

**IN THE COURT OF BAKHT ZADA, SENIOR CIVIL JUDGE/JM,
DISTRICT ORAKZAI**

Case No.....04/15AA OF 2024.
Date of Original Institution.....10.01.2024.
Date of Transfer In.....21.05.2024.
Date of Decision.....24.06.2024.

State through:

Muhammad Younas, SHO, PS Kurez Boya

.....**Complainant**

VERSES

*Abdul Karim S/O Ilyas Khan, R/O Qaum Zakha Khel, Landi Kotal, District
Khyber*

.....**Accused facing trial**

JUDGEMENT

24.06.2024.

Through this judgement, I am going to dispose of the instant case registered against accused Abdul Karim S/O Ilyas Khan is facing trial vide case FIR No. 51, Dated 05.12.2023, U/S 15AA, PS Kurez Boya.

1. Brief facts of the case as alleged in the FIR are that complainant Muhammad Younas SHO, PS Kurez Boya sent Murasila, card of arrest and recovery memo through Constable Junaid Ali No. 1607 to the PS, wherein it is alleged that he along with other police officials along with driver in the official pick-up made barricade near Tazi Khel and were busy in checking, meanwhile on 05.12.2023 at 18:20 hours, one pick-up bearing registration No. BA-3594, white colour was stopped and the driver was deboarded. Nothing was recovered from him during his body search. During search of the vehicle two

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Kalashnikovs bearing numbers 66-56-622171 and 661365 having folding butt were recovered which were hidden beneath the second seat of the vehicle. On inquiring the accused could not produced license/permit in respect of the same. Both the Kalashnikovs were sealed into parcel No. 1, while film of the occurrence was recorded at the spot and the USB of the said recording was sealed into parcel No. 2. The vehicle in question was also taken into possession and recovery memo of the same was issued. Accused was arrested at the spot.

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

3. Accused were summoned and legal formalities under Section 241-A Cr. PC were complied with. Formal charge against the accused facing trial was framed on 01.02.2024 to which he pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.

Prosecution produced as many as five (05) witnesses to prove its case against the accused facing trial, while rest of the PWs were given up by prosecution and closed its evidence.

5. *Syed Ibnal Hassan, Moharrir, PS Kurez Boya deposed as PW-01.*

He stated that constable Junaid Ali No. 1607 handed over to him the Murasila report along with recovery and card of arrest sent by ASHO.

I incorporated the contents of Murasila into FIR Ex. PW-1/1. After the arrival of SHO, the recovered ammunition in sealed condition

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was handed over to him in parcel No. 1 and USB sealed into parcel No. 2. He kept the same in the Mallkhana of the PS for safe custody and the accused was kept in lock-up of PS. DD regarding the departure and arrival of SHO is Ex. PW-1/2. He entered the details of sealed parcel sent to FSL in the DD which is Ex. PW-1/3. Entry in register-19 is Ex. PW-1/4. His statement was recorded by the IO U/S 161 Cr. PC.

6. *PW-02, is the statement of SHO/complainant:* He stated that on 05.12.2023 at about 18:20 hours, he was on ordinary gasht near Tazi Khel village. He received the information and laid barricade. In the meanwhile, one pick-up double cabin No. BA-3594, white colour was stopped for checking. Nothing was recovered from the possession of driver, however during the search of pick-up, two Kalashnikovs bearing No. 66-56-622171 and 661365 from beneath the rear seats for which the accused failed to produce any license/permit. Both the Kalashnikovs were sealed into parcel No.1 and signed with sharp object. He also made video and took pictures regarding the occurrence and saved the record in the USB which was sealed into parcel No. 2. Pick-up vehicle bearing No. BA-3594 was also taken into possession and the accused was arrested who disclosed his name as Abdul Karim. He prepared recovery memo Ex. PW-2/1 in presence of marginal witnesses. His card of arrest Ex. PW-2/2 was issued. Murasila Ex. PW-2/3 was drafted at the spot. He handed over the above-mentioned documents to constable Junaid Ali for onward submission to the Moharrir for registration of FIR. The

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IO prepared site plan on his pointation. After completion of proceedings at the spot, he returned back to the PS and handed over the ammunition in sealed condition along with accused and pick-up.

IO recorded his statement U/S 161 Cr. PC

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7. *PW-03, is the statement of Khial Hussain.* He stated that the IO handed over to him parcel No. 1 along with road permit certificate for FSL, Peshawar. He handed over the parcel No. 1 for chemical analysis to incharge FSL and his signature obtained on the receipt Ex. PW-3/1. His statement was recorded by the IO U/S 161 Cr. PC.

