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**IN THE COURT OF ABDUL BASIT**  
**ADDITIONAL SESSIONS JUDGE-II/JUDGE SPECIAL COURT,**  
**ORAKZAI**

Case no. 24/3 of 2023

Date of institution: 14.06.2023

Date of decision: 02.07.2024

Date of consignment:

State through Naseeb Khan SHO Central Mishti Mela Police Station Orakzai  
(complainant)

Versus

Muhammad Farooq (aged about 21/22 years) s/o Niaz Muhammad r/o  
Qaum Shlobar, Qambar Khel, Sheikmal Khel, Tehsil Bara, District  
Khyber (accused facing trial)

**FIR No. 17 DATED: 11.05.2023 U/S 9-D CNSA**

**CENTRAL MISHTI POLICE STATION, ORAKZAI**

**JUDGMENT**

1. Accused Muhammad Farooq is facing trial in the subject case.
2. Naseeb Khan, the complainant, along with police officials during patrolling received information about the smuggling of narcotics through Motorcar No. AFW-773/Sindh towards Peshawar; that upon said information, they arranged barricade and at about 1300 hours, the above detailed motorcar approached and stopped for the purpose of search; that driver of motorcar was deboarded and searched but nothing incriminating was recovered from his personal search; that upon search of the motorcar, the complainant recovered 13 packets of chars packed in black envelops and wrapped with yellow scotch tape from secret cavity made inside the rear bumper of the motorcar; that each packet weighed to be 1200 grams with total quantity of

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15600 grams; that 10/10 grams of chars was separated from each packet for chemical analysis, which were sealed in parcels no. 1 to 13 while remaining 15470 grams chars was sealed in parcel no. 14; that accused disclosed his name as Muhammad Farooq son of Niaz Muhammad who was arrested on the spot and case was registered against him; that during interrogation, the investigation officer has also recovered 22 packets of chars wrapped with yellow scotch tape from the secret cavities made towards right and left sides of the rear seat of the car, 2 and 3 packets of chars wrapped with yellow scotch tape from secret cavities of the left and right sides of the rear doors of the car respectively and 3 packets of chars from secret cavity of the front right door of the car making total of 30 packets each weighing 1200 grams making quantity of 36000 grams of chars on pointation of accused; that 10/10 grams of chars was separated from each packet for chemical analysis, which were sealed in parcels no. 16 to 45 while remaining 35700 grams chars was sealed in parcel no. 46; that the investigation officer recorded recovery proceedings through videography saved in the USB, hence, the proceedings.

3. The complainant reduced the above facts in the shape of murasila, Ex.2/3, on strength of which subject case was registered.
4. On completion of investigation, complete challan under section 9-D CNSA was put in court against the accused.
5. Accused was summoned through *zamima bay*. On his attendance, the copies of the case furnished to accused under section 265-C Cr.PC. The accused was then charge sheeted u/s 9-D CNSA, to which he pleaded not his guilt and claimed trial.

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6. Prosecution produced following evidence in support of its case;
7. Muhammad Saeed, Muharrir of the police station was examined as PW-1, who has registered FIR, Exh.PW 1/1, on receipt of murasila; he also kept the case property in the *malkhana* of the police station for safe custody, produced daily diaries, Exh.PW 1/2 to Exh.PW 1/4, and copy of register no. 19, Exh.PW 1/5. The statement Naseeb Khan SHO was recorded as PW-2, who confirmed the initial report to be true and testified the recovery of contraband and motorcar vide recovery memo, Exh.PW 2/1, to be genuine; he arrested the accused, issued his card of arrest, Ex.PW-2/2, and drafted the murasila, Exh.PW 2/3; he referred the site plan, Exh.PW 2/4, that was prepared by investigation officer on his pointation. One of the marginal witnesses to recovery memo was Murad Gul Constable, who was examined as PW-3; he has testified that recovery was made from accused, which was documented through recovery memo in his presence; that he took the murasila, recovery memo and card of arrest to police station and handed over the same to the Muharrir for registration of FIR. Abdul Manaf, investigation officer of the case, appeared in witness box as PW-4. He has confirmed the preparation of site plan and examination of witnesses; he took into possession the memory card having recording of recovery proceedings vide recovery memo, Exh.PW 4/1; he had produced the accused before the learned Area Judicial Magistrate vides application, Ex.PW-4/2, drafted the application, Exh.PW 4/3 to FSL and road permit certificate, Exh.PW 4/4, vide which he sent the parcel no. 1 to 13 to FSL through constable Naveedullah; that he made further recovery

