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

SPECIAL CASE NO. : 1/2 (J) OF 2024  
DATE OF INSTITUTION : 14.03.2024  
DATE OF DECISION : 24.09.2024

STATE THROUGH MUHAMMAD YOUNAS, POLICE STATION  
KUREZ.

.....(COMPLAINANT)

-VERSUS-

HAKIM ULLAH S/O. ZAMIN GUL AGED ABOUT 15 YEARS, R/O  
CASTE STORI KHEL, TARKHO SAM, DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL)

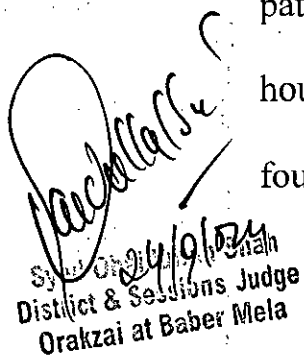
**Present:** Umar Niaz, District Public Prosecutor for state.  
: Sana Ullah Khan Advocate for accused facing trial.

**FIR No. 05**                      **Dated: 04.02.2024**      **U/S: 9 (d) of the Khyber**  
**Pakhtunkhwa Control of Narcotic Substances Act, 2019**  
**Police Station: Kurez**

**JUDGEMENT**  
**24.09.2024**

The accused named above faced trial for the offence u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019 vide FIR no. 05, dated 04.02.2024 of Police Station Kurez.

- (2). The case of the prosecution as outlined in Murasila based FIR is; that on 04.02.2024, the complainant, Muhammad Younas SHO along with constables Saif Ullah No. 1530 and Saleem Khan No. 1242 duly armed in a private motorcar driven by Inshad Ali No. 663 during routine patrolling were present on the spot where at about 1400 hours, a person standing with a white colour plastic sack was found in a suspicious condition who on seeing the police

  
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party, attempted to decamp from the spot but after covering some distance, he was overpowered. Upon checking of the said sack, the complainant recovered 32 packets of chars, wrapped with yellow colour scotch tape, each weighing 1000 grams, making a total of 32000 grams. The complainant separated 10 grams of chars with the help of a sharp object from each packet for chemical analysis through FSL, sealed the same in parcels no. 1 to 32 whereas the remaining quantity of chars weighing 15840/15840 were sealed in parcels no. 33 and 34 while the empty sack was sealed in parcel no. 35. The spot proceedings were filmed through a cellular phone in a USB which was packed and sealed by the complainant in parcel no. 36. Monogram of 'MY' was affixed/placed on all parcels. The complainant took into possession the case property vide recovery memo. The accused disclosed his name as Hakim Ullah s/o Zamin Gul r/o Caste Stori Khel, Tarkho Sam, District Orakzai who was accordingly arrested on the spot by issuing his card of arrest. Murasila was drafted and sent to the police through Constable Saif Ullah which was converted into FIR by Intikhab Ali MHC.

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

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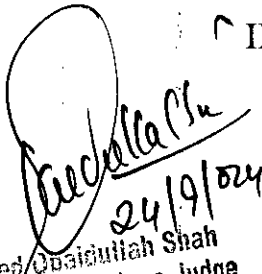
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pointation of the complainant. On 06.02.2024, he sent the samples of chars in parcels no. 1 to 32 containing 10 grams of chars to the FSL for chemical analysis through constable Khial Hussain/PW-1 along with application Ex. PW 5/2 vide road permit certificate Ex. PW 5/3 and recorded statements of marginal witnesses u/s 161 Cr.P.C. 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 was summoned through addendum-B from Sub-Jail, Orakzai, copies of the record were provided to him u/s 265-C Cr.P.C and formal charge was framed against him to which he 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 Hussain is PW-1. On 06.02.2024 he has taken parcels no. 1 to 32 containing samples of chars 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. Intikhab Ali MHC appeared in the witness box as PW-2. He has incorporated the contents of Murasila Ex. PA into FIR Ex. PA/1. He has

  
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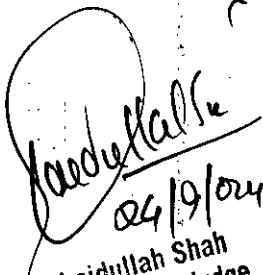
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received the case property i.e., chars in parcels no. 1 to 36 from the complainant and kept it in Mal Khana in safe custody by making its entry in register no. 19 Ex. PW 2/1. He has also made entry in daily diaries (DDs) Ex. PW 2/2 & Ex. PW 2/3 besides handed over parcels no. 1 to 32 to the Investigation Officer for sending it to the FSL.

III. Muhammad Younas SHO is the complainant of the instant 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 Saif Ullah appeared in the witness box as PW-4. He besides being eyewitness of the occurrence is the marginal witness of the recovery memo Ex. PC as well as vide which the complainant/PW -3 has taken into possession the case property. He also reiterated the contents of FIR in his statement.

