

53

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

Case No.....16/3 of 2023.

Date of Institution.....01.12.2023.

Date of Decision.....22.05.2024.

State through:

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

.....**Complainant**

VERSES

Jameel Khan S/O Lal Badshah R/O Qaum Mishti, Tappa Haider Khel,
Village Ibrahim Zona, District Orakzai **Accused**

Case FIR No. 42, Dated 16.10.2023 U/S 11-A CNSA PS Mishti Mela.

JUDGMENT

22.05.2024

Through this judgment, I am going to dispose of the instant case registered against accused Jameel Khan vide case FIR No. 42, Dated 16.10.2023 U/S 11-A.CNSA PS Mishti Mela.

1. Brief facts as per contents of FIR are that, on 16.10.2023 at 12:00 hours, SHO/complainant, who was accompanied with by other police

AM K. I
 ZAHIR KHAN
 Civil Judge/JM
 Kalaya Orakzai
 22/05/2024

nafri, was present on nakabandi at main road opposite to PS Mishti Mela. A person was coming from Mishti Mela side on his motorcycle without number, red colored and it was stopped for the purpose of checking, during his body search, no incriminating article was recovered from his possession but during search of the motorcycle, a plastic envelope of white colour containing 16 grams ICE was recovered from beneath rear brake light. The person disclosed his name as Jameel Khan S/O Lal Badshah, R/O Qaum Mishti, Tappa

59

Haider Khel, Ibrahim Zona Orakzai, who was formally arrested. Videography was done through mobile phone and it was transferred into USB. The complainant took into possession the case property including motorcycle vide recovery memo Ex. PW-4/1 in the presence of marginal witnesses. Murasila Ex.PW-4/2 was drafted at the spot and was sent to PS for registration of the case through constable Saleem Khan. On the strength of Murasila, the instant case was registered vide FIR Ex.PA against the accused facing trial. Accused facing trial was arrested vide card of arrest Ex.PW-4/3.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial. Accused was summoned

22/05/2024
 ZAFIR KHAN
 Civil Judge/JM
 Kalya Orakzai

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. Prosecution produced five (05) witnesses to prove its case against the accused. PW constable Fazal Hameed No. 1247 was abandoned by prosecution and closed its evidence.

3. PW-01 is the statement of SI Muhammad Ayub. He is IO of the case. After receiving case file for investigation, he 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 his physical remand vide application Ex.PW-1/1. He sent parcel containing 01 gram ICE to FSL for examination vide application Ex.PW-1/2 along with road permit certificate Ex.PW-1/3. Copy of register 19 is Ex.PW-1/4. FSL

SS

report is Ex.PW-1/5. He also wrote to DPO, Orakzai for corresponding with ETO, District Hangu and FSL, Peshawar for the Excise and Taxation and FSL reports regarding motorcycle Honda 125-CC without number, red color, engine No. 3263536 and chasses No. S51654. Applications are Ex.PW-1/6 & Ex.PW-1/7. FSL report regarding motorcycle is Ex.PW-1/8. After completion of investigation, he submitted complete challan against the accused. Constable Ihsan Ullah was examined as PW-02. He has incorporated the contents of murasila into FIR Ex.PA. He has also made entry in register 19 extract whereof is Ex.PW-2/1. Copies of DD are Ex.PW-2/2 and Ex.PW-2/3.

ZAHIR KHAN
Civil Judge/JM
Kalaya, Orakzai

Amir
22/05/24

PW-03 is the statement of Muhammad Khalil. He took parcel No.1 containing one gram ICE, in sealed condition to FSL Peshawar along with application and road permit certificate. He also took the recovered motorcycle to FSL, Peshawar along with letter for examination/verification. PW-04 is the statement of SI/SHO Aftab Ahmad. He is complainant of the case. He reproduced the story narrated in the FIR. He took into possession the case property including motorcycle vide recovery memo Ex. PW-4/1 in the presence of marginal witnesses. Murasila is Ex. PW-4/2. Card of arrest is Ex. PW-4/3. Recovery memo in respect of USB is Ex.PW-4/5. He submitted complete challan against the accused. Challan form is Ex.PW-4/4. He also pointed out the spot to the IO. PW-05 is the statement of Constable Saleem Khan No. 1242. He is one of the marginal witnesses to the recovery memo Ex.PW-4/1 vide which the complainant took into possession 16 grams ICE from the secret part of

