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

Case No. 02/03 of 2024

Date of institution: 09.01.2024

Date of decision: 03.09.2024

State through Aftab Ahmed SHO of the Central Mishti Mela Police Station  
Orakzai (complainant)

Versus

Muhammad Nazeer s/o Jannat Khan, Qaum Zakha Khel, District Khyber  
(accused facing trial)

**FIR No. 43 DATED 25.10.2023 U/S 9-D CNSA**  
**CENTRAL MISHTI MELA POLICE STATION, ORAKZAI**

**JUDGMENT**

1. Accused Muhammad Nazeer is facing trial in the subject case.
2. Aftab Ahmed SHO, complainant, along with other police officials during the routine patrolling were present on main road Mishti Mela to Sangra at Alwara Mela, where at about 1520 hours, a young man carrying a white color sack on his shoulder found coming, who on seeing the police party made an attempt to run but was overpowered and searched; that nothing incriminating was recovered during his personal search but the search of sack led the police to the recovery of 07 packets of charas wrapped with yellow scotch tape; that each packet was found 1000 grams making total quantity of 7000 grams; that 10 grams charas was separated from each packet for FSL, which were sealed into parcels no. 01 to 07 and the remaining 6930 grams charas along with recovered sack were sealed into parcel no. 8; that the videography of the scene was made through mobile phone which

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was saved in USB; that accused disclosed his name as Muhammad Nazeer son of Jannat Khan; that the case property was taken into possession and accused was arrested on the spot, hence, the FIR.

3. On completion of investigation, complete challan under section 9-D CNSA was put in court against the accused.
4. Accused was summoned. 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.
5. Prosecution produced following evidence in support of its case.
6. PW-1 is the statement of Aftab Ahmad SHO (complainant), who stated that he along with constables Muhammad Bilal and Rehman Gul recovered 07 packets of chars total weighing 7000 grams from the possession of accused, that he prepared recovery memo, Ex.PW-1/1, in presence of marginal witnesses; that the accused was arrested on the spot and his card of arrest was issued, Ex.PW-1/2; that he drafted the murasila respecting the entire incident, Ex.PW-1/3; that he has sent the murasila, recovery memo and card of arrest to police station for registration of FIR through constable Muhammad Bilal; that he took the USB, Exh.P2, vide recovery memo, Exh.PW 1/4, through which the recording of the occurrence was saved; that he charged the accused for commission of offence and submitted the completed challan, Ex.PW-1/5, against accused. One of the marginal witnesses to recovery memo was Muhammad Bilal Constable, who was examined as PW-2; he testified that the recovery was made from accused and documented vide recovery memo in his presence; that

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he took the murasila, recovery memo and card of arrest to the police station for registration of FIR. Aftab Hussain SI was investigation officer of the case, who entered in the witness box as PW-3; he has prepared and confirmed the site plan, Exh.PW 3/1, and recording the statements of witnesses; that he produced the accused before the learned Area Judicial Magistrate vide application, Exh.PW 3/2; that he has drafted application for FSL, Exh.PW 3/3, and prepared road permit certificate, Exh.PW 3/4; that vide application, Exh.PW 3/5, he produced the accused before the learned judicial magistrate for recording his confession; that he produced FSL report, Exh.PW 3/6, arrival and departure reports of seizing party, Exh.PW 3/7, and copy of register no. 19, Exh.PW 3/8; that on completion of investigation, he handed over the case file to SHO for onward submission of complete challan against the accused. Statement of Raheemullah was recorded as PW-4, who has taken the parcels no. 01 to 07 in sealed condition along with application and road permit certificate to FSL Peshawar. PW-5 is the statement of Amir Muharrir, who on receipt of murasila registered the FIR, Exh.PA; that he has kept the case property in *malkhana* for safe custody and made entries in register no. 19.

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Prosecution closed its evidence.

