

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

SPECIAL CASE NO. : 11/3 OF 2024
DATE OF INSTITUTION : 07.03.2024
DATE OF DECISION : 30.07.2024

STATE THROUGH IMTIAZ KHAN SHO POLICE STATION
DABORI

.....(COMPLAINANT)

-VERSUS-

ABDUL WAHID S/O NASRU ULLAH, AGED ABOUT 35 YEARS,
R/O WRASTA, DISTRICT HANGU

.....(ACCUSED FACING TRIAL)

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


FIR No. 23 Dated: 18.11.2023 U/S: 9 (d) of the
Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Dabori

JUDGEMENT

30.07.2024

The above-named accused faced trial for the
offence u/s 9 (d) of the Khyber Pakhtunkhwa CNSA,
2019 vide FIR No. 23, dated 18.11.2023 of Police Station
Daboori.

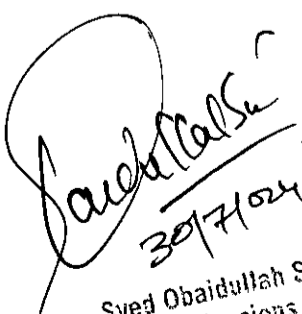
- (2). The case of the prosecution as outlined in the
Murasila based FIR is as follows: that on 18.11.2023, the
complainant Imtiaz Khan SHO along with constables
Sami Ullah No. 828 and Ghani Ur Rehman No. 771
having laid a picket were present on the spot where at
about 1100 hours a person walking on foot towards the
picket was stopped on the basis of suspicion. Upon his
personal search the complainant recovered 01 packet of


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chars, wrapped with yellow colour adhesive tape, weighing 1300 grams of chars from his trouser fold. The complainant separated 10 grams of chars from total quantity for chemical analysis through FSL, sealed the same into parcel no. 1 whereas the remaining quantity of chars weighing 1290 grams was sealed in parcels no. 02 by affixing/placing a monogram of "SR" on all the parcels by the complainant. The accused disclosed his name as **Abdul Wahid** s/o Nasru Ullah who was accordingly arrested on the spot by issuing his card of arrest. The complainant took into possession the recovered chars vide recovery memo. Murasila was drafted and sent to Police Station through Constable Sami Ullah which was converted into FIR by Khalil Ur Rehman MASI.

(3). After registration of FIR, it was handed over to Investigating Officer Saif Ur Rehman OII for investigation. Accordingly, after receipt 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 23.11.2023, the IO sent the sample of chars for chemical analysis to FSL through constable Gul Karim against road permit certificate, the results whereof was placed on file by him as Ex. PK. After completion of investigation, the case file was


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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, 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;

I. Constable Khial Hussain as PW-1. He has taken the sample of chars in parcel no. 1 for chemical analysis on 23.11.2023 and upon his return to the police station, he has handed over the receipt to the OII.

II. Khalil Ur Rehman MASI 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 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 sample to the OII for sending the same to

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FSL on 23.11.2023. He has also scribed the DDs as Ex. PW 2/2.

III. Muhammad Imtiaz SI 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.

IV. Constable Sami Ullah appeared as PW-4. He besides being eyewitness of the occurrence is marginal witness of recovery memos Ex. PC and Ex. PC/1 respectively as well vide which the complainant has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement.

V. Investigating Saif Ur Rehman 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 application Ex. PW 5/1, sent the representative sample of chars to FSL along with application addressed to the incharge FSL Ex.

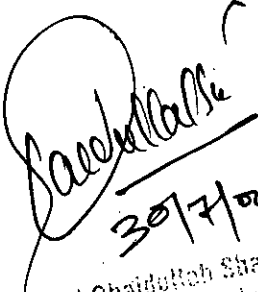

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PW 5/2 and road permit certificate, and result of the same Ex. PK was received and placed on file by him. He also placed on file attested copy of register no. 19, copies of DDs regarding departure and arrival of police officials/officers from and to 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 sample for chemical analysis was transmitted to the FSL and the same has been found positive for chars vide report of FSL Ex. PK. The complainant, the witnesses of the recovery,

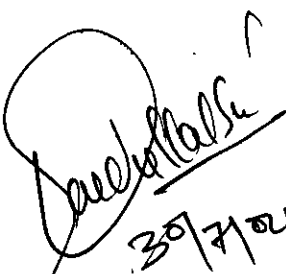
the official transmitted the sample to the FSL and the OII


