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

Case No.....2/3 of 2022.

Date of Institution.....22.01.2022.

Date of Decision.....20.12.2022.

State through:

SHO Aftab Hassan, PS Kurez Boya.

.....Complainant

VERSES

Muntazir Hussain S/O Ajmal Shah, R/O Qaum Bar Muhammad Khel,
Tehsil Lower, District Orakzai.

.....Accused


Case FIR No. 27, Dated 15.11.2021 U/S 11-A CNSA, PS Kurez Boya.

JUDGEMENT

20.12.2022

Through this judgement, I am going to dispose of the instant case registered against accused Muntazir Hussain vide case FIR No. 27, Dated 15.11.2021 U/S 11-A CNSA, PS Kurez Boya.


1. Brief facts as per contents of FIR are that, on 15.11.2021 at 14:00 hours, at Kurez Bazar near Forest check post, SHO/complainant Aftab Hassan, who was accompanied with by Sadar Ali HC, Constable Waseem Ali and other police nafri was on patrol duty and improvised barricade at Kurez Bazar near Forest check post. A person was coming from Kurez Bazar side. He was stopped and during his body search, a plastic envelope of white colour was


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recovered from his side pocket. On checking the same, it was containing 15 grams ICE. It was weighed through digital scale. One gram was separated for FSL examination and it was packed and sealed into parcel No. 1 while 14 grams ICE was packed and sealed into parcel No. 2. The person disclosed his name Syed Muntazir Hussain S/O Ajmal Shah, R/O Qaum Bar Muhammad Khel, Tappa Alat Khel, Orakzai. The recovered ICE was taken into possession through recovery memo in presence of marginal witnesses. Accused was formally arrested. Murasila was drafted at the spot and sent to PS through constable Waseem Ali for registration of the case and on the strength of Murasila, case in hand was registered against the accused.


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 four (04) witnesses to prove its case against the accused while rest of the PWs were given up by prosecution and closed its evidence.
5. Madad Moharrir Ain Ullah deposed as PW-01. He stated that on receipt of Murasila from SHO Aftab Hassan through constable Waseem Ali, he correctly incorporated contents of Murasila into FIR.


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Copy of FIR is Ex. PA. Copy of FIR along with other relevant documents were handed over to IO for investigation. Accused and case property in sealed condition was handed over to him by SHO/complainant. Entry was made in register-19. Extract of the same is Ex. PW-1/1. Accused was locked-up in the lock-up of PS. Case property in sealed condition was kept in safe custody in the mall khana of PS. On 19.11.2021, parcel No. 1 was handed over to IO for the purpose of sending it to FSL, Peshawar. His statement was recorded by IO U/S 161 Cr. PC.


- 6. PW-02,** is the statement of SHO Complainant. He stated that on the day of occurrence, he along with Sadar Ali HC, Constable Waseem Ali and other police nafri was on patrol duty and had improvised barricade at Kurez Bazar near Forest check post. A person was coming from Kurez Bazar side. He was stopped and during his body search, a plastic envelope of white colour was recovered from his side pocket. On checking the same, it was containing 15 grams ICE. It was weighed through digital scale. One gram was separated for FSL examination and it was packed and sealed into parcel No. 1 while 14 grams ICE was packed and sealed into parcel No. 2. The person disclosed his name Syed Muntazir Hussain S/O Ajmal Shah, R/O Qaum Bar Muhammad Khel, Tappa Alat Khel, Orakzai. The recovered ICE was taken into possession vide recovery memo Ex. PW-2/1 in presence of marginal witnesses. Accused was formally arrested vide card of arrest Ex. PW-2/2. Murasila Ex. PW-2/3 was


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drafted at the spot and sent to PS through constable Waseem Ali for registration of the case. He also pointed out the spot to IO who prepared site plan on his pointation. Accused and case property was handed over to Moharrir of PS. After completion of investigation, he submitted complete challan against the accused. Challan form is Ex. PW-2/4.

7. PW-03, is the statement of Incharge Legal, Ishtiaq Hussain. He is IO of the case. He stated that copy of FIR and other relevant documents were handed over to him for investigation in the instant case. He proceeded to the spot and prepared site plan on the pointation of SHO/complainant. Site plan is Ex. PB. He recorded statements of marginal witnesses U/S 161 Cr. PC. On 16.11.2021, He vide his application Ex. PW-3/1 applied for 05-days physical custody of the accused. 01-day physical custody was granted. He interrogated the accused and recorded his statement U/S 161 Cr. PC. After expiry of one day physical custody, he produced the accused before the court for recording confessional statement vide his application Ex. PW-3/2 which was turned down and accused was committed to judicial lock-up. He handed over the case property along with application for FSL and road certificate to constable Junaid Ali who took the same to FSL Peshawar. Road certificate is Ex. PW-3/3. FSL report is Ex. PW-3/4. Mad reports were placed on file. The same is Ex. PW-3/5. After completion of investigation, he handed over the case file to SHO concerned for submission of complete challan.


