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STATE VS INHAR ALI ETC
FIR No. 02 | Dated: 28.01.2024 | U/S: 9 (d) of the Khyber Pakhtunkhwa CNSA
2019 | Police Station: Kurez Boya

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

SPECIAL CASE NO. : 10/3 OF 2024
DATE OF INSTITUTION : 05.03.2024
DATE OF DECISION : 08.08.2024

STATE THROUGH MUAMMAD YOUNAS SHO, POLICE STATION
KUREZ BOYA

.....(COMPLAINANT)

-VERSUS-

1. INHAR ALI S/O ASAD ALI, AGED ABOUT 38/39 YEARS, R/O
CASTE MANI KHEL, TAPA TERAYE, DISTRICT ORAKZAI
2. TAHIR ALI S/O MUREED SHAH, AGED ABOUT 36/37 YEARS, R/O
CASTE SEPOY, TAPA LAKH KARI KHEL, DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL IN CUSTODY)

Present: Umar Niaz, District Public Prosecutor for the state.
: Hamid Sarfaraz Advocate for accused facing trial.

FIR No. 02 **Dated:** 28.01.2024 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019.

Police Station: Kurez Boya

JUDGEMENT
08.08.2024

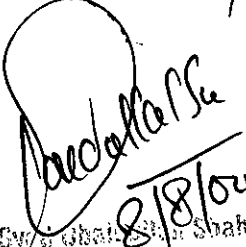
The accused named above faced trial for the offence
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA Act, 2019 vide
FIR no. 02, dated 28.01.2024 of Police Station Kurez Boya.

- (2). The case of the prosecution as outlined in the Murasila
based FIR is; that on 28.01.2024 the complainant, Muhammad
Younas SHO along with Shayaz Khan ASHO, constables
Junaid Ali No. 1607 and Saleem Khan No. 1242 during
routine patrolling in official vehicle driven by Inshad Ali No.
663 having laid a picket were present on the spot, where at
about 1600 hours a motorcycle rode by two persons wearing
shawls on way from Zera side towards the spot, on seeing the


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police party, turned back their motorcycle and were chased by the local police in official vehicle, but they were overpowered when, after covering some distance, they slipped and fell down with motorcycle. One of them disclosed his name as Inhar Ali s/o Asad Ali, r/o Caste Mani Khel, Tapa Terayi, District Orakzai, having a white colour bag on his shoulder, which was recovered by the complainant from his possession. Upon his personal body search, the complainant also recovered a pistol of a 30-bore pistol along with a fixed charger containing 10 rounds. Similarly, the other person disclosed his name as Tahir Ali s/o Mureed Shah, r/o Caste Sepoye, Tapa Lakhkari Khel, District Orakzai, who had received injury due to falling from a motorcycle. The complainant recovered a white colour bag from his possession. The checking of the bag recovered from possession of accused Inhar Ali led the complainant to the recovery of 09 packets of chars wrapped with yellow colour scotch tape, each weighing 1000 grams of chars, making a total of 9000 grams of chars. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same in parcels no. 1 to 9 whereas the remaining quantity of chars weighing 8910 grams along with the empty sack were sealed in parcel no. 10 while the complainant also sealed the recovered pistol in parcel no. 11. In the same manner, upon checking of the bag recovered from accused Tahir Ali, the

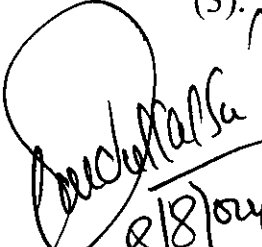

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complainant also recovered 08 packets of chars wrapped with yellow colour scotch tape, each weighing 1000 grams of chars, making a total of 8000 grams of chars. From each packet, the complainant separated 10 grams of chars for chemical analysis through FSL, sealed it in parcels no. 12 to 19 whereas the remaining quantity of chars weighing 7920 grams along with the empty sack were sealed in parcel no. 20. The spot proceedings were captured in a USB which was packed and sealed by the complainant in parcel no. 21. Monogram of 'MY' was affixed/placed on all parcels. The complainant took into possession the case property i.e., chars, pistol and motorcycle Honda-125 bearing Registration No. 8334/LER of black colour, having Engine No. 7704276 and Chassis No. U-886557 vide recovery memo. Both the accused were accordingly arrested on the spot by issuing their joint card of arrest. The injury sheet of the accused, Tahir Ali was prepared by complainant and sent to the RHC Kurez under the escort of Constable Junaid Ali for medical examination. Murasila was drafted and sent to the Police Station through Constable Saleem Khan which was converted into FIR by Moharrir Ibad Ul Hassan.

