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State Vs Shah Nawaz

Case FIR No. 103, Dated 16.10.2022 U/S 11 A CNSA, PS Kalaya.

**IN THE COURT OF SYED ABBAS BUKHARI, JUDICIAL
MAGISTRATE-II TEHSIL COURTS KALAYA, DISTRICT
ORAKZAI**

Case No. 02/3 OF 2023
Date of Original Institution: 17.12.2022
Date of Transfer In: 08.03.2023
Date of Decision: 31.07.2024

State through: Mujahid Khan ASI/NET police station Kalaya.

.....**Complainant**

VERSES

SHAH NAWAZ SON OF ZAHIR GUL, RESIDENT OF
QOM FERAZ KHEL, MIRBAK, TEHSIL LOWER
DISTRICT ORAKZAI.


....**ACCUSED FACING TRIAL**

Present: Mr. Nisar Ahmad, Assistant Public Prosecutor for
complainant.
Asad Ijaz Advocate, for accused facing trial.

JUDGMENT

31.07.2024

Through this judgement, I am going to dispose of the
instant case FIR No. 103, Dated: 16.10.2022 under
section 11 A CNSA, police station Kalaya, registered
against accused facing trial namely Shah Nawaz vide
Case.


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Civil Judge/JM-II
Tehsil Courts Kalaya

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1. Brief facts as per contents of FIR are that, on 16.10.2022 at about 14:00 hours, the complainant alongwith other police officials were on routine patrolling. During patrolling they were present at barricade, when two persons came from Feroz Khel Bazar side in suspicious condition, who were accordingly engaged. One person disclosed his name as Shah Nawaz son of Zahir Gul. Upon his body search, a white plastic shopper was recovered from his side pocket containing 15 grams of ice. The police officials separated 01 gm ice from the packet and sealed the same in parcel no. 01 for chemical analysis of FSL, whereas, remaining 14 gram ice was packed and sealed in a separate parcel no. 02. The second person disclosed his name as Arshad son of Fazal. Upon his body search, a white plastic shopper was recovered from his badda shalwar containing 15 grams of ice. The police officials separated 01 gm ice from the packet and sealed the same in parcel no. 03 for chemical analysis of FSL, whereas, remaining 14 gram ice was packed and sealed in a separate parcel no. 04. The local police took into possession the recovered case property through recovery memo Ex. PW-4/1. Accused were

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accordingly arrested and issued their card of arrest, which are Ex.PW-4/3. Murasila Ex. PW-4/2 was drafted and sent to the PS, which was converted into FIR which is Ex.PA. Hence, the case in hand.

2. After completion of investigation, separate complete challan was submitted by prosecution against the accused Shah Nawaz facing trial.
3. Accused was summoned. He appeared before the court and all the legal formalities under Section 241-A Cr. PC were complied with. Accused was formally charge sheeted. Accordingly he pleaded not guilty and claimed trial, hence prosecution was directed to produce its evidence.
4. Prosecution produced seven (06) witnesses to prove its case against the accused and thereafter closed its evidence.
5. **PW-01** is the statement of Moharrir Jameel Khan, which is reproduced as under;

Stated on oath that during the days of occurrence, I was posted as HC PS Kalaya L/Orakzai. On the day of occurrence I was present in the PS. Constable Sidar Ali brought the Murasila, which was sent by complainant

Mujahid Khan, which was handed over to me. I incorporated its contents into FIR EX.PA. After the registration of FIR I handed over the copy of FIR along with the relevant documents to the investigation staff for further proceedings. When complainant returned back to the PS, he handed over the accused along with the parcels No.1 to 04 containing ice to me. I kept the case property in Mal-Khana for safe custody and after the body search of the accused, I locked them in the lock-up of the PS. I have also entered the detail of the case property in register No.19. On 20.10.2022 I handed over the above parcels to the OII for onward transmission to the FSL. My statement was recorded by the IO u/s 161 Cr.PC.

