

IN THE COURT OF SYED OBAIDULLAH SHAH
SESSIONS JUDGE/JUDGE SPECIAL COURT, ORAKZAI
(AT BABER MELA)

SPECIAL CASE NO. : 1/3 OF 2024
DATE OF INSTITUTION : 02.01.2024
DATE OF DECISION : 04.04.2024

STATE THROUGH MUHAMMAD YOUNAS SHO POLICE
STATION KUREZ

.....(COMPLAINANT)

-VERSUS-

NAVEED ULLAH S/O AZEEM KHAN, AGED ABOUT 23 YEARS,
R/O CASTE STORI KHEL TAPPA LALBI KHEL CHAMAN JANA,
DISTRICT ORAKZAI

..... (ACCUSED FACING

TRIAL)


Present : Umar Niaz, District Public Prosecutor for State.
: Sana Ullah Khan Advocate, the counsel for accused
facing trial.

FIR No. 49 **Dated: 20.11.2023** **U/S: 9 (d)** of the
Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Kurez

JUDGEMENT
04.04.2024

The above-named accused faced trial for the
offence u/s 9 (d) of the Khyber Pakhtunkhwa CNSA,
2019 vide FIR No. 49, dated 20.11.2023 of Police Station
Kurez.

(2). The case of the prosecution as outlined in the
Murasila based FIR is as follows: that on 20.11.2023, the
complainant Muhammad Younas SHO along with
constables Junaid Ali No. 1607 and Saleem Khan No.
1242 in official vehicle driven by Inshad Ali No. 663
during routine patrolling laid a picket near Stori Khel
check-post where at about 0930 hours a motorcycle rode


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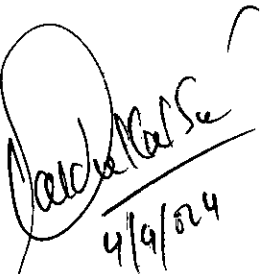
by a person wearing a shawl on way from Chaman Jana towards the picket, was signalled to stop by the complainant, who on seeing the police party, tried to turn back but fall down and was overpowered. Upon search of the person, the complainant recovered 05 packets of chars wrapped with yellow colour adhesive tape, from a grey colour jacket worn by the accused. Each packet was weighed through digital scale by complainant which came out to be 1000 grams of chars, making a total of 5000 grams of chars. The complainant separated 10 grams of chars from each packet through a sharp object for chemical analysis through FSL, sealed the same into parcels no. 1 to 5 whereas the remaining quantity of chars weighing 4950 grams were sealed in parcels no. 6 while aforementioned jacket was sealed in parcel no. 7. The spot proceedings were captured by Constable Saleem Khan which was converted into USB and was sealed in parcel no. 08. A monogram of "MY" was placed/affixed on all the parcels by the complainant. The accused disclosed his name as **Naveed Ullah** s/o Azeem Khan who was accordingly arrested on the spot by issuing his card of arrest. The complainant took into possession the recovered chars along with the above-mentioned Honda-125 motorcycle without registration number having Engine No. T-051045 and Chassis No. EB-729677 vide


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recovery memo. Murasila was drafted and sent to Police Station through Constable Saleem Khan which was converted into FIR by Ibad Ul Hassan MM.

(3). After registration of FIR, it was handed over to Investigating Officer Hashim Khan OII for investigation. Accordingly, after receipt of copy of FIR, he reached the spot and prepared site plan Ex. PB on pointation of the complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 22.11.2023, the IO sent the samples of chars and the motorcycle for chemical analysis to FSL through constable Khial Hussain against road permit certificates, the results whereof were placed on file by him as Ex. PK and Ex. PK/1. After completion of investigation, the case file was handed over to the SHO for submission of challan against the accused facing trial.

(4). Upon receipt of the case file for the purpose of trial, the accused was summoned trough addendum B from Sub-Jail, Orakzai, copies of the record were provided to him in line with section 265-C CrPC and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned and examined. The gist of the evidence is as follow;

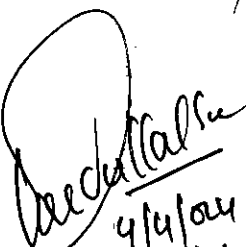

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I. Constable Khial Hussain as PW-1. He has taken the samples of chars in parcels no. 1 to 5 along with motorcycle Honda-125 to the FSL for chemical analysis on 22.11.2023 and upon his return to the police station, he has handed over the receipt to the OII.