(3).

After registration of FIR, it was handed over to PW-5 Hashim Khan OII for investigation. Accordingly, after receipt of copy of FIR, Murasila, card of arrest and recovery memo, he visited the spot and prepared site plan Ex. PB on pointation

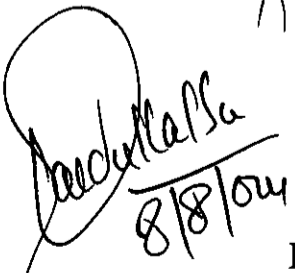

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of the complainant. On 30.01.2024, he sent the samples of chars in parcels no. 1 to 9 and 12 to 19 containing 10 grams of chars, and the pistol in parcel no. 11 to the FSL through constable Khial Hassan/PW-1 along with applications Ex. PW 5/2 and Ex. PW 5/3 vide road permit certificates Ex. PW 5/4 and Ex. PW 5/5 and recorded statements of marginal witness u/ 161 CrPC. After completion of investigation, he handed over the case file to SHO for submission of challan.

- (4). Upon receipt of the case file for the purpose of trial, the accused facing trial were summoned through addendum-B from Sub-Jail, Orakzai, copies of the record were provided to them u/s 265-C CrPC and formal charge was framed against them to which they pleaded not guilty and claimed trial. Accordingly, the prosecution examined as many as 05 witnesses. The gist of the evidence is as follow;

I. Constable Khial Hassan is PW-1. On 30.01.2024 he has taken parcels no. 1 to 9 and 12 to 19 containing samples of chars and on 06.02.2024 parcel no. 11 containing the pistol to the FSL for chemical analysis and after submission of the same; he was given the receipt of the parcels which was handed over by him to the Investigation Officer upon his return.

II. Moharrir Ibad Ul Hassan appeared in the witness box as PW-2. He has incorporated the contents of


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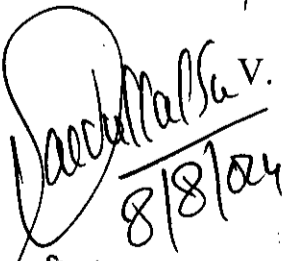
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Murasila Ex. PA into FIR Ex. PA/1. He has received the case property from the complainant and kept it in mal khana in safe custody by making its entry in register no. 19 Ex. PW 1/1 besides parked the motorcycle in vicinity of the Police Station. He has also made entry in DDs Ex. PW 2/2 and 2/3 besides handed over parcels no. 1 to 9, 11 & 12 to 19 to the OII for sending the same to FSL.

III. Muhammad Younas SHO is the complainant of the case. He as PW-3 repeated the same story as narrated in the FIR. He has submitted complete challan Ex. PW 3/2 in the instant case against the accused facing trial.

IV. Constable Saleem Khan appeared in the witness box as PW-4. He besides being eyewitness of the occurrence is the marginal witness of recovery memo Ex. PC as well vide which the complainant/PW-3 has taken into possession the case property. He also reiterated the contents of FIR in his statement.

Investigating Officer Hashim Khan 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


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Ex. PB on pointation of the complainant, recorded the statements of witnesses u/s 161 CrPC, produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 5/1 & Ex. PW 5/6, sent the representative samples and recovered pistol to the FSL along with the applications Ex. PW 5/2 & Ex. PW 5/3 vide road permit certificates Ex. PW 5/4 & Ex. PW 5/5 and the result whereof was received and placed on file by him as Ex. PK and Ex. PK/1. He has also drafted a letter Ex. PW 5/7 for verification of the motorcycle besides placed on file photographs of spot proceedings Ex. PW 5/8, the attested copy of register No. 19 Ex. PW 2/1 and injury sheet of the accused Tahir Ali and the report of the doctor Ex. PW 5/9 and submitted the case file to the SHO for onward proceeding.


