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

Case No. 12/02 of 2023

Date of institution: 24.06.2023

Date of decision: 12.03.2024

State through Muhammad Younis SHO of the Mishti Mela Police Station  
Orakzai (complainant)

Versus

Rahidullah s/o Khan Asghar, Qaum Shalobar, Qambar Khel, District  
Khyber (accused facing trial)

**FIR No. 13 DATED 19.03.2023 U/S 468, 471 PPC**

**MISHTI MELA POLICE STATION, ORAKZAI**

**Judgment**

1. Accused Rahid Ullah is facing trial in the subject case registered u/sections 468 & 471 PPC of Mishti Mela Police Station, Orakzai.
2. Muhammad Younis SHO, complainant, along with police officials on receiving spy information about smuggling of narcotics through motorcar registration no. LEB-7410, the car, arranged a barricade at place of occurrence, where at about 1400 hours, the above detailed car approached and stopped by complainant for search; that driver of car was deboarded and searched but nothing incriminating recovered from his possession; that search of the car led the complainant to the recovery of 17 packets chars wrapped in yellow scotch tape from secret cavity made over the left rear tire, each packet having weight of 1100 grams with total quantity of 18700 grams; that 10 grams chars from each packet was separated for FSL, which was sealed into parcels no. 1-17 and the remaining chars was sealed into parcel no. 18 and 19, each parcel having 9 and 8 packets respectively; that

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case property along with the car were taken into possession and accused was arrested on the spot, hence, the FIR.

3. On completion of investigation, complete challan under sections 468 and 471 PPC was put in court against the accused.
4. Accused was summoned through *zamima bay*. On his attendance, the copies of the case furnished to accused under section 265-C Cr.PC. The accused was then charge sheeted u/suit shop 468 & 471 PPC, to which he pleaded not his guilt and claimed trial.
5. Prosecution produced following evidence in support of its case;
6. PW-1 is the statement of Raheemullah constable, who has taken the parcels 1-17 containing samples of chars to the FSL Peshawar for chemical analysis. PW-2 is statement of Muhammad Saeed AMHC, who on receipt of murasila registered the FIR, Exh.PA, and also kept the case property in *malkhana* for safe custody vide register no. 19, Exh.PW 2/1. He produced the report, Exh.PW 2/2. The statement of Muhammad Younis SHO (complainant) was recorded as PW-3, who confirmed the initial report, Ex.PA; recovery of the contraband and the car vide recovery memo, Ex.PW 3/1, to be true. He arrested the accused and issued his card of arrest, Exh.PW 3/2, and drafted the murasila report, Exh.PA-1. He produced remaining chars contained in parcels no. 18 & 19, Exh.P-1 and Exh.P-2, weighing 9810 grams and 8720 grams respectively. He produced recovered car, Exh.P-3. After completion of challan, he submitted complete challan, Exh.PW 3/3, against accused in instant case. One of the marginal witnesses to recovery memo was Fazal Hameed Constable, who was examined as PW-4. He testified that the recovery was made from accused and

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documented vide recovery memo. He took the murasila, recovery memo and card of arrest to the police station for registration of FIR. Abdul Manaf SI was investigation officer of the case, who entered in the witness box as PW-5. He has prepared and confirmed the site plan, Exh.PW 5/1, and examination of witnesses. He submitted an application, Exh.PW 5/2, to ETO Islamabad for the verification of recovered car, second application to Excise and Taxation, Exh.PW 5/3, & third application to FSL for examination of car, Exh.PW 5/4. He also exhibited the application Exh.PW 5/5 submitted through SP Investigation to FSL. He had produced the accused before the Area Judicial Magistrate vides application, Exh.PW 5/6, produced road certificate, Exh.PW 5/7, and letter to FSL, Exh.PW 5/8. He vides application, Exh.PW 5/8, produced accused before the Court for recording confessional statement. He produced FSL results about the car, Exh.PA, and the recovered chars, Exh.PA-1. On completion of investigation, he handed over the case file to SHO for onward submission of complete challan against the accused.

7. Prosecution closed its evidence. Statement of accused was recorded u/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 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

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narcotics from accused; that FSL result in respect car is in positive; that there is no malafide on part of the prosecution to falsely involve the accused in the instant 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 and 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 accused has not confessed his guilt; that the case against the accused is not proved and request is made for the acquittal of accused.

11. The record available before the court and arguments advanced by learned counsel for parties led me to the conclusion that the local police on spy information arranged a barricade and intercepted the car registration no. LEB-7410, wherefrom, recovered 18700 grams chars placed from its secret cavity made over the left rear tire, which were taken into possession and the accused was arrested on the spot and the vehicle seized. It is bounden duty of prosecution to prove its case beyond shadow of a reasonable doubt from the moment of receiving the spy information by the local police to the interception of accused, recovery of tampered vehicle, preparation of recovery memo, drafting the murasila, witnessing of the whole proceedings by marginal witnesses, registration of case, investigation of the case and laboratory report etc. To prove this, prosecution led the evidence of as many witnesses as it wished.

