

SS

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

Case No.....11/3 of 2023.

Date of Institution.....10.10.2023.

Date of Decision.....30.05.2024.

**State through:**

Sub-Inspector Aftab Ahmad, SHO PS Mishti Mela, District Orakzai

.....**Complainant**

**VERSES**

1. Hazrat Ullah S/O Khaistan Akbar
2. Muhammad Yaseen S/O Sawab Gul both R/O Qaum Mishti, Gujar Khel, District Orakzai ..... **Accused**

**Case FIR No. 28, Dated 05.08.2023 U/S 11-A CNSA PS Mishti Mela.**

**JUDGMENT**

**30.05.2024**

Through this judgment, I am going to dispose of the instant case registered against accused Hazrat Ullah etc vide case FIR No. 28, Dated 05.08.2023 U/S 11-A CNSA PS Mishti Mela.

**ZAHIR KHAN**  
**Civil Judge, JM**  
**Kalaya Orakzai**

Brief facts as per contents of FIR are that, on 05.08.2023 at 15:00 hours on metaled road near Mishti Bazar, SHO/complainant, who was accompanied with by other police nafri, was present on nakabandi on metaled road near Mishti bazar. Two persons were coming from Sanghra side they were stopped for the purpose of checking, during their body search, a plastic envelope of white colour containing 40 grams ICE was recovered from side pocket of accused Hazrat Ullah, similarly, a plastic envelope of white colour containing 45 grams ICE

*Am. K. 17*  
*30/05/2024*

was recovered from side pocket of accused Muhammad Yaseen. The persons disclosed their names as Hazrat Ullah S/O Khaistan Akbar and Muhammad Yaseen S/O Sawab Khan both R/O Qaum Mishti, Gujar Khel, District Orakzai, who were formally arrested. The complainant took into possession the case property vide recovery memo Ex. PW-2/1 in the presence of marginal witnesses. One gram each was separated for the purpose of FSL examination and the same were packed and sealed into parcel No. 1 & 2 while rest of the ICE was packed and sealed into parcel No. 3 & 4. Murasila Ex.PW-2/3 was drafted at the spot and was sent to PS for registration of the case through constable Muhammad Umar No. 252. On the strength of Murasila, the instant case was registered vide FIR Ex.PA against the accused facing trial. Accused facing trial were arrested vide card of arrest Ex.PW-2/2.

ZAHIR KHAN  
Civil Judge/JM  
Kalaya Orakzai

Amir K. D  
30/05/2024

After completion of investigation, complete challan was submitted by prosecution against the accused facing trial. Accused were summoned and legal formalities under Section 241-A Cr. PC were complied with. Formal charge was framed against the accused to which they pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence. Prosecution produced five (05) witnesses to prove its case against the accused. PW constable Saeed Khan No.167 was abandoned by prosecution and closed its evidence.

- 3. PW-01 is the statement of Assistant Sub-Inspector Muhammad Ayub. He is IO of the case. After receiving case file for investigation, he

57

proceeded to the spot and prepared site plan Ex.PB on the pointation of the complainant. He recorded statements of PWs u/s 161 Cr.PC. He also produced the accused before the court concerned for obtaining their physical remand vide application Ex.PW-1/1. He sent parcels containing 01/01 gram ICE to FSL for examination vide application Ex.PW-1/3 along with road certificate Ex.PW-1/5. FSL report is Ex.PW-1/4. After completion of investigation, he submitted complete challan against the accused. PW-02 is the statement of SI/SHO Aftab Ahmad. He is complainant of the case. He reiterated the story narrated in the FIR. He took into possession the case property vide recovery memo Ex. PW-2/1 in the presence of marginal witnesses. Card of arrest is Ex. PW-2/2. Murasila is Ex. PW-2/3. Recovery memo in respect of USB is Ex.PW-2/4. He submitted complete challan against the accused. Challan form is Ex.PW-2/5. He also pointed out spot to the IO. PW-03 is the statement of Muhammad Khalil. He took parcel No.1 & 2 containing 01/01 gram ICE, in sealed condition to FSL Peshawar along with application and road certificate. Sub-Inspector Amir Khan was examined as PW-04. He has incorporated the contents of murasila into FIR Ex.PA. He has also made entry in register 19 extract whereof is Ex.PW-4/1. PW-05 is the statement of Constable Muhammad Umar. He is one of the marginal witnesses to the recovery memo Ex.PW-2/1 vide which the complainant took into possession 40 and 45 grams ICE from possession of accused Hazrat Ullah and Muhammad Yaseen respectively. Parcels No. 3 & 4 were exhibited as

*Amir Khan*  
30/05/2024  
**ZAHIR KHAN**  
Civil Judge/JM  
Kalaya Orakzai

Ex.P-1 and Ex.P-2 while parcel containing USB was exhibited as Ex.P-3. He took murasila, recovery memo and card of arrest from the spot to PS for registration of the case. Thereafter, prosecution evidence was closed.