(5). Prosecution closed its evidence whereafter the statements of the accused were recorded u/s 342 Cr.P.C but both the accused neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of learned DPP for the state and counsel for the accused facing trial heard and case file perused.

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Learned DPP for the state submitted that the accused facing trial are directly nominated in the FIR, huge quantity of

chars have been recovered from possession of the accused facing trial, the recovered chars are sealed and sampled on the spot by the complainant, the OII has conducted investigation on the spot, the samples for chemical analysis have been transmitted to the FSL within the prescribed period of 72 hours which has been found positive for chars vide report of FSL. The complainant, the witness of the recovery, the official transmitted the samples to the FSL and the OII 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 are directly nominated in the FIR, the alleged chars have been shown recovered from their possession and the report of FSL support the case of prosecution, however, the accused facing trial are falsely implicated in the instant case and nothing has been recovered from their 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


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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). In the light of arguments advanced by learned DPP for the state and learned counsel for the defence and the available record, following are the points for determination of charge against the accused facing trial:

- (i). Whether the recovery is proved to have been made from possession of accused facing trial in the mode and manner as detailed in the Murasila?
- (ii). Whether the occurrence has taken place and the investigation have been conducted in the mode and manner as detailed in the file?
- (iii). Whether the recovered substance is proved through report of FSL as chars?

(9). The case of prosecution, as per contents of Murasila Ex. PA/1, court statements of Muhammad Younas SHO as PW-3 and Constable Saleem Khan as PW-4 is, Muhammad Younas SHO/PW-3 along with Shayaz Khan ASHO, constables Junaid Ali No. 1607 and Saleem Khan No. 1242/PW-4 during routine patrolling in official vehicle driven by Inshad Ali No. 663 having laid a picket were present on the spot, where at about 1600 hours a motorcycle rode by two persons wearing shawls on way from Zera side towards the spot, on seeing the police party, turned back their motorcycle and were chased by local police in official vehicle, but they


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were overpowered, after covering some distance, when they slipped and fell down with motorcycle. One of them disclosed his name as Inhar Ali s/o Asad Ali, r/o Caste Mani Khel, Tapa Terayi, District Orakzai, having a white colour bag on his shoulder, recovered by complainant from his possession. Upon his personal body search, the complainant/PW-3 also recovered, a pistol of 30-bore along with a fixed charger containing 10 rounds. Similarly, the other person disclosed his name as Tahir Ali s/o Mureed Shah, r/o Caste Sepoye, Tapa Lakhkari Khel, District Orakzai, who had received injury due to falling from the motorcycle; the complainant/PW-3 also recovered a white colour bag from his possession. The checking of the bag recovered from possession of accused, Inhar Ali led the complainant/PW-3 to the recovery of 09 packets of chars, wrapped with yellow colour scotch tape, each weighing 1000 grams of chars, making a total of 9000 grams of chars. The complainant/PW-3 separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same in parcels no. 1 to 9 whereas the remaining quantity of chars weighing 8910 grams along with empty sack were sealed in parcel no. 10 and sealed a 30-bore pistol in parcel no. 11. Similarly, upon checking of the bag recovered from accused Tahir Ali, the complainant/PW-3 also recovered 08 packets of chars, wrapped with yellow colour scotch tape, each weighing 1000 grams of chars, making a total of 8000

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grams of chars. The complainant/PW-3 separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same in parcels no. 12 to 19 whereas the remaining quantity of chars weighing 7920 grams along with the empty sack were sealed in parcel no. 20. The spot proceedings were captured in a USB which was sealed by the complainant/PW-3 in parcel no. 21. Monogram of 'MY' was affixed/placed on all parcels. The complainant/PW-3 took into possession the case property i.e., chars, pistol and motorcycle Honda-125 bearing Registration No. 8334/LER of black colour, having Engine No. 7704276 and Chassis No. U-886557 vide recovery memo Ex. PC. Both the accused were accordingly arrested on the spot by issuing their joint card of arrest Ex. PW 3/1. The injury sheet/Ex. PW 3/2 of the accused Tahir Ali was prepared and sent to the RHC Kurez under the escort of Constable Junaid Ali for medical examination. Murasila Ex. PA/1 was drafted and sent to the Police Station through Constable Saleem Khan/PW-4 which was converted into FIR Ex. PA by Moharrir Ibad Ul Hassan.