V. Investigation 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 site plan Ex. PB on pointation of the complainant, recorded

  
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statements of witnesses u/s 161 CrPC, produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 5/4, sent the representative samples to the FSL along with the application Ex. PW 5/2 vide road permit certificate Ex. PW 5/3 and its result was received and placed on file by him as Ex. PK. He has also placed on file photographs of spot proceedings Ex. PW 5/5, the attested copies of register no. 19 Ex. PW 2/1, DDs regarding departure and arrival of police officials/officer from and to the police station and submitted the case file to the SHO for onward proceedings.

(5). Prosecution closed its evidence whereafter statement of the 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 are sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, the samples for chemical analysis

  
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have been transmitted to the FSL within the prescribed period which have been found positive for chars vide report of FSL Ex. PK. The complainant, the witness of the recovery, the official transmitted the sample to the FSL and the IO 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 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, the alleged chars have been shown recovered from his possession and the report of FSL supports 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 IO on the spot, as detailed by the prosecution on the case file. He further submitted that the safe custody of the case property and its transmission from the spot to the PS has not been proved. 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.

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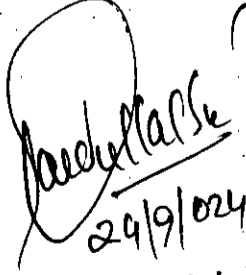
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(8). In the light of arguments advanced by the learned DPP for the State, arguments of the learned counsel for the defence and the available record, following are the points for determination of charge against the accused facing trial:

- (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 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 Head Constable Saif Ullah, the eyewitness witness of the occurrence and marginal witness of recovery memo Ex. PC 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 and handed over the documents to Intikhab Ali MHC/PW-2 who has registered the FIR as Ex. PA and Hashim Khan OII as PW-5 who have carried out the investigation in the instance.

  
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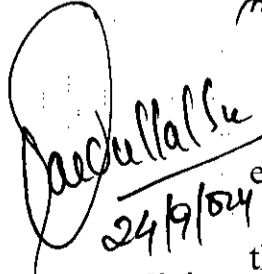
The recovery of contrabands chars have been effected from the accused facing trial on the spot and the complainant/PW-3, despite being well-known of the difference between chars "Gharda" and chars "Pukhta" has neither mentioned the details, nature, kind and colour of chars in the Murasila Ex. PA/1 nor in his court statement. The relevant portion of his cross-examination is as under;

*"I know the kind of chars which is paka and kacha. It is not mentioned in the Murasila that the recovered chars from the accused was chars paka or kacha. The chars was brown in colour".*

Moreover, as per contents of Murasila Ex. PA/1, thirty-two (32) packets of chars wherefrom the complainant/PW-3 separated 10 grams of chars from each packet with the help of a sharp object for chemical analysis through FSL but when this point was placed to the complainant/PW-3 in his cross examination by learned counsel for the defence, PW-3 replied that he has extracted the samples of recovered chars from each packet through his hands in the following words;

*"The samples were extracted through my hands; however, the plastic wrapping was opened through knife."*

The same point also admitted by the PW-4, eyewitness of the occurrence in his cross examination that that the complainant/PW-3 has extracted the samples from

  
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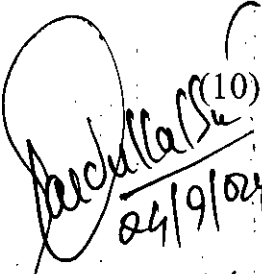


each packet through his hands. PW-3 also failed to explain that which sample of chars has been separated from which packet.

Moreover, as per copy of FIR available on file as Ex. PA, the occurrence has taken place at 1400 hours, the report has been made at 1540 hours while the FIR has been chalked out at 1630 hours; however, careful perusal of the statement of PW-4/the Murasila Carrier shows that he has taken the documents to the police station and handed over the same to the Moharrir at 0500 hours who registered the FIR. If the statement of PW-4 is admitted correct that how is it possible for a Moharrir of a police station to register FIR prior to the arrival of the Murasila Carrier. Furthermore, as per version of the complainant, the Investigation Officer has remained on the spot for about 30 minutes; however, this point has been contradicted by the marginal witness/PW-4 in his cross examination that the Investigation Officer remained with us on the spot for an hour.

The aforementioned statements of PWs testifying the prosecution version, create serious doubts regarding the mode and manner of the occurrence and mode and manner of recovery as alleged by the prosecution.