6. **PW-02**, is the statement of OII Muhammad Hanif, which reproduced as under;

Stated on oath that after registration of the case, copy of FIR along with relevant documents were handed over to me for investigation. I proceeded to the spot and prepared site plan Ex. PB on pointation complainant. During spot inspection. I recorded statement of marginal witnesses Sidar Ali and Gul Rehman on the spot. I also


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recorded statement of Muhammad Jameel Moharrir in the PS. I also drafted an application for 04 days physical custody of accused before the Illaqa Magistrate, vide my application is Ex. PW-2/1, which is turned down. On 20.10.2022 I made an application for FSL and handed over the parcels no. 1 & 3 to Constable Abdul Wadood for FSL, vide my application is Ex. PW-2/2 and road certificate is Ex. PW-2/3. I also recorded statement of PW Abdul Wadood u/s 161 Cr. PC. I also received FSL report which is Ex. PZ. The uncle of accused also handed over to me school certificate which is Ex. PW-2/4. I also annexed copy of register no. 19 which is Ex. PW-2/5 and DD regarding arrival and departure containing 04 pages which is Ex. PW-2/6. Today I have seen all the relevant documents which are correct and correctly bear my signature. After completion of investigation, I handed over case file to SHO for submission of complete challan against accused Shanawaz and Juvenile challan against accused Arshad.

7. **PW-03**, is the statement of Abdul Wadood, which is reproduced as under;


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C/O Illaqa Magistrate
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Stated on oath that during the days of occurrence, I was posted as Constable at PS Kalaya. On 20.10.2022, parcel No. 01 & 03 containing 01-gram ICE each sample for FSL examination along with application and road certificate was handed over to me by IO. I took the same to FSL Peshawar and handed over the same to incharge FSL, Peshawar. Receiving signature and seal of incharge FSL Peshawar was obtained on road certificate which I handed over to IO on my return. My statement was recorded by IO U/S 161 Cr. PC.


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8. PW-04, is the statement of Mujahid Khan SI/complainant, which is reproduced as under;

Stated on oath that during the days of occurrence, I was posted as SI NET at Lower Orakzai. On the day of occurrence, I along with constable Sadar Ali Shah HC 481 and Gul Rehman 21 along with driver was present on Nakabandi near Bezot. Two persons coming from Feroz Khel Bazar side were stopped and during their body search, a plastic envelope in white color containing 15 grams ICE was recovered from the side pocket of accused Shah Nawaz. One gram separated for FSL and sealed in parcel no. 1 and remaining 14 grams was

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packed and sealed in parcel no. 2. Similarly a plastic envelope in white color containing 15 gram ICE was recovered from the Badda Shalwar of accused Arshad. One gram was separated for FSL and sealed in parcel no. 3 while remaining 14 grams ICE was packed and sealed in parcel no. 4. One seal was put inside the each parcel while by affixing 3/3 seals with the monogram SH. Recovery memo was prepared at the spot in the presence of marginal witness namely Sadar Ali Shah and Gul Rehman. Recovery memo is Ex. PW-4/1. Murasila was also drafted on the spot. Murasila is Ex. PW-4/2. I issued card of arrest of both the accused which is Ex. PW-4/3. Murasila was sent to PS through Constable Sidar Ali Shah for registration of the case. After registration of the case, site plan was prepared by IO on my pointation.

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 Civil Judge, Kalaya
 Tehsil Chowks Kalaya



9. PW-05, is the statement of Shal Muhammad SI PS Mishti Mela, which is reproduced as under;

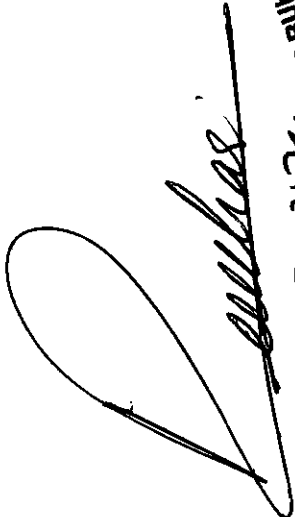
Stated on oath that during the days of occurrence I was posted as SHO PS Kalaya. After completion of investigation, I submitted complete challan against the accused. Today, I have seen the challan form which is

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correct and correctly bears my signature. Challan form is Ex. PW-5/1.