The prosecution in order to prove its case in the mode and manner as alleged, has examined Muhammad Younas SHO, the complainant of the case, as PW-3 who has reiterated the contents of Murasila Ex. PA/1 and Constable Saleem Khan, the eyewitness of the occurrence and marginal witness of recovery memo Ex. PC as PW-4 who besides repeating the


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same story as narrated in the FIR, has stated to have taken the documents to the police station for registration of FIR and handed over the documents to Ibad Ul Hassan MM/PW-2 who has registered the FIR Ex. PA and Hashim Khan OII as PW-5 who have carried out the investigation in the instance.

With respect to the recovery of chars in the mode and manner as detailed, it is alleged that the recovery of contrabands chars has been effected from both of the accused facing trial on the spot and the complainant despite being abreast of the difference between chars "Gharda" and chars "Pukhta" has neither mentioned the details, nature, kind and colour of chars in the Murasila Ex. PA/1 nor in his court statement. The relevant portion of his cross-examination is as under;

"It is not in my report that as to whether chars garda or pukhta was recovered. Similarly, it is also not in my report that what were the appearance as well as the colour of alleged chars"

Similarly, the complainant party during routine patrolling were present on the spot, where at about 1600 hours a motorcycle riding by two persons wearing Shawls on way towards the spot, having white colour bags, wherefrom the complainant/PW-3 had recovered contraband chars, the same was packed and sealed in different parcels. The complainant/PW-3 took into possession the case property vide


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recovery memo Ex. PC; however, the factum regarding sealing and sampling of shawls, despite being part of the criminal activity, has neither been mentioned in Murasila report Ex. PA/1 nor he has taken into possession the same vide recovery meme Ex. PC, even in his cross-examination he failed to explain this fact that he has not taken into possession any Chaddar belonging to either of the accused. Reliance is placed on **2019 YLR 2082** which states that;

"The prosecution was bound to produce the case property allegedly being used in a criminal activity; however, non-production of such incriminating piece of evidence creates doubt in the mode and manner of alleged recovery on the spot".

Moreover, as per FIR Ex. PA, Murasila report Ex. PA/1, recovery memo Ex. PC and court statement of complainant/PW-3, it is clearly mentioned that the complainant/PW-3 had not given any specific or corresponding number to each alleged packet/parcel of chars. In this respect the reliance is placed on **2020 YLR 2524** which quotes that;

"Rule 6 of Control of Narcotic Substances (Government Analysts) Rules, 2001 provided that it was incumbent upon the investigator/forwarding agency to give specific number to each sample and the substance from which it was prepared in order to relate to its origin. Likewise, it was

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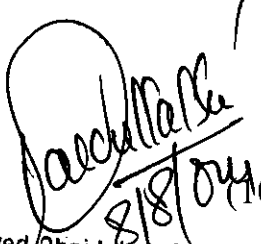
compulsory for Forensic Laboratory to prepare the report with respect to each packet by specifically numbering them and given details of full protocols of the test applied as mandate by the said rule”.

The complainant/PW-3 and the marginal witness/PW-4 also diverged in their descriptions of the accused's actions during the arrest. The SHO/PW-3 provided a detailed narrative of the pursuit and apprehension while PW-4's account lacked certain details about the nature of the chase and the behaviours exhibited by the accused. This inconsistency raises questions about the credibility of the prosecution's narrative regarding the accused's involvement in the crime.

If the statement of PW-4 is compared with the site plan prepared by the IO/PW-5 on pointation of the complainant/PW-3, a clear contradiction is found in both of them, provided that the site plan shows that the driver of the motorcycle was Inhar Ali; however, PW-4 disproves it by stating that the accused Tahir was driving the motorcycle.

The identified contradictions within the testimonies of prosecution witnesses significantly undermine the prosecution's case which affect the overall strength of the evidence presented against the accused.