Statement of accused was recorded u/section 342 CrPC, wherein, he again denied from the charges and adhered to his innocence. In reply to a question, 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 Dy.PP for State argued that the prosecution has proved the case against accused beyond shadow of doubt; that prosecution witnesses are consistent in their statements in respect of recovery of narcotics from accused; that FSL result in respect of the samples, separated from contraband recovered from accused is in positive; that there is no malafide on the part of prosecution to falsely involve the accused in the instant case, therefore, he requested to award him maximum punishment.
11. Counsel for the accused argued that prosecution has failed to prove its case against accused beyond reasonable shadow of doubt; that prosecution evidence contradicts and suffers major inconsistencies; that prosecution case is full of doubts because prosecution witnesses materially contradicted each other; that complainant has not recorded the statement of any private person regarding recovery; 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. Keeping in view the arguments advanced by learned counsel for the parties, evidence and record before the court, it is held that the case of prosecution is this that the seizing officer has found the accused carrying 7000 grams of charas, whereat, he was arrested and case was registered against him. This is the bounden duty of prosecution to prove its case against accused beyond shadow of reasonable doubt from the interception of accused, his body search, his transportation of charas, taking of samples from recovered contraband, preparation of recovery memo, drafting the murasila, witnessing of the whole proceedings by marginal witnesses, registration of case, safe custody

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of recovered articles, investigation of the case and laboratory reports etc. To prove this, prosecution led the evidence of as many witnesses as it wished. In narcotics cases, recovery of contraband in presence of marginal witnesses, separation of parcels, its safe custody and finally the transmission to laboratory has become vital in these days to establish the factum of sending of the originally recovered article to the laboratory, presence of witnesses on the spot during the whole proceedings coupled with mode and manner about the commission of offence.

- 13. Contents of murasila report explicitly provides that the occurrence has allegedly taken place at 1520 hours, report was made at 1620 hours and the case was registered at 1630 hours, however, seizing officer (PW-1) in his cross-examination first stated that he has hand handed over the murasila to constable Muhammad Bilal at 1520 hours (03.20 pm) and on recollection rectified that it was 1620 hours (04.20 pm), which is not believable in either case and reflects that the occurrence had not taken place in the mode and manner alleged by the prosecution because in earlier stated situation it was the time of occurrence and the alleged recovery must have taken sufficient time in collections of samples, preparation of parcels, its sealing followed by preparation of recovery memo, card of arrest and drafting of the murasila, which each parcel took around 5 minutes as per marginal witness (PW-2) and total forty minutes in preparation of eight parcels. In the second stated situation, if it is presumed that the seizing officer has delivered the murasila report to Muhammad Bilal at 1620 hours for taking to the police station for registration of

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the case, then, it is not only contradictory to the time of report mentioned over the murasila report but also not practically possible because time of report and delivery of murasila to constable cannot be the same. On the contrary, Muhammad Bilal (PW-2) stated that he has left the spot for the police station at about 1630 hours (04.30 pm) and reached the police station within ten minutes on motorcycle, which avails that the FIR should not have been registered earlier than 1640 hours, however, it was found to be chalked at 1630 hours, which time is much earlier than the time witness has handed over the murasila to Muharrir of the police station for registration of case.

- 14. Moreover, according to daily diary report, Exh.PW 3/7, investigation officer (PW-3) has left the police station for the spot for investigation at 1645 hours and reached there at about 1700 hours, which is also evident from the statement of seizing officer, who stated that the investigation officer has reached to the spot at 1700 hours (05.00 pm), where after, he has started investigation of the case, however, Muhammad Bilal (PW-2) stated that the investigation officer has recorded his statement at about 1600 hours (04.00 pm), which is much prior than the time of arrival of investigation officer and the registration of case. If it is presumed that the marginal witness would have erred telling time of recording his statement or error might be result of typographical mistake, however, the witness further stated that they had left the spot after completion of whole proceedings at 1630 hours, which is time of chalking of FIR, which also removed the presumption about typographical mistake. At another place, he has contradicted his own statement stating that he has returned to the

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spot at 1710 hours (05.10 pm), then, how it was possible for the investigation officer to record his statement at 1600 hours. Similarly, if it is admitted that he has returned to the spot at 1710 hours and before the investigation officer had reached there, then, on the other hand, seizing officer stated that when the investigation officer had reached to the spot at 1700 hours, Muhammad Bilal, the murasila carrier (PW-2), had already reached there having availed the fact that Muhammad Bilal had reached back to the spot earlier than 1700 hours and all above discussed situation leads to inference that the murasila carrier (Muhammad Bilal) was not present with the seizing officer at the time of occurrence and the alleged offence has been committed in a mode and manner different from the stated one.