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12. The Muharrir of the police station explicitly stated that register no. 19 is meant for making the entries of each and every article they received, when, however, he was asked about the receiving of keys of the car, he stated that he did not mention the fact of receiving any key of the car in the register except the entry of parcels and vehicle. Importantly, the extract of register no. 19, Exh.PW 2/1, though provides the entry of car and its safe parking there; however, there is nothing on record about delivery of the car to investigation officer or any other police official for driving away to Peshawar for chemical analysis, which is also admitted by the investigation officer in his statement recorded as (PW-5), which raises an eye-brow that as to which car was chemically examined at forensic laboratory Peshawar especially when Muharrir (PW-2) of the police station admitted that he has no handed over the car in question to the investigation officer for further proceedings in the instant case.

13. Undoubtedly, the forensic science laboratory report in respect of car is in positive, according to which the chassis number over the car was found to be welded and refitted sheet piece measuring 12 x 2½ having number NZE140-2064647, however, investigation officer produced the FSL report on record at the time of recording his statement before the court, which is alarming that why did he kept the FSL report with him till his statement was recorded.

14. Abdul Manaf, being investigation officer of case, though explained that a plate was affixed with bumper of the car but strange to note that he did not know whether the car was having the bumpers or not. He admittedly did not take into possession the plate. More so,

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neither seizing officer nor the investigation officer has bothered to note down the size of the cavity made in the car, which speaks volume about inefficiency and poor investigation in the case by the investigation officer.

15. There are few contradictions also noted in the statements of the prosecution witnesses. Record provides that the police official has taken photographs of the car at the time of recovery of contraband, however, seizing officer (PW-3) stated that those photographs were not taken by him but by his sub-ordinate. Fazal Halim, marginal witness to recovery memo, stated that those photographs were taken by driver Sami-ul-Haq, whereas, investigation officer contradicted both of them stating those photographs had already been taken by the SHO. The seizing officer deposed that the photographs contained the picture of the accused, whereas, the photographs, Exh.PK, do not provide any picture of the accused, which is also confirmed by the investigation officer. Even, Sami-ul-Haq, driver of police vehicle, was not produced as witness before the court to state the true facts. Similarly, the complainant stated that he has entered the FIR number in the police station after he came back from the spot but marginal witness (PW-4) stated that it was entered by Muharrir of the police station. Likewise, marginal witness stated that they had arranged barricade at main road Mishti Mela but in cross-examination admitted that there is no mention of this fact in his police statement, which rather provides that barricade was arranged at Manddate Adda, which is a different place.

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16. Record provides that accused was arrested for trafficking chars in car but there is no evidence on record that the car was registered in his name or not. Even, no driving license had been recovered from 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 relevant time, so 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. 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 2023 PCrLJ 154 [Peshawar].

17. Although, the FSL report provides that the chassis number of the car has been welded and refitted in piece of 12 x 2½, however, in reply to a question the seizing officer has just mentioned the affixation of just one registration number over the number plates the car and has shown lack of knowledge about availability of any other registration number on the back of each registration number plates. Likewise, the investigation officer has also stated that there was no other registration number over the vehicle except the one mentioned in the report, however, when the number plate of the car was detached on request of learned defense counsel, it provided a separate registration number QX-397 on the back of both number plates, which creates doubt in the prosecution case. Even, the photographs were taken but registration number and complete picture of the care was not brought on file to authenticate the recovery of car in question.

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18. This is a normal routine that when the recovery is effected, the seizing officer first prepares the recovery memo, then card of arrest and finally drafts the murasila. In the instant case, recovery memo was also prepared prior to drafting of the murasila, however, the recovery memo contained all particulars of the car, however, those particulars were not mentioned in the murasila report, which leads to inference that recovery memo was prepared inside the police station and after registration of case; therefore, it born the FIR number.

19. The seizing officer has also not recovered any documentary evidence from possession of accused in respect of the car so as to link him with the car in question nor did he recover any driving license from the accused. On the other side, the investigation officer deposed that he has inquired about the ownership of the car, which was found to be the ownership of accused; however, he has not brought a single document on record to establish the fact that the car was ownership of the accused. He has also not recovered any driving license from the accused or any evidence that the accused has tampered the car, which further doubts that whether the accused was actually driving the car or not.

This 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 or concession but as a matter of right, the wisdom is drawn from case law reported in 2023 YLR 2579.

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21. From above appreciation of evidence it is held that the proceedings of making arrest and seizure of the car from accused by the police had become doubtful. Moreover there are many major discrepancies and contradictions in the case of prosecution that creates reasonable doubt about the commission of offence by accused in a mode and manner stated in the case. In view of above discussed facts, it is held that prosecution has failed to bring home the guilt against accused, hence, while extending the benefit of doubt, the accused Rahidullah is acquitted from the charge leveled against him. As he is behind the bars; therefore, he is directed to be released forthwith, if not required in any other case. *Zamima bay* issued in the instant case is cancelled.
22. Case property i.e. the car having a welded and refitted chassis sheet piece is found to be tampered as per chemical examiner report thus it is confiscated in favor of the State and be disposed of in accordance with law after expiry of period provided for appeal/revision.
23. File consigned to record room after completion and compilation.


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**CERTIFICATE**

It is certified that this judgment of mine consists of nine (09) pages and each page is duly signed by me after necessary corrections.

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12.03.2024

  
**Abdul Basit**  
Additional Sessions Judge-II/JSC,  
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