8. *PW-04, is the statement of Hasham Khan.* He is IO of the case. He stated that copy of FIR along with relevant documents were handed over to him. He proceeded to the spot and prepared site plan Ex. PW-4/1 at the pointation of SHO/complainant. He produced the accused before Judicial Magistrate for obtaining his physical custody vide his application Ex. PW-4/2 which was turned down and accused was committed to judicial lock-up. He recorded the statements of all the PWs U/S 161 Cr. PC. Moharrir of the PS handed over to him parcel

No. 1 for sending the same to FSL, Peshawar. In this respect, he prepared road permit certificate and letter to FSL, Peshawar Ex. PW-4/3. He submitted report/parwana Ex. PW-4/4 regarding the correction of number of Kalashnikov in the FIR. He also submitted parwana Ex. PW-4/5 to the FSL Peshawar in this regard. Letter No. 815/SP/INV which is Ex. PW-4/7 addressed to Excise and Taxation Officer, Peshawar and report of which is Ex. PW-4/7. FSL report is

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Ex. PK. After completion of investigation, he handed over the case file to the SHO for submission of complete challan.

9. *PW-05, is the statement of complainant Zubair Ahmad.* He is marginal witness to the recovery memo and he was present with SHO during the spot proceedings. He repeated the same story as deposed by SHO/complainant. His statement was recorded by the IO U/S 161 Cr. PC.

10. All the PWs were cross examined by the counsel for the accused facing trial.

11. Private PW namely Saif Ullah was abandoned by prosecution and closed its evidence.

12. Afterwards, statement of accused U/S 342 Cr. PC was recorded wherein he pleaded not their guilt and did not wish to be examined on oath. He opted not to produce defense evidence.

13. Arguments of the learned Sr. PP for the state and counsel for accused facing trial heard and available record perused.

14. It is the case of prosecution that complainant along with other police officials and driver were on routine patrolling in the area Tazi Khel.

On receipt of the information, SHO/complainant laid barricade and in the meanwhile on 05.12.2023 at 18:20 hours, one pick-up bearing registration No. BA-3594, white colour was stopped and the driver was deboarded. Nothing was recovered from him during his body search. During search of the vehicle two Kalashnikovs bearing numbers 66-56-622171 and 661365 having folding butt were recovered which were hidden beneath the second seat of the vehicle.

Signature
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On inquiring the accused could not produce license/permit in respect of the same. Both the Kalashnikovs were sealed into parcel No. 1, while film of the occurrence was recorded at the spot and the USB of the said recording was sealed into parcel No. 2. The vehicle in question was also taken into possession and recovery memo of the same was prepared.

15. During evidence of the prosecution Moharrir of the PS Kurez Boya Ibnal Hassan appeared as PW-01 and during cross examination he stated that there is no entry regarding alleged recovered pick-up, its keys and registration copy in the register-19 which makes the recovery of alleged vehicle dubious. It is also mentioned in the FIR as well as in the statement of PW-01 that video of the occurrence was recorded by the police and the same video was saved in USB which was sealed into parcel No. 2, but the perusal of case file shows that neither PW-01 being Moharrir of the PS nor PW-02 Muhammad Younas SHO being complainant and seizing officer has produced the same before the court during the course of evidence which further makes the alleged occurrence dubious. Although it is not necessary under the law to make video of such like occurrence, but once video of an occurrence is prepared, then non-production of the same before the court will definitely create doubts about the mode and manner of the occurrence. Furthermore, the case of prosecution is also hit under article 129-G of the Qanon-E-Shahadat Order, 1984 because despite of availability, the USB containing videography of the occurrence has not been produced. Copy of the relevant page of the register-19

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is available on the case file as Ex. PW-1/4, wherein under the column of case property the details of the case property is shown as two Kalashnikovs and one USB. The place of occurrence has been shown in the site plan Ex. PW-4/1 on the main Anjani to Kohat road, but the complainant has not bothered to associate private witness on the recovery. It is also mentioned that neither any ammunition, nor any magazine was present with the alleged weapons which also creates doubts about the occurrence because it is not appealing to prudent mind that one can carry without magazine and ammunition in the area which is consisted of mountains on both side of the road. All these are fatal grounds for the case of prosecution.

- 16.** There is no criminal history of accused facing trial. Accused has not confessed his guilt before the court. There are material contradictions in the statement of PWs and record before the court. Thus, prosecution badly failed to prove its case beyond reasonable shadow of doubts against the accused facing trial. I, therefore, acquit the accused facing trial named above from the charges levelled against him. He is on bail. His sureties are discharged from their liability. Case property be kept intact till the expiry of period provided for appeal/revision.
- 17.** Case file be consigned to Record room after its completion and necessary compilation.

Announced
24.06.2024

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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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