

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

Case No.....9/3 of 2022.

Date of Institution.....28.09.2022.

Date of Decision.....08.11.2022.

State through:

SHO Hassan Jan, PS Kurez Boya.

.....**Complainant**

VERSES

Muhammad Islam S/O Kalay Khan, R/O District Bahawalpur, Tehsil
 Ahmad Pur Sharqia, Village Got Raza, Punjab Province.

.....**Accused**


Case FIR No. 16, Dated 19.08.2022 U/S 11-A CNSA, PS Kurez Boya

JUDGEMENT

08.11.2022

Through this judgement, I am going to dispose of the instant case registered against accused Muhammad Islam vide case FIR No. 16, Dated 19.08.2022 U/S 11-A CNSA, PS Kurez Boya.

1. Brief facts as per contents of FIR are that, on 19.08.2022 at 17:20 hours, SHO/complainant, who was accompanied by other police nafri was present at main road Tazi Khel check post. Barricade was improvised. At the relevant time, a motorcycle of white colour 70 CC without number came from Anjani Bazar side having a red colour ice cream box/dabba on it. He was stopped. During his body search, an envelope containing 15 grams ice was recovered from the side pocket


ZAHIR KHAN
 Civil Judge/JM
 Kalaya Orakzai

08.11.2022

of the person. The recovered ice was weighed with digital scale. Motorcycle and the recovered ice were taken into possession in presence of marginal witnesses. The person disclosed his name as Muhammad Islam S/O Kalay Khan, R/O Bahawalpur, Tehsil Ahmad Pur Sharqia, Village Got Raza, Punjab Province. Accused was formally arrested. Murasila was drafted. Recovery memo was prepared in presence of marginal witnesses. Murasila was sent to PS for registration of the case through Constable Shakhsar Ali No. 686. On the strength of Murasila the instant case was registered against the accused.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.
3. Accused was produced in custody from Sub-Jail Orakzai at Baber Mela 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 six (06) witnesses to prove its case against the accused while rest of the PWs were given up by prosecution and closed its evidence.

Zahir Khan


ZAHIR KHAN
 CIVIL JUDGE
 Kalaya Orakzai
 08.11.2022

PW-01, is SHO/complainant. He stated that on the day of occurrence, i.e., 19.08.2022, he along with ASI Shah Sawar Ali, Constable Hasrat Ali, Shakhsar Ali along with other police nafri was present at main road Tazi Khel check post. Barricade was

114

improvised. In meanwhile a motorcycle of white colour 70 CC without number came from Anjani Bazar side having a red colour ice cream box/dabba on it. He was stopped. During his body search, an envelope containing 15 grams ice was recovered from the side pocket of the person. The recovered ice was weighed with digital scale. Envelope was separately weighed which came out 04 grams. 01-gram ice was separated for FSL examination. It was packed and sealed into parcel No. 1 while the rest along with envelop was packed and sealed into parcel No. 2 by affixing 3/3 seals in the mark of AH. Motorcycle and the recovered ICE were taken into possession in presence of marginal witnesses. The person disclosed his name as Muhammad Islam S/O Kalay Khan, R/O Bahawalpur, Tehsil Ahmad Pur Sharqia, Village Got Raza, Punjab Province. He was formally arrested. He drafted Murasila at the spot. Murasila is Ex. PW-1/1. Recovery memo is Ex. PW-1/2. Card of arrest is Ex. PW-1/3. Murasila was sent to PS through Constable Shakhsar Ali No. 686. He pointed out the spot to IO who prepared site plan on his pointation. After completion of investigation, he submitted complete challan against the accused.


- 6.** PW-02, is the statement of Moharrir Intekhab Ali. He stated that on receipt of Murasila along with other relevant documents from SHO Hassan Jan through Constable Shakhsar Ali No. 686, he correctly incorporated contents of Murasila into FIR. Copy of FIR is Ex. PA. Copy of FIR was handed over to IO for investigation.


ZAHIR KHAN
Civil Judge JM
Kalaya Orakzai
08.11.22

45

SHO/complainant returned to PS and handed over to him accused and case property. Entry was made in register-19. Extract of the same is Ex. PW-2/1. Accused was locked up in PS and case property was kept in safe custody. On 22.08.2022, parcel No. 1 was handed over to IO for the purpose of sending it to FSL. His statement to this effect was recorded by IO U/S 161 Cr. PC.

- 7.** PW-03, is the statement of SI Mohsin Ali. He is IO of the case. He stated that after registration of the case in hand, copy of FIR along with relevant documents were handed over to him for investigation. He proceeded to the spot and prepared site plan Ex. PB at the instance of SHO/complainant. He recorded statements of PWs and that of accused U/S 161 Cr. PC. Accused was handed over to him for interrogation/further investigation. He produced the accused before the court for obtaining his physical custody vide his application Ex. PW-3/1 which was turned down and accused was committed to judicial lock up. Parcel No. 1 containing 01 gram ICE was sent to FSL vide his application Ex. PW-3/2. Road certificate is Ex. PW-3/3. FSL report was received and placed on file. FSL report is Ex. PW-3/4. Mad report dated 19.08.2022 was placed on file which is Ex. PW-3/5.