II. Ibad Ul Hassan MM appeared in the witness box as PW-2. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He has received the case property from the complainant duly packed and sealed which he had kept in mal khana in safe custody besides parked the motorcycle in vicinity of the police station and put the accused behind the lock-up. The witness further deposed that he has recorded entry of the case property in Register No. 19 Ex. PW 2/1 and has handed over the samples along with the motorcycle to the OII for sending the same to FSL on 22.11.2023. He has also scribed the DDs Ex. PW 2/2 and Ex. PW 2/3.

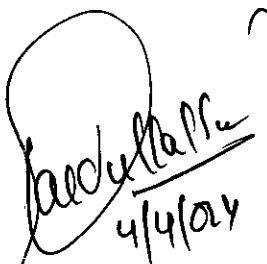
III. Muhammad Younas SHO is the complainant of the case. He as PW-3 repeated the same story as narrated in the FIR. He has also submitted complete challan Ex. PW 3/2 against the accused facing trial in the instant case.


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IV. Constable Saleem Khan appeared as PW-4. He besides being eyewitness of the occurrence is marginal witness of recovery memo Ex. PC as well vide which the complainant has taken into possession the recovered chars and the motorcycle. He also reiterated the contents of FIR in his statement.

V. Investigating Officer Hashim Khan OII was examined as PW-5 who in his evidence deposed in respect of the investigation carried out by him in the instant case. He has prepared the site plan Ex. PB on pointation of the complainant, recorded the statements of witnesses on the spot, produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 5/1 and Ex. PW 5/9, sent the representative samples of chars and the motorcycle to FSL along with application addressed to the incharge FSL Ex. PW 5/7 and road permit certificate Ex. PW 5/8 and result of the same Ex. PK and Ex. PK/1 were received and placed on file by him, also sent the motorcycle to the ETO and placed on file his report as Ex. PW 5/12, placed on file copy of FIR regarding previous involvement of the accused in such like case, copy of register no. 19 Ex. PW


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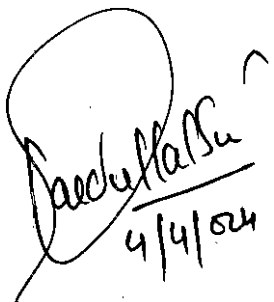
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2/1, copies of DDs regarding departure and arrival of police officials/officers from and to the Police Station and submitted the case file to SHO for submission of challan against the accused.

(5). Prosecution closed its evidence whereafter the statement of accused was recorded u/s 342 Cr.P.C but the accused neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of the learned DPP for the State and learned counsel for the accused facing trial heard and case file perused.

(6). Learned DPP for the State submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars has been recovered from possession of the accused facing trial, the recovered chars were sealed and sampled on the spot by the complainant, the OII conducted investigation on the spot, the samples for chemical analysis were transmitted to the FSL and the same have been found positive for chars vide report of FSL Ex. PK. The complainant, the witnesses of the recovery, the official transmitted the samples to the FSL and the OII have been produced by the prosecution as witnesses, whom have fully supported the case of the prosecution and their statements have been lengthy cross examined but nothing contradictory could be extracted


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from the mouth of any of the witness of the prosecution and that the prosecution has proved its case beyond shadow of any doubt.

(7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR and the report of FSL supports the case of prosecution; however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his possession. He argued that the prosecution has failed to prove the mode and manner of recovery and the mode and manner of investigation allegedly conducted by the OI on the spot, as detailed by the prosecution on the case file. He concluded that there are various dents in the case of prosecution leading to its failure to bring home the charge against the accused facing trial.

(8). The case of prosecution, as per contents of Murasila Ex. PA/1, on 20.11.2023, the complainant Muhammad Younas SHO/PW-3 along with constables Junaid Ali No. 1607 and Saleem Khan No. 1242/PW-4 in official vehicle driven by Inshad Ali No. 663 during routine patrolling laid a picket near Stori Khel check-post

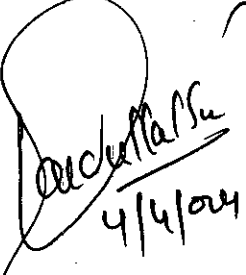
where at about 0930 hours a motorcycle rode by a person wearing a shawl on way from Chaman Jana towards the picket, was signalled to stop by the complainant/PW-3,

