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

Case No. 20/03 of 2023

Date of institution: 15.05.2023

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 9-D CNSA**  
**MISHTI MELA POLICE STATION, ORAKZAI**

**Judgment**

1. Accused Rahid Ullah is facing trial in the subject case registered under section 9-D CNSA 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 section 9-D CNSA 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/s 9-D CNSA, 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 prosecution witnesses are consistent in their statements in respect of recovery of narcotics from accused; that FSL result in respect of the samples,

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separated from contraband recovered from accused is in positive; that there is no malafide on the part of 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 recovery is not effected from the immediate possession of accused; 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.

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, his body search, his transportation of contraband in the vehicle, taking of samples from recovered contraband, preparation of recovery memo, drafting the murasila, witnessing of the whole proceedings by marginal witnesses, registration of case, safe custody

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of recovered articles, investigation of the case and laboratory reports etc. To prove this, prosecution led the evidence of as many witnesses as it wished. In narcotics cases, recovery of contraband, separation of parcels for the test, its safe custody and finally the transmission to laboratory has become vital in present days to establish the factum of sending of the originally recovered article to the laboratory.

12. So far safe custody of case property from the moment of its recovery from vehicle driven by accused, separation of samples from packets, its sealing, its delivery to Muharrir police station for safe custody, his keeping the same in the *maalkhana*, its delivery to investigation officer for production before the learned Judicial Magistrate, the delivery of samples to police official for taking to FSL Peshawar for the chemical analysis and route certificate is related, it is held that according to complainant (PW-3), he has handed over the recovered contraband and the car to Muharrir of police station for safe custody, however, there is admittedly no signature of complainant present in register no. 19 about depositing the case property in the *malkhana* by complainant in sealed condition. When, however, Muharrir of the police station was asked about sealed packets, he mentioned that as per extract of the register no. 19, Exh.PW 2/1, it only mentioned the receiving of parcels no. 1-17, whereas, it is not mentioned anywhere that what article was contained in it nor the fact that whether those packets were sealed and had the monogram or not. Importantly, the extract of register no. 19, Exh.PW 2/1, only provides a detail about route certificate and delivery of parcels no. 1-17 to Raheemullah (PW-1) for submission to FSL, however, Raheemullah, the murasila

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carrier, stated that on 21.03.2023, parcels no. 1-17 were delivered to him by investigation officer for onward transmission to laboratory, however, neither this fact was brought in his 161 CrPC statement by investigation officer nor it is on record that where, when and at what time those parcels were delivered to him and by whom. Likewise, there is no entry in register no. 19 about delivery of parcels no. 1-17 to the investigation officer nor there is anything in black and white as to who has handed over those parcels to the investigation officer and when, where and at what time those parcels were received by him, especially, when it is admitted by Muharrir (PW-2) that there is no record/entry in register no. 19 about handing over any parcel to the investigation officer in between dates 19.03.2023 and 22.03.2023, which fact is also admitted by the investigation officer that he has no signature in register no. 19 about receiving of those parcels, which creates serious concerns about the date of delivery of the contraband to the investigation officer, his onward delivery to Raheemullah and safe custody of the contraband in the police station.

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13. Undoubtedly, the forensic science laboratory report in respect of the contraband is in positive, according to which the recovered articles have been found to be chars, however, investigation officer produced the FSL report on record at the time of recording his statement, which is alarming that why did he kept the FSL report with him till his statement was recorded.

14. Almost all car owners/drivers are versant with fact that mudguard of the cars are situated above tires of the cars so as to protect its body from mud etc., whereas, in this case the seizing officer has allegedly

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recovered the contraband from secret cavity present above the mudguard of front left tire of the car. Statement of investigation officer (PW-5), however, suggests that secret cavity was specially created somewhere inside the bumper of the car and explained that a plate was affixed with bumpers of the car. He affirmed that bumpers of the car are located on front and back side of the car; however, he did not observe any cutting or welding for creation of the cavity. On the other hand, being an investigation officer of the case, he though explained that a plate was affixed with the 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, neither seizing officer nor the investigation officer has bothered to note down the size of the cavity made in the car so as to prove that such a huge quantity of chars could have been placed in said secret cavity, which speaks volume about inefficiency and poor investigation in the case by the investigation officer.

15. Record provides that though a huge quantity of chars has been allegedly recovered from the car but complainant admittedly did not mention the kind of chars in his report that as to whether the recovered chars was in *pukhta* or *garda* form. Even, investigation officer did not bother to collect evidence that whether the recovered chars was in *pukhta* or *garda* form.

16. 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

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not taken by him but 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 photographs contained the picture of 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, the 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; the 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.

17. There is also an anomaly noted in the prosecution case, according to which the seizing officer had allegedly recovered 17 packets of chars from secret cavity of the car, separated 10 grams of chars from each packet for chemical test and each sample was placed in a separate parcel having serial numbers 1-17, however, he has admittedly not given corresponding number to each packet from which he has separated the chars nor he was in a position to tell this fact at the time of recording his statement, which leads to probability that the recovered 17 packets might not have contained the chars and the

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seizing officer might have placed original chars in parcels for the chemical analysis to trap the accused in a false case. The probability drawn above is also gathered from the fact that seizing officer and marginal witness to recovery memo clearly stated that the recovered packets of 17 chars, sealed in parcels no. 18 and 19, were wrapped with yellow carton tape and there was no writing on those packets, which contention found true when those parcels were unsealed on the request of learned counsel for defense, however, the photograph, Exh.PK, transpires the marker writing on packet placed on the top, which is also admitted true by investigation officer and leads to inference that the local police has recovered a different stuff as shown in the picture but has sent the original chars for chemical analysis, which badly affects the prosecution story.


18. Record provides that accused was arrested for trafficking seventeen packets of chars in car; however, 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 the 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].

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19. From above appreciation of evidence it is held that the proceedings of making arrest and seizure of narcotics from accused by the police had become doubtful. Moreover there are many major discrepancies and contradictions in the case of prosecution as discussed above, which creates reasonable doubt about the commission of offence by accused in a mode and manner stated by the prosecution and in no way suggests the conviction of accused. In view of above discussed facts, it is held that the prosecution has failed to bring home the guilt against the accused, hence, while extending the benefit of doubt, the accused Rahidullah is acquitted from the charge leveled against him. As accused 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.
20. Case property i.e. chars be destroyed after expiry of period provided for appeal/revision.
21. File consigned to record room after completion and compilation.


**Announced**  
12.03.2024

  
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**CERTIFICATE**

It is certified that this judgment of mine consists of ten (10) pages and each page is duly signed by me after necessary corrections.

**Announced**  
12.03.2024

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