10. PW-06, is the statement of Sidar Ali Shah HC, which is reproduced as under;

Stated that on the day of occurrence, I was posted as HC PS Kalaya. I alongwith complainant SI Mujahid Khan were present on Nakabandi near Bezot bridge on main road HQ chowk to Kohat. Two persons coming from Feroz Khel Bazar side on foot were stopped on suspicious condition. The person disclosed his name as Shah Nawaz. Upon his body search, the complainant recovered ICE from his side pocket and took into possession the same through recovery memo Ex. PW-1/4. Upon weightment through digital scale it came out 15 gram ICE, out of which one gram was separated for FSL which was packed and sealed into separate parcel no. 1 while the remaining 14 grams ice was packed and sealed into separate parcel no. 2 which is Ex. P-1. The second person disclosed his name as Arshad. Upon his body search, the complainant recovered ICE from his side pocket and took into possession the same through recovery memo in my presence. Said ICE was weighed


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through digital scale and upon weighing it came out to be 15 grams ICE, out of which one gram was separated for FSL which is packed and sealed into separate parcel no. 3 while the remaining 14 grams ice was packed and sealed into separate parcel no. 4 which is Ex. P-2. By affixing 3/3 seals with monogram SH and put one seal inside the parcels. The complainant handed over to me murasila, card of arrest and recovery memo. I took the same to the PS and handed over to Moharrir of the PS in his office. My statement was recorded by IO u/s 161 Cr. PC.


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11. Afterwards, statement of accused U/S 342 Cr. PC was recorded, wherein he pleaded not his guilt and did not wish to be examined on oath. He did not opt to produce defense evidence.
12. Thereafter arguments were heard from both the sides.
13. Now on perusal of the available record, valuable assistance of learned APP for the state and learned counsel for the accused facing trial, this court is of the humble view that as for as time of occurrence is concerned, complainant has mentioned the same in Murasila as 14:00 hours. Complainant in his statement

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as PW-04 has deposed that he left his office at 12:00 hours and laid barricade 15 minutes prior to the occurrence i.e. at about 13:45 hours while on the other hand marginal witness constable Sidar Ali Shah when appeared as PW-06, has deposed in his cross examination that the nakabandi was laid at 14:40 hours i.e. after about 40 minutes of the alleged occurrence. Thus a vast contradiction exist between the statements of complainant and the marginal witness regarding the time of occurrence.

(Signature)
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 Civil Judge (M-I)
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As for as the name of driver of official vehicle is concerned, complainant has disclosed the same as Abdul Haq in his cross examination as PW-04 while on the other hand marginal witness has disclosed the name of driver as Munawar Khan in his cross examination as PW-06.

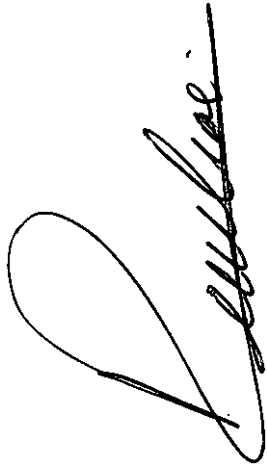
As for as body search of the accused facing trial is concerned, complainant (PW-04) has deposed in his cross examination that he searched accused Shah Nawaz while accused Arshad was searched by Sidar Ali Shah (PW-06). However when marginal witness appeared as PW-06 in the witness box, has deposed in his cross examination that both the accused were searched by

