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IN THE COURT OF ZAHIR KHAN, JUDICIAL MAGISTRATE -I
TEHSIL KALAYA, DISTRICT ORAKZAI

Case No. 5/3 OF 2021.
Date of Institution: 19.05.2021.
Date of Decision: 26.10.2022.

State through:

Rasool Gul SI Mir Mela check post.

.....Complainant

VERSES

Nadeem Ullah S/O Shafi Ullah Khan, R/O Qaum Sheikhan, Tappa Bazid
Khel, Village Mir Mela, Tehsil Lower, District Orakzai

.....Accused

Case FIR No. 25, Dated 25.02.2021 U/S 15AA, PS Kalaya

ORDER:
26.10.2022

APP for the state present. Accused Nadeem Ullah on bail present.
Arguments on application filed by accused/petitioner U/S 249-A Cr.
PC and application U/S 494 Cr. PC already heard and record perused.


Through this order, I am going to dispose of the instant case
registered against accused Nadeem Ullah vide Case FIR No. 25,
Dated 25.02.2021 U/S 15AA, registered at PS Kalaya.

1. Brief facts as per contents of FIR are that, on 25.02.2021 at
10:00AM, SI/complainant who was accompanied by other police
nafri was on routine patrol duty at Mir Mela check post, Tehsil
Lower, District Orakzai. A person duly armed with Kalashnikov was
overpowered and a Kalashnikov with folding butt without number

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along with a fixed charger containing 01 live round of 7.62 bore was recovered from his possession. On further body search of the person, one pistol 30 bore without number and charger was recovered from the Badda Shalwar of the said person who disclosed his name as Nadeem Ullah S/O Shafi Ullah Khan, Qaum Sheikhan, Tappa Bazid Khel, Village Mir Mela, Lower Orakzai. The recovered arms and ammunition were packed and sealed into parcel No. 1. Accused was formally arrested. Murasila was drafted. Recovery memo was prepared in presence of marginal witnesses. Murasila and other relevant documents along with accused were sent to PS for registration of the case through Constable Dilawar Khan.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
3. Accused was summoned and legal formalities under Section 241-A Cr. PC were complied with. Accused was formally indicted. He pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.
4. Prosecution produced five (05) witnesses to prove its case against the accused while rest of the PWs were given up by prosecution and closed its evidence.


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PW-01 is the statement of Ain Ullah Mad Moharrir. He stated that on the day of occurrence i.e., 25.02.2021, he was present in the police station. He received Murasila from SI Rasool Gul through Constable Dilawar Khan. On the strength of Murasila, he registered FIR which

is Ex. PA. He has seen copy of FIR which is in his hand writing and correctly bears his signature. Copy of FIR along with other relevant documents were handed over to IO for investigation. Case property was handed over to him which he kept in safe custody. Entry was made in register-19. Accused was locked up. On 01.03.2021, the case property was handed over to IO for the purpose of sending it to FSL. His statement was recorded by IO U/S 161 Cr.PC.

- 6. PW-02** is the statement of SI/complainant Rasool Gul. He stated that on the day of occurrence, he along with HC Eid Badshah and FC Dilawar Khan was on area patrol. During patrol at Mir Mela, a person duly armed with Kalashnikov was overpowered and a Kalashnikov with folding butt without number along with a fixed charger containing 01 live round of 7.62 bore was recovered from the possession of accused. On further body search of the person, one pistol 30 bore without number and charger was recovered from the Badda Shalwar of the said person who disclosed his name as Nadeem Ullah S/O Shafi Ullah Khan, Qaum Sheikhan, Tappa Bazid Khel, Village Mir Mela, Lower Orakzai. The recovered arms and ammunition were packed and sealed into parcel No. 1 which is Ex. P1 by affixing 3/3 seals monogram in the name of SH. Accused was formally arrested. Murasila was drafted. Recovery memo was prepared. Murasila is Ex. PW-2/1, recovery memo is Ex. PW-2/2 and card of arrest is Ex. PW-2/3. Murasila was sent to PS for registration of the case through Constable Dilawar Khan. SI/complainant pointed


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out spot to IO who prepared site plan on his pointation. Accused was sent to the PS along with the relevant documents.

7. PW-03 is the statement of Constable Dilawar Khan. He stated that on the day of occurrence, he was present with Rasool Gul SI on patrol duty. In his presence, SI Rasool Gul recovered and took into possession a Kalashnikov with folding butt without number with a fixed charger containing 01 live round of 7.62 bore from possession of accused facing trial. One pistol 30 bore without number and charger was recovered by SI Rasool Gul from the Badda Shalwar of the accused and he packed and sealed the same into parcel No. 1 by affixing 3/3 seals monogram in the name of SH. His statement was recorded by the IO U/S 161 Cr. PC.

8. Minhaz Hussain was examined as PW-04. He stated that case property in sealed condition in parcel No. 1 was handed over to him by Shal Muhammad Khan IO along with application and road certificate and he took the same to FSL, Peshawar for examination. To this effect he took receiving signature and seal of incharge of FSL, Peshawar. He returned to PS and handed over the road certificate to IO. His statement was recorded by the IO U/S 161 Cr. PC.