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8. Constable Waseem Ali was examined as PW-04. He stated that he was present with SHO/complainant Aftab Hassan along with other police nafri. They were on patrol duty. Barricade was improvised at Kurez Bazar near Forest check post. In his presence, SHO/complainant recovered and took into possession, a plastic shopper of white colour from the side pocket of accused. On checking the same, it was containing 15 grams ICE. The recovered ICE was weighed with digital scale. 01-gram was separated for FSL examination. It was packed and sealed into parcel No. 1 while the rest was packed and sealed into parcel No. 2 Ex. P-1. Murasila was drafted at the spot by SHO/complainant and handed over to him and he took it to PS and handed over the same to Moharrir of PS. His statement was recorded by IO U/S 161 Cr. PC.



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9. PW Constable Sadar Ali was abandoned by prosecution and closed its evidence.


10. 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.

11. Record transpires that the alleged occurrence took place on 15.11.2022 at 14:00 hours at Kurez Bazar near Forest Check Post, Lower Orakzai. It was reported through Murasila at 14:30 hours and FIR was registered at 15:00 hours. There is 5/6 km distance between PS and spot. PW-01 stated in his cross examination that parcels containing case property were handed over to IO on 19.11.2021 for

the purpose of sending it to FSL, Peshawar. PW-02, SHO/complainant stated in his cross examination that he left PS at 09:00AM and remained on patrol duty till 02:00PM contradicted by PW-04 who stated that barricade was improvised at 09:30AM. Per record the alleged occurrence took place at 02:00PM and per statement of PW-02, after 15 minutes of improvisation of barricade, the recovery was affected. If these 15 minutes are added with 02:00PM then time of occurrence would be 02:15PM which contradicts the record. PW-03, who is IO of the case, stated in his cross examination that parcels were not handed over to him and the same were in possession of SHO/complainant.

12. Per Ex. PW-2/3 (Murasila) and Ex. PW-2/1 (Recovery memo), one-gram ICE was separated for FSL examination while as per Ex. PW-1/1 (Register-19), Ex. PW-3/3 (Receipt/road certificate) and Ex. PW-3/4 (FSL Report), parcel containing one-gram ICE was sent to FSL on 19.11.2021. Entry in register-19 was made on 19.11.2021. The occurrence took place on 15.11.2021. Sample taken from the recovered ICE was sent to the FSL after four days of the alleged recovery which is fatal to the case of prosecution.

13. PW-01, deposed that he received Murasila at 14:50 hours while as per Ex. PW-2/3 and Ex. PA, the occurrence was reported at 14:30 hours which means that FIR was registered before receiving Murasila. PW-02, deposed that he returned to PS from spot within 20/25 minutes in his official vehicle. He further deposed that case



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property was handed over to Moharrir but Moharrir, who deposed as PW-01 stated that except accused, nothing else was handed over to him by SHO. Similarly, Ishtiaq Hassan, who investigated the case, deposed that he cannot tell that by whom the Murasila, recovery memo, card of arrest, case property and accused were handed over to Moharrir of the PS. PW-04, stated that they left PS at 09:00AM for gasht. Barricade was improvised at 09:30AM. They directly proceeded to the place of barricade/occurrence which contradicts PW-02 who stated that he left PS for gasht at 09:00AM and from 09:00AM to 02:00PM they were on gasht. PW-02 and PW-04 contradicts each other on material points.

14. Per statements of PWs, accused is an employee of Forest Department. The alleged occurrence took place near the forest check post at Kurez Bazar. This fact that accused is an employee of Forest Department is nowhere mentioned in the Murasila, FIR and recovery memo. There were other officials of Forest Department at the check post at the relevant time but none of them has been associated during the recovery proceedings. Their statements U/S 161 Cr. PC have not been recorded. Accused has not confessed his guilt before the court. There is no previous criminal history of accused which could show his involvement or conviction in such like cases.

15. There are so many dents and doubts in case of prosecution benefit of which goes to the accused. Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt.


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- 16.** As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Syed Muntazir Hussain is hereby acquitted from the charges leveled against him. He is on bail. His bail bonds stand cancelled. Sureties are discharged from their liability. Case property be dealt with in accordance with law.
- 17.** Case file be consigned to Record room after its completion and necessary compilation.

Announced
20.12.2022



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CERTIFICATE

It is certified that this judgment consists of **08** pages. Each page has been dictated, read, corrected and signed by me.



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