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

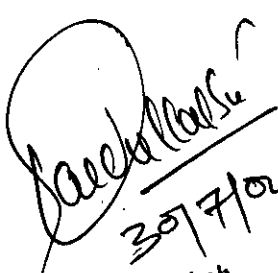
(7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR and the report of FSL support the case of prosecution; however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his possession. He argued that the prosecution has failed to prove the mode and manner of recovery and the mode and manner of investigation allegedly conducted by the OII 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, that on 18.11.2023, the complainant Imtiaz Khan SHO/PW-3 along with constables Sami Ullah No. 828/PW-4 and Ghani Ur Rehman No. 771 having laid a picket were present on the spot where at about 1100 hours a person walking on foot towards the


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picket was stopped on the basis of suspicion. Upon his personal search the complainant recovered 01 packet of chars, wrapped with yellow colour adhesive tape, weighing 1300 grams of chars from his trouser fold. The complainant/PW-3 separated 10 grams of chars from total quantity for chemical analysis through FSL, sealed the same into parcel no. 1 whereas the remaining quantity of chars weighing 1290 grams was sealed in parcels no. 02 (Ex.P1) by affixing/placing a monogram of "SR" on all the parcels by the complainant/PW-3. The accused disclosed his name as **Abdul Wahid** s/o Nasru Ullah who was accordingly arrested on the spot by issuing his card of arrest Ex. PW3/1. The complainant/PW-3 took into possession the recovered chars vide recovery memos Ex. PC and Ex. PC/1 respectively. Murasila Ex. PA/1 was drafted and sent to Police Station through Constable Sami Ullah which was converted into FIR Ex. PA by Khalil Ur Rehman MASI. After registration of FIR Ex. PA, it was handed over to Hashim Khan/PW-5, the IO of the case. The IO/PW-5 visited the spot and conducted investigation by making a site plan Ex. PB on pointation of Imtiaz Khan/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 Imtiaz Khan



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SHO, the complainant of the case, as PW-3 who reiterated the contents of Murasila Ex. PA/1 and Constable Sami Ullah, the eyewitness witness of the occurrence as well as marginal witness of recovery memos Ex. PC and Ex. PC/1 respectively 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 Khalil Ur Rehman MASI/PW-2 who has registered the FIR.

The case of prosecution, as per contents of Murasila Ex. PA/1, the occurrence has taken place at 1100 hours during broad daylight on a public road where the police officials were deputed at Nala Check-post who are natural witnesses of the occurrence but no effort has been made by the complainant to associate any private witness or officials deputed at said check-post with the process of search and recovery. Even the Investigation Officer has not examined any witness regarding the proceedings conducted on the spot.


With respect to process of sampling and sealing as alleged in the Murasila report Ex. PA/1, the complainant/PW-3 has recovered 1300 grams of chars from person of accused, from which 10 grams of chars have been separated for chemical analysis to FSL, sealed and sampled the same in parcels no. 1 to 2 and a


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monogram of 'SR' has been affixed over the parcels and when complainant/PW-3 was cross-examined about monogram he stated that the 'SR' monogram is not in his name while the same was collected by him from Moharrir of the police station. The entire record is silent that who is the owner of 'SR' monogram. It is also surprising when parcel no. 2 was produced before the court, a monogram of 'DB' was affixed over the parcel which shows that the said parcel was not made on the spot, if the parcel was made on the spot by affixing a monogram of 'SR' then it was later one de sealed with the monogram of 'DB'. Moreover, there is also overwriting on date mentioned on the parcel no. 2 in the digit of 2024 after overwriting as 2023. After having gone through the record in the light of statements of prosecution and objection raised by the defence, the process of sampling, safe custody of the case property, transmission of the representative sample to the FSL are not proved by the prosecution beyond shadow of doubt for the reason that the complainant despite being abreast of the difference between chars "Pukhta" and chars "Kacha" has neither mentioned the details, nature, kind and colour of chars in the Murasila nor in his court statement even in his cross examination he failed to explain the kind and nature of alleged recovered chars.

Relevant portion of his cross-examination is as follow;



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"It is not mentioned in the Murasila that the recovered chars is pukhta or kacha. The colour of recovered chars was blackish green".