9. PW-05 is the statement of SHO Shal Muhammad Khan. He is IO of the case. He stated that during the days of occurrence, he was posted at PS Kalaya in the investigation wing. After receiving copy of FIR along with relevant documents, he proceeded to the spot and prepared site plan Ex. PB on the pointation of complainant/SI Rasool


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Khan. He recorded statements of PWs U/S 161 Cr. PC. When he returned from the spot inspection, accused and case property was handed over to him at PS. On 26.02.2021, he produced the accused before the Ilaqa Magistrate with request for judicial remand vide his application Ex. PW-5/1. Accused was committed to judicial lock-up. He recorded statement of accused U/S 161 Cr. PC. Case property was sent to FSL vide his application Ex. PW-5/2 through constable Minhaz Hussain. Road certificate is Ex. PW-5/3. FSL report was received and placed on file. FSL report is Ex. PW-5/4. Extract of register-19 was placed on file. The same is Ex. PW-5/5. He has also placed on file naqalmad No. 9, dated 25.02.2021. The same is Ex. PW-5/6. After completion of investigation, case file was handed over to SHO concerned for submission of challan against the accused.

10. Remaining PWs were abandoned by prosecution and closed its evidence.
11. Afterwards, statement of accused U/S 342 Cr. PC was recorded wherein he pleaded not his guilt and did not wish to be examined on oath. He opted not to produce defence evidence.
12. Record depicts that PW-01 (Ain Ullah Mad Moharrir) stated in his cross examination that it is correct that he has not mentioned in his statement recorded U/S 161 Cr. PC that the case property was received in sealed condition.
13. PW-02 SI/complainant Rasool Gul, in his cross examination stated that he is middle pass. Entry was made in the relevant register of


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check post before his departure for patrol. They left check post at 09:50AM. They were on foot. He completed the proceedings within 30 minutes and thereafter returned to check post. SI Shal Muhammad reached the spot at about 12:00PM. Shal Muhammad SI was alone. He knows that what is recovery memo but he cannot tell which fact is written/mentioned in the recovery memo.

14. Constable Dilawar Khan, who is marginal witness to the recovery memo deposed as PW-03, stated in his cross examination that they left the check post at about 10:00AM. They were on foot. They reached the spot from check post in 30 minutes. When they reached the spot, accused was present there. Accused was taken to the check post after recovery. He cannot tell the exact time when they reached check post. SI Shal Muhammad came to check post at about 12:30PM. SI Shal Muhammad came to the spot in a private vehicle. He was accompanied with by 3/4 other police officials. Accused was made to set in rear seat of the private vehicle.

15. SHO Shal Muhammad Khan, who was posted in the investigation wing of PS Kalaya deposed as PW-05, stated in his cross examination that he reached the spot at 12:30 PM. Before his return to the PS, the seizing officer along with accused and case property had returned to the PS. He visited the spot in his official vehicle.


16. APP for the state filed application U/S 494 Cr. PC for withdrawal of the instant case on the following grounds;


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- (1). That PW namely SI Rasool Gul appeared before the court and recorded his statement as PW-02. He stated in his cross examination that they left check post at about 12:00PM. SI was alone. He knows what is recovery memo but he cannot tell which fact is written/mentioned in the recovery memo.
- (2). That PW namely Dilawar Khan Constable appeared before the court and recorded his statement as PW-03. He stated in his cross examination that they left the check post at about 10:00AM. They reached the spot from check post in 30 minutes. SI Shal Muhammad Khan came to check post at about 12:30 PM. He was accompanied with by 3/4 other police officials.
- (3). That there are material contradictions in the statements of PWs.
- (4). That there is no probability of the conviction of the accused in the instant case on the basis of available contradictory statements.


17. Record transpires that the alleged occurrence took place on 25.02.2021 at 10:00AM at Mir Mela check post, Lower Orakzai. It was reported through Murasila at 10:20AM and FIR was registered at 10:50AM. PW-01 in his cross examination stated that he has not stated in his 161 Cr. PC statement that he received the case property in sealed condition. PW-02 stated that they left the check post for the


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spot at 09:50AM. Recovery proceedings were completed within 30 minutes and thereafter, they returned back to check post. IO arrived at the spot at 12:00PM and he was alone. On the other hand, PW-03 stated that they left the check post at 10:00AM and reached to the spot within 30 minutes. Accused was taken to the check post. On the other hand, PW-02 stated that accused was taken to the PS. PW-03 stated that IO arrived to the spot at 12:30PM and there were 3/4 police officials with him. He came to the spot in his private vehicle. Accused was made to sit in the rear seat of motorcar. PW-05, in his cross examination stated that he reached the spot at 12:30PM in his official vehicle. There are material contradictions in the statements of PWs.

- 18.** As per law, a Magistrate may grant consent on the ground of inexpediency of prosecution for reasons of state, or relatable to public policy, or public peace, and administration of justice, or where there is credible information to Government as to the falsity of the prosecution evidence, or the undesirability of permitting the prosecution to continue where there is insufficient or meagre evidence to justify a conviction, or there is no likelihood of conviction on the available evidence. Public prosecutor with the consent of the court could withdraw from the prosecution of any case and there is no embargo or condition laid down on the public prosecutor or the court to pass an appropriate order. Public prosecutor filed application for withdrawal of the case U/S 494 Cr.


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PC giving reasons of withdrawal. Withdrawal of the case was allowed and accused was acquitted [1990 P.Cr.LJ. 986].

- 19.** Keeping in view the above facts and circumstances and contents of application filed by public prosecutor, accused Nadeem Ullah is hereby acquitted U/S 494 (b) Cr. PC (2) from the charges leveled against him. He is on bail. Sureties of accused discharged from their liability. Case property be dealt with in accordance with law.
- 20.** Case file be consigned to Record room after its completion and necessary compilation.

Announced
26.10.2022



Zahir Khan
Judicial Magistrate-I
Kalaya, Orakzai