58

motorcycle of accused facing trial. He took murasila, recovery memos 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, statement of accused was recorded u/s 342 Cr.PC, in which he professed his innocence, however, he did not opt to record his statement on oath as envisaged u/s 340 (2) Cr.PC, and also did not opt to produce any defense witness in his favour.

5. Record shows that the alleged occurrence took place on 16.10.2023 at 12:00 hours on main road Mishti Mela to Sanghra, Lower Orakzai

ZAHIR KHAN
Civil Judge/JM
Kajaya Orakzai

opposite to PS Mishti Mela. It was reported at 12:30 hours and FIR was registered at 12:40 hours. The spot is right in front of PS MM. PW-04; SI Aftab Ahmad is the complainant while PW-01 SI

Amir Khan
22/05/2024

Muhammad Ayub is IO of the case. Prosecution was duty bound to prove the case against the accused facing trial as described in the murasila Ex.PW-4/2 and FIR Ex.PA. Although, the alleged recovery of 16 grams ICE has been shown from the motorcycle driven by accused facing trial at the relevant time but there was no prior information regarding possession/transportation of ICE by the accused via his motorcycle, then, how the SHO/complainant came to know that there is ICE in the secret cavity/part of the motorcycle? Per statements of PWs, there is civil litigation between accused and one Kashmir regarding landed properties and nephew of the said Kashmir, who is a Sub-Inspector in police department, is posted at PS Mishti Mela in front of which the alleged occurrence took place. Accused is a retired

57

Sobidar and elder/Malak of the area. He is about 55/56 years old.

There is no criminal history of accused. False implication of accused cannot be ruled out. There are material contradictions in the statements of PWs. PW-01, who is IO of the case, stated in his cross examination that he was entrusted with the investigation of the case at about 12:50 pm. He left PS for spot soon after receiving case file for investigation. The spot is right in front of main gate of PS MM. He remained at the spot till 13:30 hours. Accused was handed over to him in PS on his return from the spot. On the other hand, PW-02 stated that accused was brought to PS at about 13:30 hours. SHO returned back to PS at about 13:30 hours. PW-05 stated in his cross examination that IO reached to the spot at about 12:45 pm. When copy of FIR along

with other relevant documents were handed over to IO at 12:50 pm, then how he visited the spot at about 12:45 pm.

ZAFAR KHAN
Civil Judge/JM
Kalaya Orakzai

While going further through record available on file, it is noticed that prosecution version qua the recovery of 16 grams ICE from possession

of the accused has not been substantiated through the statements of PWs. PWs are not consistent on salient respect of the prosecution version. The chain of custody of the recovered ICE has not been established. Accused has not confessed his guilt before the court.

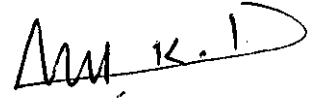
There is no criminal history of accused facing trial. Case of prosecution is full of dents and doubts benefit of which goes to the accused as of right. Prosecution failed to prove its case against the accused facing trial.

Am. K. 1)
22/05/24

58

7. As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Jameel Khan 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 i.e motorcycle has already been released on superdari to the accused. Rest of the case property be dealt with in accordance with law.
8. Case file be consigned to record room after its completion and necessary compilation.

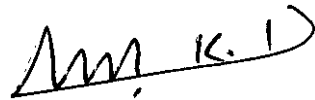
Announced
22.05.2024



Zahir Khan
Judicial Magistrate-I
Kalaya, Orakzai

CERTIFICATE

It is certified that this judgment consists of 06 pages. Each page has been dictated, read, corrected and signed by me.



Zahir Khan
Judicial Magistrate-I
Kalaya, Orakzai