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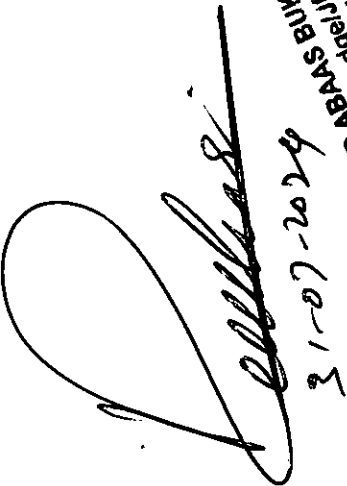
complainant (PW-04). These contradictory statements of the police officials, in whose presence the alleged occurrence had taken place and the alleged recovery was effected, make the occurrence doubtful.

As for as return of police party from the spot to the PS is concerned, Complainant has deposed in his cross examination as PW-04 that he returned to the PS at 16:00 hours while PW-06 (marginal witness) has deposed in his cross examination that they returned to the PS at 17:10 hours. It is also worth mentioning here that perusal of daily diary dated: 16.10.2022, available on the record as Ex-PW2/6 (page 2/4), would reveal that the time of arrival of complainant to the PS has been mentioned as 17:00 hours, which is in contradiction to the statements of PW-04 and PW-06. Furthermore, PW-01 has also deposed in his cross examination that accused were brought to the PS at 17:10 hours.

Furthermore, no private witness was involved in the instant case while the alleged occurrence took place on main road and thus the local police failed to comply with the mandatory provisions of section 103 Cr.P.C.


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Furthermore, no criminal history of the accused has is available on the record, which could suggest that accused previously remained involved in such offences. There exist a series of material contradiction in the statements of PWs which make the manner and commission of offence doubtful.


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Civil Judge (M-II)
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14. In light of the evidence produced by the prosecution to establish its case against accused facing trial, it has been noticed that there exist a vast contradiction in the statements of PWs and the witnesses were contradicted in material particulars. Furthermore, there exist dents in the prosecution case, which make the same one of further inquiry and thus, the prosecution miserably failed to bring home the charge against the accused facing trial.

15. As prosecution failed to prove its case against the accused facing trial beyond the shadow of doubt, therefore, by extending the benefit of doubt to the accused facing trial namely Shah Nawaz son of Zahir Gul, he is hereby acquitted from the charges leveled against him. As he is on bail, his Sureties are discharged from the liability of bail bonds.

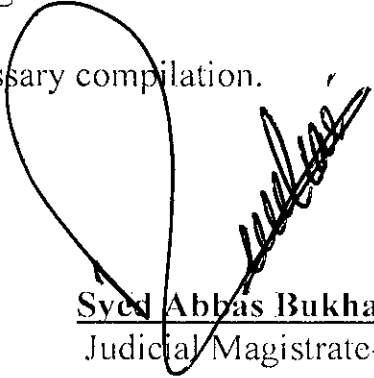
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16. Case property stands confiscated in favour of state.
17. Case file be consigned to Record room after its completion and necessary compilation.

Announced
31.07.2024

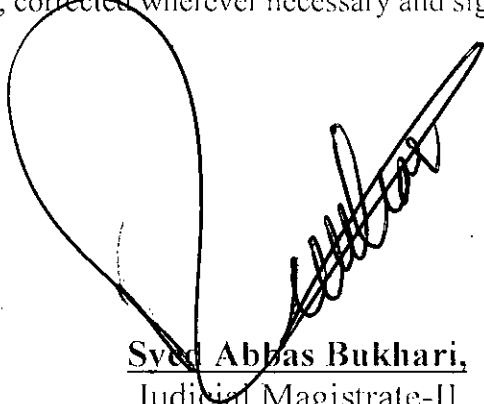


Syed Abbas Bukhari,
Judicial Magistrate-II
Tehsil Courts, Kalaya, Orakzai

CERTIFICATE

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

Dated: 31.07.2024.



Syed Abbas Bukhari,
Judicial Magistrate-II
Tehsil Courts, Kalaya, Orakzai