The mode and manner of occurrence, as alleged by the prosecution, as per contents of Murasila Ex. PA/1, that after drafting of the Murasila, recovery memo and card of arrest, the same were handed over to Constable Sami Ullah/PW-4 who took the same to the police station for registration of FIR, as per examination-in-chief of complainant/PW-3 that he had prepared two recovery memos as Ex. PC and Ex. PC/1 respectively on the spot and handed over the same for taking to the police station but as per cross-examination of marginal witness as PW-4 that he had received only card of arrest and Murasila from complainant for taking the same to the police station.

The aforementioned situations create serious doubt regarding preparation of parcels on the spot and the mode and manner of occurrence as alleged by the prosecution.

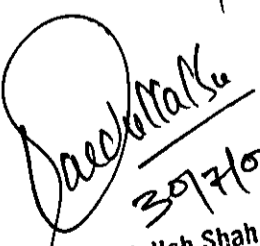
With respect to transmission of the case property from the spot to the Police Station and sending of the representative samples to the FSL, the case of prosecution is; that after sampling and sealing of case property into the parcels on the spot, these were brought by the complainant/PW-3 to the Police Station and handed over


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the same to Khalil Ur Rehman MASI/PW-2, who deposited the same in Mal khana of police station. The representative samples were handed over by Moharrir of the Police Station to the IO on 23.01.2022 who transmitted the same to FSL through constable Gul Karim/PW-1- vide road permit certificate.

In order to prove its case, the prosecution produced constable Gul Karim as PW-1, complainant of the case Muhammad Imtiaz Khan SI as PW-3 and Saif UI Rehman SI as PW-5. PW-2, though in his examination in chief has stated that he had received case property i.e., parcels no. 1 to 2 and parcel no. 3 containing in USB from the complainant, who made entry of the same in register no. 19, but as per copy of register no. 19 Ex. PW 2/1 the Moharrir had received case property i.e., parcel no. 1 to 2 from the complainant and later on when original register no. 19 was produced before the court wherein the entry of parcel no. 3 was added. It means that the entry of the parcel no. 3 has been made later on in original register no.19 which shows create a shadow of doubt regarding filming of the spot proceedings. Moreover, neither the name of person who handed over the parcels to the Moharrir of the police station nor the name of the person who took the samples to FSL has been mentioned in register no. 19. Furthermore, the occurrence has taken


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place on 18.11.2023 while as per report of the FSL Ex. PK, representative sample has been transmitted to FSL on 23.11.2023 with a delay of 05-days which has not yet been explained.

Hence, in view of what is discussed above, though the representative sample, as per report of FSL Ex. PK, has been found as chars but keeping in view the failure of the prosecution to prove the safe custody of the case property and the delay of sending the sample, it is held that the report of FSL cannot be relied for recording conviction.

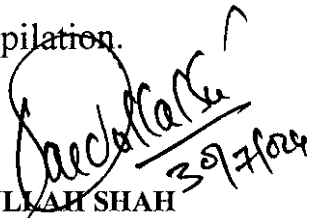
- (9). In the light of aforementioned discussion, it is held that the prosecution has failed to prove the alleged recovery of chars from possession of the accused facing trial in the mode and manner as detailed in the report. The prosecution also failed to prove the safe custody of case property. All these facts lead to the failure of prosecution to prove the case against the accused beyond shadow of doubt. Therefore, the accused namely, **Abdul Wahid** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is on bail. His bail bonds stand cancelled and his sureties are released of the liabilities of bail bonds. The case property i.e., chars be destroyed after the expiry of period provided for appeal/revision in accordance with law.


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

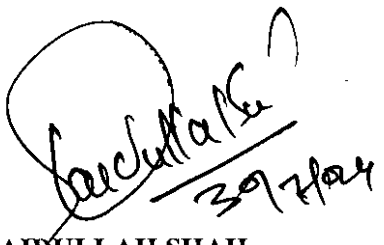
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CERTIFICATE

Certified that this judgment consists of ~~thirteen~~ (13)
pages. Each page has been read, corrected wherever
necessary and signed by me.

Dated: 30.07.2024


SYED OBAIDULLAH SHAH
Sessions Judge/Judge Special Court,
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