ZAHIR KHAN
Civil Judge JM
Karaya Orakzai
08.11.2022

- 8.** Khyal Hassan was examined as PW-04. He stated that he was handed over parcel No. 1 containing sample for FSL examination by IO along with application for FSL and road certificate. He took the same to FSL, Peshawar and handed over it to incharge FSL, Peshawar.

Receiving signature of the official concerned was obtained on road certificate accordingly which he handed over to IO. His statement was recorded by IO U/S 161 Cr. PC.

- 9. PW-05**, is the statement of ASI Shahsawar Ali. He stated that on the day of occurrence, he was present with SHO/complainant at barricade. During body search of the accused, an envelope containing 15 grams ice was recovered and taken into possession from the side pocket of the accused by SHO/complainant in his presence. The recovered ICE was weighed with digital scale. Envelope was separately weighed which came out 04 grams. 01-gram ICE was separated for FSL examination. It was packed and sealed into parcel No. 1 while the rest along with envelope was packed and sealed into parcel No. 2 by affixing 3/3 seals in the mark of AH. Motorcycle along with ice cream box/dabba was also taken into possession vide above referred recovery memo. Parcel No. 2 containing 14 grams ICE along with envelope/shopper is Ex. P1. Motorcycle along with ice cream box/dabba is Ex. P2. His statement was recorded by IO U/S 161 Cr. PC.



ZAHIR KHAN
Civil Judge (JM)
Kalaya Orakzai

08.11.2022

- 10. PW-06**, is Constable Shakhsar Ali. He stated that on the day of occurrence, he was present with SHO/complainant. Murasila was drafted by SHO/complainant at the spot and it was handed over to him along with relevant documents. He took the same to PS and handed over it to AMHC Intekhab Ali. His statement was recorded U/S by IO U/S 161 Cr. PC.

- 11.** PW Constable Hasrat Ali No. 1609 was abandoned by prosecution and closed its evidence.
- 12.** 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.
- 13.** Record depicts that PW-01(SHO/complainant) stated in his cross examination that he was accompanied with by six other police officials. Ice cream box/dabba was also checked. There were ice creams in the box/dabba. There is also a police check post at Tazi Khel. Officials of Tazi Khel check post were also present there. Tazi Khel check post is supervised/commanded by ASI Ashraf Ali. There were five police officials with ASI Ashraf. Barricade was improvised at 03:00PM. The motorcycle was taken to PS by Constable Hasrat Ali. Murasila was prepared by Constable Shakhsar Ali on his dictation. Murasila is in the hand writing of Constable Shakhsar Ali. He along with Constable Shakhsar Ali, Hasrat Ali and Shahswar Ali accompanied the accused to the PS.
- 14.** PW-02, Moharrir Intekhab Ali, in his cross examination stated that motorcycle was brought to PS by Constable Hasrat Ali and SHO was also present with him. Accused was handed over to him by Constable Shakhsar Ali.
- 15.** PW-03, SI Mohsin Ali, who is IO of the case, stated in his cross examination that copy of FIR along with relevant documents were handed over to him at 18:30 hours. He did not recorded statement of


ZAHIR KHAN
Civil Judge JM
Kalaya Orakzai

08.11.022

SHO/complainant U/S 161 Cr. PC. Ashraf ASI was incharge of Tazi Khel check post. He reached the spot at 19:25 hours and prepared site plan at about 19:55 hours. He has not mentioned ASI Ashraf and two others officials of Tazi Khel check post in the site plan. He has not mentioned all the six police officials in the site plan who were present with SHO at the relevant time.

16. PW-04, stated in his cross examination that he left the PS for FSL at about 07:00AM and returned to the PS at about 04:00PM. Parcel was handed over to him by the IO in sealed condition.

17. PW-05, stated in his cross examination that they left the PS at 12:00PM. Barricade was improvised at 03:00PM. There were 5/6 police officials at the spot at the relevant time. Incharge Tazi Khel check post came down from check post after the occurrence. All the officials posted at Tazi Khel check post came down to the spot. The ICE was in a Sheesha in ice cream box/dabba. They remained at the spot for about 40/45 minutes after the occurrence. It is correct that Sheesha was not taken into possession and no separate parcel was prepared for the same. He returned to PS along with accused in their official vehicle. Motorcycle was handed over to a constable posted at Tazi Khel check post. He returned to PS at about 07:30PM. Motorcycle was brought to PS by the constable posted at Tazi Khel check post.