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of 30 packets chars from secret cavities made in the motorcar on pointation of accused and in this regard, he prepared the recovery/pointation memo, Exh.PW 4/5, in presence of the marginal witnesses and also prepared pointation sketch, Exh.PW 4/6. Vide application, Exh.PW 4/7, he produced accused for confessional statement before Judicial Magistrate and forwarded two letters, Exh.PW 4/8 and 4/9, to SP investigation for correspondence with ETO and FSL. He sent parcels no. 16 to 45 through Naveedullah constable vide application, Exh.PW 4/10, and road certificate, Exh.PW 4/11; he himself has driven away the motorcar to FSL and submitted FSL reports, Exh.PW 4/12 and Exh.PW 4/13, about the contraband and motorcar, Exh.PW 4/14. On completion of investigation, he handed over the case file to SHO for onward submission of complete challan against the accused. PW-5 is the statement of Naveedullah, who has taken the parcels no. 1-13 to FSL Peshawar for chemical analysis; he is marginal witness to recovery memo, Exh.PW 4/5, vides which the investigation officer recovered 30 packets of chars. He also took the parcel no. 16 to 45 along with FSL application and road certificate to FSL.

8. Prosecution closed its evidence. The statement of accused was recorded under section 342 CrPC, wherein, he again denied from the charges and adhered to his innocence. In replies to the questions, he neither wished to be examined under oath nor to produce evidence in defense.
9. Arguments heard and record perused.

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10. Learned DyPP for State argued that the prosecution has proved the case against accused beyond shadow of reasonable doubt; that the recovery of contrabands is proved from the motorcar driven by the accused. The prosecution witnesses are consistent in their statements in respect of recovery of narcotics from accused. That FSL results in respect of the sample, separated from the chars recovered from the accused, are in positive; that there is no malafide on the part of the prosecution to falsely involve the accused in the case, therefore, requested to award him maximum punishment.
11. Counsel for the accused facing trial argued that prosecution has failed to prove its case against accused beyond reasonable shadow of doubt; that prosecution evidence contradicts & suffers from major inconsistencies; that the prosecution case is full of doubts because prosecution witnesses materially contradicted with each other; that recovery is not effected from the immediate possession of accused but from the motorcar; that the accused has not confessed his guilt; that the case against the accused is not proved and request is made for the acquittal of accused.
12. Viewing the arguments advanced by learned counsel for parties, the evidence and record before the court, it is held that the local police have initially recovered 15600 grams chars from the rear bumper of the motorcar, whereas, during interrogation, the investigation officer has also recovered 36000 grams chars on pointation of the accused from secret cavities of the motorcar allegedly driven by the accused, thus, it is bounden duty of the prosecution to prove its case against accused beyond shadow of a reasonable doubt from the moment of

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receiving spy information by local police to the interception of the accused, his transportation of contraband in the motorcar, taking of samples from recovered contraband, preparation of recovery memo, drafting the murasila, witnessing of whole proceedings by marginal witnesses, registration of case, safe custody of recovered articles, investigation of the case and laboratory reports etc. To prove this, prosecution has led the evidence of many witnesses to establish the safe custody and safe transmission of drug from the spot recovery till its receipt by the Narcotics Testing Laboratory satisfactorily as well as establish the mode and manner of the commission of offence, which are the most important aspects of the case because in narcotics cases, the chain of safe custody is the fundamental as the report of the Government Analyst is the main evidence for the purpose of conviction. The prosecution must establish that chain of custody was unbroken, unsuspecting, safe and secure. Any break in the chain of custody i.e. safe custody or safe transmission impairs and vitiates the conclusiveness and reliability of the report of Government Analyst, thus, rendering it incapable of sustaining conviction, the reliance is place on Zahir Shah versus The State (2019 SCMR 2004). As per record, complainant has allegedly recovered the contraband, taken samples from each packet, packed and sealed each test sample in separate parcel bearing no. 1-13, whereas, the investigation officer has recovered 30 packets of chars on pointation of accused, taken samples from each packet, packed and sealed each test sample in separate parcel bearing no. 16-45, which were allegedly kept in the *malkhana* of the police station for safe custody; however, there is no