With respect to process of investigation on the spot, as per contents of Murasila Ex. PA/1, the IO has visited the spot and prepared site plan Ex. PB on pointation of the


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complainant. Nevertheless, careful examination of the site plan Ex. PB prepared on the spot, the road leading to the spot of occurrence is a straight road and there is no curve or any hurdle obstructing the vision over there. This fact has also been admitted by the complainant/PW-3 in his cross examination but it was totally negated by the marginal witness/PW-4 in his cross-examination who stated that the spot is on a zigzag road. It is astonishing to note that if the spot of occurrence is a straight road and there is no curve or any other hurdle obstructing the vision, then how come it possible for both the accused facing trial with a huge quantity of chars in their possession have opted to pass through a picket laid by Police instead of adopting alternate route avoiding the police. This unnatural behavior of the accused shown by the police casts doubt upon the story of prosecution case. Besides, the Investigation Officer was cross-examined on the point that when he reached the spot, the complainant/PW-3 shown him the parcels having the FIR number, so a question would arise that when the FIR was not yet registered then how the FIR number was written on the parcels which negates the mode and manner as alleged by the prosecution.

In terms of corroborating the connection of the motorcycle with the accused facing trial, Hashim Khan's/PW-5 lacks specifics regarding the motorcycle's ownership and could not provide any document to verify any nexus of the

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motorcycle with any of the accused, suggesting gaps in the investigation process.

The prosecution has failed to prove the mode and manner of investigation as alleged in the case file, ultimately affecting the outcome of the trial.

(11). 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 in parcels on the spot, these were brought by the complainant/PW-3 to the Police Station and handed over the same to MM Ibad Ul Hassan/PW-2, who deposited the same in Mal khana. The representative samples were handed over by Moharrir of the Police Station to the Investigation Officer on 30.01.2024 who transmitted the same to FSL through constable Khial Hussain/PW-1 vide road permit certificate.

The prosecution in order to prove the safe custody of case property, produced constable Khial Hussain as PW-1, MM Ibad Ul Hassa/PW-2, complainant, Muhammad Younas SHO/PW-3 and Hashim Khan OII, the Investigation Officer as PW-5. The complainant/PW-3 after completion of spot proceedings, returned to the police station and handed over the case property to the Moharrir who made entry of the same in register no. 19 Ex. PW 2/1 followed by handing over of parcels no. 10, 11 and 20 to the IO/PW-5 for its production


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before the Judicial Magistrate but the entire record is silent regarding its return or its deposition in District Mal Khana except the statement of Moharrir.

Moreover, the testimonies regarding the motorcycle's custody reveal another layer of ambiguity. Hashim Khan/PW-5 expressed uncertainty about who brought the motorcycle to the police station, indicating a lack of clarity in respect of safe custody of the case property.

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, only the positive FSL report cannot be taken into consideration for conviction of the accused facing trial.

- (12). In light of these contradictions, the overall strength of the evidence against the accused appears significantly weakened. The cumulative effect of these inconsistencies leads the defence to argue that the prosecution has not sufficiently demonstrated the accused's guilt beyond a reasonable doubt. Consequently, the reliability of witness testimonies, which form the backbone of the prosecution's case, stands in jeopardy, potentially influencing the court's decision on the matter. Therefore, the accused namely, **Inhar Ali and Tahir Ali** are acquitted of the charge levelled against them by extending them the benefit of doubt. Accused are in custody.


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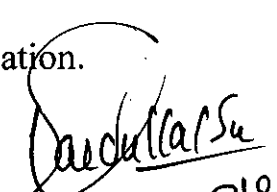
They be released forthwith, if not required in any other case.

The case property i.e., chas be destroyed after the expiry of period provided for appeal/revision in accordance with law.

The motorcycle be returned to its lawful owner.

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

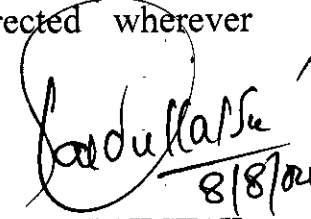
Dated: 08.08.2024


SYED OBAIDULLAH SHAH 8/8/24
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

CERTIFICATE

Certified that this judgement consists of seventeen (17) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 08.08.2024.


SYED OBAIDULLAH SHAH 8/8/24
Sessions Judge/Judge Special Court,
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