18. PW-06, deposed that he was present with SHO/complainant at 17:40 hours at the time of barricade at Tazi Khel check post. After 20


ZAHIR KHAN
Civil Judge JM
Kalaya Orakzai

08-11-022


minutes of improvisation of barricade at the spot, the accused reached there. Motorcycle was brought from check post and he left the spot for PS on that motorcycle.

- 19.** Record transpires that the alleged occurrence took place on 19.08.2022 at 17:20 hours at main road Tazi Khel check post, Lower Orakzai. It was reported through Murasila at 17:40 hours and FIR was registered at 18:30 hours. PW-01 stated in his cross examination that the barricade was improvised at 03:00PM at Tazi Khel check post. Motorcycle was brought by Constable Hasrat Ali from spot to PS. Murasila was drafted by Constable Shakhsar Ali on his dictation but this fact has not been mentioned in the Murasila and recovery memo. The said constable namely Shakhsar Ali No. 686, who deposed as PW-06, stated that Murasila was drafted by SHO/complainant at the spot. Similarly, PW-02 stated in his cross examination that motorcycle was brought by Constable Hasrat Ali from spot to PS. On the other hand, PW-05 stated that motorcycle was handed over to a constable posted at Tazi Khel check post and it was brought to PS by the said constable. PW-03 deposed that ASI Ashraf Ali, incharge Tazi Khel check post came down to the spot at 19:25 hours. On the other hand, PW-01 stated that incharge Tazi Khel check post ASI Ashraf Ali and other officials of the said check post were present at the spot at the relevant time but they have not been mentioned in the Murasila and recovery memo. No specific points have been allotted to the officials of Tazi Khel check post in


ZAHIR KHAN
Civil Judge/JM
Kalaya Orakzai

08.11.2022

the site plan. Similarly, PW-05 stated in his cross examination that ASI Ashraf Ali, incharge Tazi Khel check post came down from check post after the occurrence while PW-01 stated that ASI Ashraf Ali was present with him at the time of occurrence. PW-05 further deposed that the ICE was in a Sheesha in ice cream box/dabba but this fact is not mentioned in the Murasila. Sheesha was not taken into possession. He also stated that Motorcycle was handed over to a constable posted at Tazi Khel check post which fact is not supported by rest of the PWs. PW-06 stated in his cross examination that he was present with SHO/complainant at 17:40 hours. After 20 minutes of the improvisation of barricade at the spot, the accused reached there. Per Ex. PW-1/1 (Murasila), the alleged occurrence took place at 17:20 hours. Barricade was improvised at 15:00 hours, so the time of occurrence would be 15:20 hours not 17:20 hours. Per statement of PW-06, Motorcycle was brought from check post and he left the spot for PS on that motorcycle but this fact is not supported by rest of the PWs. There are material contradictions in the statements of PWs.


ZAHIR KHAN
 Civil Judge (M)
 Kalaya Orakzai

08.11.22

20.


As per contents of Murasila, recovery memo and card of arrest, the said documents were prepared by SHO/complainant namely Hassan Jan who deposed as PW-01. In examination in chief, he stated that he drafted Murasila at the spot and sent it to PS for registration of the case through Constable Shakhsar Ali No. 686 but in cross examination he stated that Murasila was prepared by Constable

Shakhsar Ali No. 686 and it is in the hand writing of Constable Shakhsar Ali. This fact has not been mentioned anywhere in the Murasila, recovery memo and card of arrest. Constable Shakhsar Ali stated that Murasila was prepared by SHO/complainant. More so, per statement of PW-05, the ICE was present in a Sheesha but neither any sheesha has been taken into possession nor this fact is mentioned in the Murasila and recovery memo.

21. Per statements of PWs, incharge Tazi Khel check post, ASI Ashraf Ali and 5/6 other police officials were present at the spot at the time of occurrence but they have not been mentioned in Murasila and site plan. Statements of ASI Ashraf Ali, incharge Tazi Khel check post and other police officials posted at the said check post have not been recorded U/S 161 Cr. PC by the IO which is fatal to the case of prosecution.

22. Prosecution was bound to prove its case against the accused beyond any shadow of doubt but there are so many dents and doubts in the prosecution case benefit of which goes to the accused facing trial. Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt.

23. As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Muhammad Islam is hereby acquitted from the charges leveled against him. He is in custody. He be released from Sub-Jail, Orakzai at Baber Mela, if not

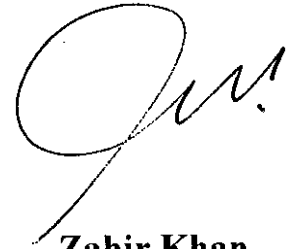

ZAHIR KHAN
 Civil Judge JM
 Kalaya Orakzai
 08.11.22

52

required in any other case. Case property be dealt with in accordance with law.

- 24.** Case file be consigned to Record room after its completion and necessary compilation.

Announced
08.11.2022



Zahir Khan
Judicial Magistrate-I
Kalaya, Orakzai