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documentary proof on record that how the tests samples of chars came into the hands of constable Naveedullah. Although, statements of investigation officer and Naveedullah suggests that those tests samples were received by investigation officer from the Muharrir of the police station and were then delivered to constable Naveedullah, however, Muharrir (PW-1) admitted that there is even no diary report available on file in this respect. Even, the extract of register no. 19, Exh.PW 1/5, is also silent about the fact that whether those parcels were collected in sealed condition and born any monogram or not, which not only makes the receipt of samples by Muharrir of police station in sealed condition doubtful but also the chain of safe custody of samples was found broken and transmission thereof to laboratory had become doubtful; therefore, the forensic laboratory report cannot be relied against the accused.

13. If the above discrepancies are ignored, even then, there are various shortcomings noted in the prosecution story. The Muharrir (PW-1) admitted that once the case property i.e. parcels or motorcar is handed over to Muharrir of the police station, then, no one can take it or open it without the permission of Muharrir of the police station, however, in this case, the investigation officer during investigation of the accused not only opened the motorcar in question, parked in the police station, without prior written permission of the Muharrir but also allegedly recovered further 30 packets of chars from secret cavities of the motorcar, which further puts dent on safe custody of chars and the motorcar in *malkhana* of the police station and infers that anyone had free access to the alleged recovered case properties.

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14. Likewise, the Muharrir of the police station admitted that there is no detail written in daily diary no. 5 dated 12.05.2023 disclosing that he has taken the samples from *malkhana* of police station and handed over to the investigation officer for its production before the learned Judicial Magistrate. More so, the investigation officer (PW-4) stated that on same day, he took the motorcar from Muharrir of the police station and took that to laboratory for FSL, however, admittedly there is no detail mentioned in the register no. 19 about handing over the motorcar in question for further investigation or proceedings to investigation officer or its entries in the daily diaries. Even, there is also no detail available in register no. 19 that who has submitted the parcels no. 16 to 47 and to which case/FIR those parcels belonged.
15. It is important to note that as per daily diary no. 3 dated 11.05.2023, the complainant along with police party has left the police station for patrolling of area at 0820 hours, received spy information about the occurrence pursuant to which he had arranged a barricade opposite to the police station, where the accused approached in the motorcar at 1300 hours, the murasila report etc. was drafted at 1430 hours, which was handed over to Murad Gul, who took the same to police station at 1435 hours, whereat, as per daily diary no. 13 of even date, the FIR was chalked at 1445 hours and thereafter the case was entrusted to investigation wing, which all facts suggests that the motorcar in question did not attract to the place of occurrence earlier than 1300 hours, however, the seizing officer (PW-2) deposed that the motorcar in question approached to the place of occurrence at 0830 hours, which altogether changes the mode and manner about

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the commission of offence by accused. He (PW-2) deposed the time of arrival of the investigation officer to the spot as 02.35 pm (1435 hours) and time of recording the statements of prosecution witnesses as 1445 hours, however, record provides that 1435 hours was the time of chalking out of the FIR, which completed at 1445 hours as evident from daily diary no. 13. Likewise, Murad Gul (PW-3) stated that he has delivered the murasila to Muharrir of the police station at about 03.40 pm (which is 1540 hours), whereas, the investigation officer has reached to the spot at 1440 hours. Contrary to this, daily diary no. 14 provides that the investigation officer has started his journey towards the place of occurrence at 1455 hours, where after, he conducted investigation in the case and recorded the statements of prosecution witnesses, which shows that his time of his arrival to the place of occurrence and recording of the statements of prosecution witnesses cannot be earlier than 1500 hours, however, the conflict in the facts and statements of these witnesses are wide enough to create serious doubt about the mode, manner and time of the commission of offence.

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On similar footings, there are standing directions of august Peshawar High Court that at the time of search and recovery of contraband from accused, the seizing officer will be bound to make videography of the whole proceedings. Contents of murasila report and FIR does not provide any detail about the videography of the proceedings by the seizing officer, however, statement of complainant suggests that he has allegedly made the videography of the proceedings, which he has saved in USB/memory card that he has delivered to investigation

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officer on the spot. Contrary to this, Murad Gul (PW-3), marginal witness to the occurrence, has shown ignorance to the fact that as to who has made videography of the whole proceedings despite fact that total three police officials including the driver had accompanied the complainant, which does not rule out the possibility that the videography of the occurrence was made later on just to fill up the lacunae, otherwise, seizing officer would have delivered the USB to Muharrir of police station along with other case property himself instead of handing over to investigation officer. Likewise, there is nothing as such in the statement of complainant and on record that whether the seizing officer had delivered the USB/memory card to the investigation officer in sealed or opened condition or not, which fact also leads to adverse inference.