15. Besides above, in light of direction of the august Peshawar High Court, videography of whole recovery proceedings were allegedly made, which fact is also mentioned in the murasila report but when seizing officer was questioned about sealing of the parcels and USB in separate parcels, he stated that he has prepared 09 parcels and sealed the USB in parcel no. 9 and this fact was also mentioned in the murasila report but when he was confronted with the murasila report and recovery memo, there were total 08 parcels found to have been prepared and there was no mentioning of fact about preparation of parcel no. 9, which avails that the police has actually not made the videography at the time of occurrence but later on to cover up the lacunae and has mentioned the fact of making the videography of the proceedings as per routine matter. The fact of making videography becomes further doubtful when seizing officer and the marginal

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witness were questioned that as to who had made the videography, to which the earlier replied that Mekail has made the videography, whereas, the latter stated that it was made by Rehman Gul.

16. In similar manner, Muhammad Bilal, the marginal witness (PW-2), stated that he has made just one sign on recovery memo after the arrival of the investigation officer, whereas, record provides that he has signed two recovery memos. Even, otherwise, there is naked eye difference visible in his signatures over both the recovery memos and provides that one of the recovery memo was signed by someone else. Likewise, there is also improvement observed in the site plan prepared by investigation officer because the investigation officer (PW-3) has admitted that there is no date mentioned in the site plan available on police file, while, the site plan available on file suggests the incorporation of date later on with different ink and doubts the preparation of site plan by the investigation officer on the spot.

17. The murasila carrier (PW-5) admitted that there are no details about date and time nor there is any detail in column no. 3 of the register no. 19 that who had handed over the case property to him. Similarly, the Muharrir of the police station stated that he has handed over the parcels no. 1-7 to constable Raheemullah for chemical examination but at the same time admitted that there is no reference of direction from the investigation officer mentioned in the register no. 19. On the contrary, the parcels carrier (PW-4) stated that the investigation officer has handed over him the parcels no. 1-7 for transmission to the laboratory, which leads to the inference that Muharrir of the police station has not handed over the parcels no. 1-7 to constable

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Raheemullah on direction of investigation officer but had actually handed over to investigation officer, who then handed over to Raheemullah for transmission to laboratory for examination and thus safe custody and transmission of the parcels has become doubtful.

18. Record and statement of investigation officer (PW-3) provide that Raheemullah (PW-4) not only accompanied the investigation officer to the spot at the time of investigation but also allegedly took the samples of chars to FSL Peshawar for chemical analysis, however, the statement of PW-4 provide that he has just taken the test samples to the FSL Peshawar and did not participate in any other proceedings with investigation officer nor did visit the spot with the investigation officer, which not only vitiates his statement but also questions the veracity of statement of investigation officer, from which an adverse inference can be drawn that the investigation officer might not have paid any visit to the place of occurrence and had conducted the investigation in the police station.

19. Record provides that though a huge quantity of chars has been allegedly recovered from possession of accused but seizing officer (PW-1) admittedly did not mention the kind of chars in his report that as to whether the recovered chars was in *pukhta* or *garda* form and thus the material aspect of the case was found missing.

20. 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.


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21. 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 Muhammad Nazeer son of Jannat Khan 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.
22. Case property be destroyed after expiry of period of appeal/revision.
23. File consigned to record room after completion and compilation.

**Announced**  
03.09.2024

  
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**CERTIFICATE**

It is certified that this judgment of mine consists of ten (10) pages and each page is duly signed by me after necessary corrections.

**Announced**  
03.09.2024

  
**Abdul Basit**  
Additional Sessions Judge-II/JSC,  
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