With respect to process of investigation allegedly conducted by investigation officer as PW-5, as per his statement as PW-5, after receipt of Murasila, card of arrest,

  
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recovery memo and copy of FIR from PW-2, the Moharrir of police station, he proceeded to the spot and prepared site plan Ex. PB on pointation of the complainant. The place of occurrence has been shown in site plan Ex. PB as a metaled road leading from Kalaya to Kohat near Tazi Khel Dagey Kaley which has also been shown in the contents of the Murasila Ex. PA/1 but as per version of the complainant/PW-3, the place where the occurrence has taken place, is known as Dayai Kaley Morr. The relevant portion of his statement is as follows;

*"I patrolled in the area including Zera check post, Gwadar check post, Tazi Khel check post and then reached to the spot which Dayai Kaley Mor (curve)."*

If the spot of occurrence is admitted as Dayai Kaley then how would the prosecution justify the statement of IO/PW-5 that the said village does not fall within the jurisdiction of the Kurez Police Station where the FIR was registered. The version of the complainant party regarding filming of the spot proceedings is that, the spot proceedings was captured by driver Inshad Ali through a cellular phone sealing it in parcel no. 36 but the Investigation Officer/PW-5 has neither recorded the statement of the said official nor has given any specific point to him in the site plan Ex. PB.

Besides, when a question was put to the complainant/PW-3

and Investigation Officer regarding the abbreviation of the

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CNSA in their cross examination both of the them failed to clarify the same, even the complainant/PW-3 stated that he does not know whether this law pertains to province or an entire country. Furthermore, as per version of the Investigation Officer, he had left the police station at about 1640 hours, accompanied by the two police officials namely, Zar Khan and Khial Hussain reaching the spot for investigation where they remained on the spot for an hour. However, when his teammate, constable Khial Hussain, was confronted with the assertion made by the IO/PW-5, he contradicted this fact that they had spent 02 hours on the spot proceedings.

In view of aforementioned dents noted in the case of prosecution, it is held that there are various doubts regarding the mode and manner of investigation allegedly conducted on the spot leading to failure of the prosecution to prove its case against the accused facing 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 Intikhab Ali MHC/PW-2, who deposited the same in Mal khana. The representative samples were handed over by Moharrir of the

  
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Police Station to the IO on 06.02.2024 who transmitted the same to FSL through constable Khial Hussain/PW-1 vide road permit certificate.

In order to prove its case, the prosecution produced Intikhab Ali MHC as PW-2, constable Khial Hussain as PW-1 and Hashim Khan as PW-5. The Moharrir/PW-2, though in his examination in chief has stated that he had received case property i.e., parcels no. 1 to 36 from the complainant, kept the same in mal khana of the police station in safe custody and made entry of the same in register no. 19 as Ex. PW 2/1 but as per Ex. PW 2/x-2, parcels no. 1 to 35 were sent to District Mala khana which fact has been contradicted by the IO while parcel no. 36 containing the USB has nowhere been mentioned which create a reasonable doubt in safe custody of the parcels. Even, the IO/PW-5 was not sure about the fact that who deposited the parcels in the District Mal Khan despite the fact that the name of Hashim Khan/PW-5 has been mentioned in Ex. PW 2/x-2 as a shifter of the case property. Ironically, the Investigation Officer of the instant case is unaware of the fact of deposition of the case property in the District Mal Khana, who stated that;

*"I do not know whether I have deposited the parcels in the District Mal Khana or otherwise."*

Furthermore, the representative samples i.e., parcels 1 to 32 vide road permit Ex. PW 5/3 and application Ex. PW

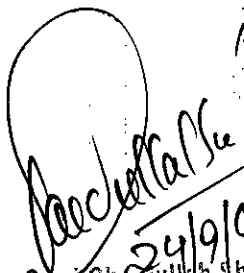
  
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5/2 addressed to the incharge FSL were handed over to the constable Khial Hussain for taking it to FSL, Peshawar. The IO in his cross statement as PW-5 stated that the Moharrir/PW-2 has prepared the road permit certificate Ex. PW 5/3 (receipt no. 22/21KB); PW-2 blatantly refused to have prepared the said receipt.

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

(12). 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. Similarly, the prosecution has also failed to prove the alleged mode and manner of the investigation carried out by the IO on the spot. All these facts lead to the failure of prosecution to prove the case against the accused beyond shadow of doubt. Therefore, the accused namely, **Hakim Ullah** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is in custody. He be released forthwith, if not required in any other case. The case property i.e., chars be

  
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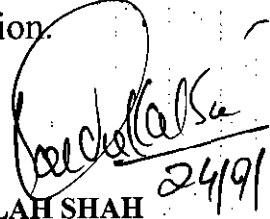
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destroyed after the expiry of period provided for  
appeal/revision in accordance with law.

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

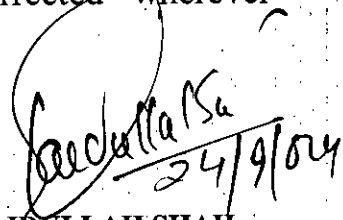
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**SYED OBAIDULLAH SHAH**  
Sessions Judge/Judge Special Court,  
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**CERTIFICATE**

Certified that this judgment consists of fourteen (14)  
pages. Each page has been read, corrected wherever  
necessary and signed by me.

Dated: 24.09.2024

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