17. It is a general practice that when the seizing officer finds any person committing the crime, he first prepares the recovery memo, then issues his card of arrest and finally prepares the murasila, however, marginal witness (PW-3) deposed that the seizing officer first prepared the murasila, then issued his card of arrest and finally prepared the recovery memo, which infers that marginal witness was not present on the spot at the time of occurrence and he was later on introduced to fill up the lacunae in the prosecution case.

18. Record provides that though a huge quantity of chars has been allegedly recovered from possession of accused but the complainant (PW-2) admittedly did not mention the kind of chars in his report that as to whether the recovered chars was in *pukhta* or *garda* form. This fact, nevertheless, is explained by investigation officer in his

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statement deposing that the chars consisted of soft and hard form, however, neither the investigation officer has mentioned the specific numbers of soft and hard packets in the recovery memo nor the numbers of packets recovered from left and right sides of the motorcar. On the contrary, the FSL report, Exh.PW 4/13, provides that the recovered chars was in solid shape, which leads to inference that actual recovered article/stuff from accused was something else and the test samples sent to the laboratory for expert opinion might be the genuine chars in order to obtain desirable results.

19. Investigation officer (PW-4) in his examination-in-chief deposed that he has examined the motorcar in question and its secret cavities but this is strange to note that being an investigation officer of the case, he has failed to recover any further contraband from the motorcar except on alleged pointation of the accused, whereas, they have not bring on record the secret cavities of the vehicle to insure that actually there were secret cavities made in the motorcar for the purpose of keeping the chars secretly.

20. Record provides that accused was arrested for trafficking 51600 grams chars in motorcar, which accused disclosed to investigation officer to be his ownership, however, the investigation officer did not collect any evidence whether the motorcar was actually registered in his name or not. Material discrepancies existed in the statements of prosecution witnesses, which also gave a hint that the prosecution case was not free from doubt, the benefit of which is to be extended to accused. Even, the investigation officer admitted that he has not recovered any driving license from accused; so in absence

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of any driving license, it could not be stated with certainty that who was on driving seat of the car at relevant time, so mere disclosing the accused as driver of the vehicle was not sufficient qua corroboration of version of prosecution particularly when no recovery had been effected from the immediate possession of the accused. Material discrepancies existed in the statements of prosecution witnesses, which also gave a hint that the prosecution case was not free from doubt, the benefit of which is to be extended to accused, the wisdom is drawn from case law reported in 2022 MLD 1612 and 2023 PCrLJ 154 [Peshawar].

21. It is by now a settled principle of law that it is not necessary that there should be many circumstances creating doubts rather a single circumstance, creating reasonable doubt in prudent mind about guilt of accused makes him entitled to its benefit, not as a matter of grace or concession but as a matter of right, the wisdom is drawn from case law reported in 2023 YLR 2579 of august Peshawar High Court [Mingora Bench].

22. From above appreciation of evidence it is held that the proceedings of making arrest of accused and seizure of narcotics had become doubtful. Moreover, so many discrepancies and contradictions in the case of prosecution have been observed, the accumulative effect of which provides that prosecution has failed to bring home the guilt against the accused beyond shadow of doubt; therefore, in view of these facts, the prosecution has failed to prove the commission of offence by the accused in the mode, manner and time stated by them, hence, while extending the benefit of doubt, the accused facing trial

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Muhammad Farooq son of Niaz Muhammad is acquitted from the charge leveled against him. As accused is in custody and behind the bars; therefore, he be released forthwith if not required in any other case.

23. Case property i.e. chars be destroyed, while, motorcar having not been deciphered with the different chasses number as per chemical examiner report be returned to lawful owner subject of his furnishing original documents/registration papers in his name both after expiry of period provided for appeal/revision.
24. File consigned to record room after completion and compilation.



**Announced**  
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**CERTIFICATE**

It is certified that this judgment of mine consists of thirteen (13) pages. Each page is duly signed by me after necessary corrections.



**Announced**  
02.07.2024

**Abdul Basit**  
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