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who on seeing the police party, tried to turn back but fall

down and was overpowered. Upon search of the person, the complainant/PW-3 recovered 05 packets of chars wrapped with yellow colour adhesive tape, from a grey colour jacket worn by the accused. Each packet was weighed through digital scale by the complainant/PW-3 which came out to be 1000 grams of chars, making a total of 5000 grams of chars. The complainant/PW-3 separated 10 grams of chars from each packet through a sharp object for chemical analysis through FSL, sealed the same into parcels no. 1 to 5 whereas the remaining quantity of chars weighing 4950 grams were sealed in parcels no. 6 (Ex. P1) while aforementioned jacket was sealed in parcel no. 7 (Ex. P2). The spot proceedings were captured by Constable Saleem Khan which was converted into USB and was sealed in parcel no. 08 (Ex. P3). A monogram of "MY" was placed/affixed on all the parcels by the complainant/PW-3. The accused disclosed his name as **Naveed Ullah** s/o Azeem Khan who was accordingly arrested on the spot by issuing his card of arrest Ex. PW 3/1. The complainant/PW-3 took into possession the recovered chars along with the above-mentioned Honda-125 motorcycle (Ex. P4) without registration number having Engine No. T-051045 and Chassis No. EB-729677 vide recovery memo Ex. PC. Murasila Ex. PA/1 was drafted and sent to Police Station through Constable

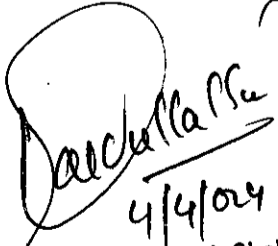

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Saleem Khan/PW-4 which was converted into FIR Ex. PA by Ibad Ul Hassan MM/PW-2. After registration of FIR, it was handed over to Hashim Khan/PW-5, the IO of the case. The IO visited the spot and conducted investigation by making a site plan Ex. PB on pointation of Muhammad Younas/PW-3 and recorded the statements of marginal witnesses u/s 161 CrPC.

The prosecution in order to prove its case in the mode and manner as alleged, has examined Muhammad Younas SHO, the complainant of the case, as PW-3 who reiterated the contents of Murasila Ex. PA/1 and Constable Saleem Khan, the eyewitness witness of the occurrence and marginal witness of recovery memo Ex. PC as PW-4 who besides repeating the same story as narrated in the FIR, has stated to have taken the documents to the police station for registration of FIR Ex. PA and handed over the documents to Ibad Ul Hassan MM/PW-2 who has registered the FIR.

According to the Murasila Ex. PA/1, the complainant/PW-3 accompanied by police officials, namely Constables Junaid Ali and Saleem Khan/PW-4 embarked on patrolling the area and laid a picket near Tazi Khel Check-Post, intercepted the accused, found him in possession of chars which were weighed on the spot. Subsequently, 10 grams of chars from each packet were

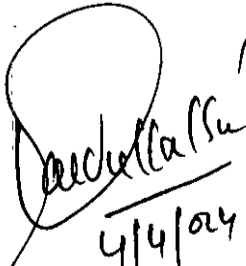

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extracted for examination by the Forensic Science Laboratory (FSL). The quantity of representative samples provided for FSL examination was stated as 10 grams by PW-1/Constable Khial Hussain, who delivered them to the FSL. However, this assertion is directly contradicted by the contents of the road permit certificate Ex. PW 5/8, which indicates the quantity sent to the FSL as 05 grams. He stated that;

“Stated that on 22.11.2023 Incharge Investigation Hashim Khan handed over parcels no. 1 to 5 each containing 10/10 grams of chars, duly packed and sealed having monogram of ‘MY’ ...”

Likewise, it can be deduced from the report of FSL Ex. PK that the samples sent for chemical examination in parcels no. 1 to 5 received therein contained 05 grams of chars each. The questionable conduct of the prosecution by the police is also evident from the testimony of PW-2/Ibad Ul Hassan who mentioned having recorded 10 grams of chars in road permit certificate Ex. PW 5/8, yet it does not corroborate this claim. Moreover, although the complainant/PW-3 was present on a picket near Tazi Khel

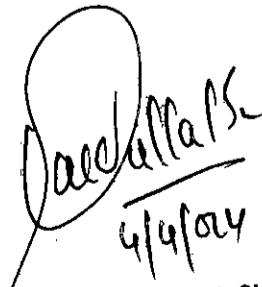
Check-Post where the occurrence has taken place but neither he/PW-3 nor the eyewitness/PW-4 were acquainted with the name of the Incharge of the said check-post as both the witnesses have mentioned two


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different names. It is noteworthy that the IO/PW-5 has not recorded statement of any witness present on the check-post to confirm the events, particularly the presence of the complainant's party. With regard to the colour of the recovered chars, the complainant/PW-3 said that;

"The alleged recovered chars were pukhta which were blackish in colour."

