the SHO and packing and sealing of the parcels on the spot, where all the three witnesses have affirmed that the chars have been weighed through digital scale fetched by the PW-3 from official vehicle and the parcels have been packed and sealed on the spot. The complainant as PW-3 has also been cross examined on the point that as to whether the FIR number on the top of recovery memo was scribed at the time of scribing of the same or otherwise?, which has been duly explained by him that the same was later on added after contacting the Moharrir on

56

STATE VS JAHANZEB KHAN
FIR No. 10 | Dated: 27.03.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

telephone. The recovery of chars has also been admitted by the defence; however, it has objected to the mode and manner of recovery i.e., the IO of the case has been cross examined and put a suggestion as;

"I do not know as to whether the accused is a driver of flying-coach or otherwise. I have recorded the statement of accused u/s 161 CrPC. The accused in his statement recorded u/s 161 CrPC has disclosed that the recovery has not been effected from me rather these have been recovered from the trunk of the flying-coach. It is incorrect to suggest that the recovery has been made by FC officials at FC check-post and later on the accused has been handed over to us along with the recovered contrabands."

However, keeping in view the quantum of evidence produced by the prosecution on the points i.e., the complainant along with two eyewitnesses coupled with the fact that their statements are thoroughly consistent regarding all the points, it is held that the mode and manner of the recovery is proved while on the other hand the objection of defence to the mode and manner of recovery, amounts to claim of defence which is neither supported by any material available on file nor any evidence in that respect has been produced by the accused.

With respect to mode and manner of investigation conducted on the spot, after drafting of recovery memo, card of arrest, and Murasila, these documents have handed over to PW-

Shaukat A. Khad Khan
District & Sessions Judge,
Orakzai at Dabori
23/12/22

STATE VS JAHANZEB KHAN
FIR No. 10 | Dated: 27.03.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

5/constable Muhammad Asim who has transmitted the same to police station, where ASHO of the police station has registered the FIR and he has handed over the same to Muhammad Ishaq SI/PW-6 for investigation. The said Muhammad Ishaq, after receipt of FIR, Murasila, card of arrest and recovery memo, has visited the spot where he has prepared site plan Ex. PB on the pointation of complainant and recorded the statements of witnesses on the spot. The prosecution in order to prove its version has examined constable Muhammad Asim as PW-5 and Muhammad Ishaq as PW-6. Both the witnesses have supported the version of the prosecution in their statements. Both the witnesses have been cross examined regarding arrival of the IO on the spot, the statements recorded by the IO on the spot and inspection of the case property and the accused by the IO on the spot. The witnesses of prosecution are unanimous on the points that the IO accompanied by two police officials had arrived on the spot at about 1350 hours, the constable Muhammad Asim who had taken the documents to police station, had returned to the spot prior to arrival of the IO, the statements of witnesses were recorded by the IO on the spot, the parcels of chars and accused were shown to the IO on the spot and site plan was prepared by IO on the pointation of complainant/PW-3. Not a minute contradiction could be extracted by the defence from any of the witness.

Shaukat Ali Nisa Khan
District & Sessions Judge,
Orakzai at Baber Mela
23/1/22

With respect to FSL report, the case of the prosecution is; that after return of complainant/PW-3, the case property has

58

STATE VS JAHANZEB KHAN
FIR No. 10 | Dated: 27.03.2022 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

handed over by him to Abdullah AMHC/PW-2 who by making entry of the same in register no.19 deposited the same in Mal Khana on 12.04.2022, the IO/PW-6 has collected parcel no. 1 from Moharrir and handed over the same to PW-1/constable Abdullah who has taken the same to FSL and result of the representative sample being in positive for chars has been placed on file by IO which is Ex. PK. All the three witnesses have been produced by the prosecution but nothing contradictory could be extracted from their mouths in this respect except the fact that the occurrence has taken place on 27.03.2022 while the representative sample has been sent to FSL on 12.04.2022 with a delay of about 15 days; however, PW-6, the IO of the case, in his examination in chief has explained that as his daughter was ill and admitted in CMH Peshawar and when he returned, he sent the sample on 12.04.2022. This portion of the statement of IO has not been cross examined even a single question in respect of delay has not been put to the IO.

Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Esher Mata
23/12/22


(10).

In the light of aforementioned discussion, it is held that the prosecution has successfully proved its case against the accused facing trial without any shadow of doubt. Hence, the accused facing trial, Jahanzeb Khan is held guilty for having in his possession 1050 grams of chars. He is convicted u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 *“punishable with death, imprisonment for life or imprisonment for a term which may extend to 14 years and with fine which may extend to Rs. 1000000 and not less than 05 lacs*

if the quantity of narcotics substance exceeds the limit of 01 kilograms. Provided that if the quantity exceeds 10 kilograms, the punishment shall not be less than imprisonment for life in any case."

As the quantity of chars slightly exceeds the limit of 01 kilogram; therefore, while commensurating the quantum of punishment with the quantity of chars recovered from possession of the accused **Jahanzeb Khan**, he is sentenced to imprisonment for one (01) year and fine of Rs. 500,000/- (five lacs). In case of default of the payment of fine, the accused shall further undergo simple imprisonment for two (02) months. The benefit of section 382-B Cr.P.C is extended to the accused. The case property i.e., chars be destroyed after the expiry of period provided for appeal/revision. Copy of the judgement delivered to the accused today free of cost and his thumb impression to this effect obtained at the margin of the order sheet. The copy of judgement also be issued to the District Public Prosecutor u/s 373 of the Cr.P.C free of cost. Consign.


Pronounced
23.12.2022


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: 23.12.2022


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