4. On conclusion of prosecution evidence, statements of accused were recorded u/s 342 Cr.PC, in which they professed their innocence, however, they did not opt to record their statements on oath as envisaged u/s 340 (2) Cr.PC, and also did not opt to produce any defense witness in their favour.

5. The scanning of the record shows that the alleged occurrence took place on 05.08.2023 at 15:00 hours on metaled road near Mishti bazar, Lower Orakzai. It was reported at 15:40 hours and FIR was registered

at 16:00 hours. PW-02; SI Aftab Ahmad is the complainant while PW-

01 ASI Muhammad Ayub is IO of the case. Although, as per Ex.PW-01/3 (Murasila) and Ex.PW-2/1 (recovery memo), recovery of 40 & 45

grams ICE has been made from the direct possession of accused

Hazrat Ullah and Muhammad Yaseen respectively. FSL report

Ex.PW-1/4 also shows both the samples in parcel No. 1 & 2 as

Methamphetamine (ICE). One gram each was separated for the

purpose of FSL and sealed into parcel No. 1 & 2 while the rest of the

ICE was packed and sealed into parcel No. 3 & 4 Ex.P-1 & Ex.P-2,

however, parcels containing samples for FSL were sent to FSL on

09.08.2023 which is evident from Ex.PW-1/4 (FSL report), Ex.PW-

4/1 (extract of register 19), Ex.PW-1/3 (application for FSL) and

*M. K. 1*  
**ZAHIR KHAN**  
 Civil Judge/JM  
 Kajaya Orakzai  
 30/05/2024

59.

Ex.PW-1/5 (road certificate No. 33/21 MM). The alleged recovery was made on 05.08.2023 while samples were sent to FSL on 09.08.2023 which is fatal to the case of prosecution. Prosecution witnesses have tried to cover the delay by stating that samples in parcels No. 1 & 2 in sealed condition, were sent to FSL on 08.08.2023 but the same were not received by incharge FSL for the reason that seals on the parcels were not visible, therefore, the parcels containing samples were returned and were again taken to FSL, Peshawar on 09.08.2023. This version of prosecution is not supported by the record on file as the above referred exhibits clearly show that samples were sent to FSL on 09.08.2023, after 04 days of the alleged recovery. The

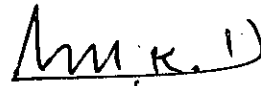
*Am, K. 1*  
**ZAHIR KHAN**  
 Civil Judge/JM  
 Kalaya Orakzai  
*30/05/24*

extract of register 19, FSL report, application for FSL and road certificate bear date as 09.08.2023. None of these exhibits were prepared on 08.08.2023. There is nothing on record which could show that samples were sent to FSL on 08.08.2023. The chain of custody must be safe and secure. Any break or gap in the chain of custody i.e. in the safe custody or safe transmission, makes the report of the chemical examiner unsafe and unreliable. Secondly; the complainant, who deposed as PW-02, prepared murasila Ex.PW-2/3 and recovery memo Ex.PW-2/1 and he has not mentioned in the murasila that videography of the recovery proceedings was made. There is nothing in the murasila which could show that videography was done with mobile phone and it was transferred into USB, packed and sealed into

parcel No. 5. It also creates a serious dent and doubt in case of prosecution.

6. While going further through record available on file, it is noticed that prosecution version qua the recovery of 40 & 45 grams ICE from possession of the accused has not been substantiated through the statements of PWs. The chain of safe custody of the recovered ICE has not been established. Accused have not confessed their guilt before the court. There is no criminal history of accused facing trial. There are contradictions in the statements of PWs. Case of prosecution is full of dents and doubts benefit of which goes to the accused as of right not as a concession and grace. Prosecution failed to prove its case against the accused facing trial.
7. As prosecution failed to prove its case against the accused beyond reasonable doubts, therefore, accused namely Hazrat Ullah and Muhammad Yaseen are hereby acquitted from the charges leveled against them. They are on bail. Their bail bonds stand cancelled. Sureties are discharged from their liability. Case property be dealt with in accordance with law.
8. Case file be consigned to record room after its completion and necessary compilation.

**Announced**  
30.05.2024



**Zahir Khan**  
Judicial Magistrate-I  
Tehsil Courts, Kalaya, Orakzai

61

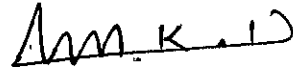
*State vs Hazrat Ullah etc*

Case FIR No. 28, Dated 05.08.2023 U/S 11-A CNSA PS Mishti Mela.

Page 7 of 7

**CERTIFICATE**

It is certified that this judgment consists of 07 pages. Each page has been dictated, read, corrected and signed by me.



**Zahir Khan**

Judicial Magistrate-I  
Tehsil Courts, Kalaya, Orakzai