But the FSL report Ex. PK in conjunction with the statement of the eyewitness/PW-4 shows that the chars received by them for chemical analysis were 'Brown Solid', thus clearly highlighting discrepancies between the accounts of the complainant/PW-3 and the marginal witness/PW-4. With respect to process of drafting of the documents and sending the same to the police station, the version of prosecution is, that the documents i.e., the recovery memo Ex. PC, card of arrest Ex. PW 3/1 and Murasila Ex. PA/1 were sent to the police station through PW-3/Constable Saleem Khan. But, as per his cross examination, he despite being educated up to 8th class and the documents being prepared in his presence, cannot identify the documents. It is pertinent to mention that neither the motorcycle was registered in the name of accused nor there was any document which could show any nexus with him nor there was any receipt through which the motorcycle was given to him on rent. Moreover,


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a driving license was not taken into possession from the accused which is repellent to the common sense that without driving license a person would drive a motorcycle or whether he is able to drive or not, which aspect of the case has created reasonable doubt in the prosecution case.

With respect to process of investigation on the spot, as per DD Ex. PW 2/2, the IO accompanied by two police officials, namely Afsar Ali Shah and Nasir Ali, has visited the spot and prepared site plan Ex. PB based on the information provided by the complainant/PW-3. The number of police officials accompanying the IO/PW-5 has been opposed by PW-4 who claimed that the IO/PW-5 was accompanied by three police officials. The complainant/PW-3 in his cross examination stated that in his presence the IO/PW-5 has given a point to the official driver, namely Inshad Ali – who accompanied the complainant to the spot – in the site plan; however, careful examination of the site plan Ex. PB shows that there is no mentioning of the said driver. Similarly, PW-4, the eyewitness stated that the complainant/PW-3 has handed over the USB containing video footage of the spot proceedings to the IO/PW-5 on the spot, but the complainant/PW-3 and copy of register no. 19 Ex. PW 2/1 speaks otherwise and the statement of PW-2/Ibad Ul Hassan MM acts like adding salt to injury. It is also

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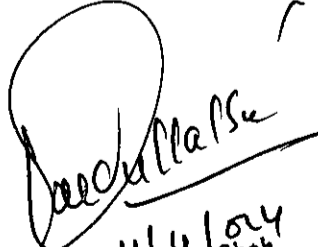
evident from the site plan Ex. PB that the place of occurrence is a straight road but how come it possible that a person having huge quantity of chars in his possession would straightaway proceed towards the police party despite being visible to him.

With respect to safe custody of the case property, the case of the prosecution is that; the complainant/PW-3, after recovery of chars and completion of spot proceedings, has come back to the police station and handed over the case property to the Ibad Ul Hassan/PW-2 who confirms this fact. Ironically, PW-2 admitted that the case property was handed over to Moharrir Intikhab Ali, in his cross examination in the following words;

"It is correct that in column no. 10 of the DD dated 20.11.2023, it is correctly mentioned that the parcels of alleged case property were handed over to Moharrir of the PS namely, Intikhab Ali."

Moreover, the entire record is silent regarding transportation of the recovered motorcycle from the spot to the police station besides neither the complainant nor the eyewitness or the investigation officer has uttered a single word in this regard.

The evidence in shape of FSL report concerning the recovered chars does support the prosecution's case regarding their transportation within the stipulated


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timeframe and the nature of the chars recovered. However, as previously discussed, significant disparities exist between the documents presented by the prosecution in support of their argument and the statements of witnesses recorded before the court. These disparities include differences in the colour of the chars, discrepancies in the representative samples submitted to the FSL, variations in the quantity mentioned in the road permit certificate and the application addressed to the FSL authority, among others. These inconsistencies diminish the significance of the favourable FSL report and cannot be relied upon for the conviction of the facing trial. As far as the taking of the motorcycle to FSL is concerned, PW-1 stated to have taken it against a road permit certificate bearing no. 225/21KB but the said road permit certificate is nowhere available on file.

- (9). In the light of aforementioned discussion, it is held that the prosecution has failed to prove the alleged recovery of chars from possession of the accused facing trial in the mode and manner as detailed in the report. Similarly, the prosecution has also failed to prove the alleged mode and manner of the investigation carried out by the IO on the spot. The prosecution also failed to prove the safe custody of case property. All these facts lead to the failure of prosecution to prove the case against the accused beyond


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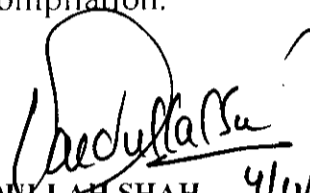
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shadow of doubt. Therefore, the accused namely, **Naveed Ullah** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is in custody. He be released forthwith, if not required in any other case. The charrs be destroyed after the expiry of period provided for appeal/revision in accordance with law. The motorcycle be returned to its lawful owner.

Judgment announced. File of this court be consigned to record after its necessary completion and compilation.

Dated: 04.04.2024


SYED OBAIDULLAH SHAH 4/4/24
Sessions Judge/Judge Special Court,
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CERTIFICATE

Certified that this judgment consists of fifteen (15) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 04.04.2024




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