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

Case no. 16/03 of 2022

Date of institution: 26.05.2022

Date of decision: 05.10.2024

Date of consignment:

State through Muhammad Naseeb Khan SHO Central Mishti Mela Police Station Orakzai (complainant)

Versus

Muhammad Almas (aged about 46/47 years) s/o Musa Khan r/o Qaum Bar Muhammad Khel Khajori, PO Bara, District Khyber (accused facing trial)

**FIR No. 05 DATED: 30.01.2022 U/S 9-D CNSA & 468/471 PPC  
CENTRAL MISHTI MELA POLICE STATION, ORAKZAI**

**JUDGMENT**

1. Accused Muhammad Almas is facing trial in the subject case.
2. Muhammad Naseeb Khan SHO, the complainant, along with police officials during patrolling received information about smuggling of narcotics from district Khyber; that on said information, they had arranged a barricade, where at about 1630 hours, white color Hundai Shahzor Pick-up No. KP-2133/Sindh approached, which on being found suspicious was stopped for search; that the driver of vehicle was deboarded and upon search, the floor of the vehicle was found double, which was opened through screwdriver and screw wrench; that complainant recovered 130 packets of chars wrapped with yellow scotch tape from beneath the secret cavity made above the floor by affixing a floor on it; that each packet weighed 1000 grams of chars making total quantity to be 130000 grams, that 10/10 grams of chars was separated from each packet for the chemical analysis, which were sealed in parcels no. 1 to 130 while remaining 128700

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grams chars was sealed in parcel no. 131; that Accused was arrested on the spot; that the recovered vehicle was found tampered during chemical analysis; hence, the FIR.

3. On completion of investigation, complete challan was put in court.
4. Accused was summoned through *zamima bay*. On his attendance, the copies of the case furnished to accused under section 265-C Cr.PC.
5. The accused was charge sheeted u/s 9-D CNSA and 468/471 PPC, to which he pleaded not his guilt and claimed trial.
6. Prosecution produced following evidence in support of its case;
7. Muhammad Ayub, Muharrir of the police station was examined as PW-1, who kept the case property in the *malkhana* of the police station, parked the vehicle in the vicinity of police station and locked the accused lock-up of police station and made entries in register no. 19, Exh.PW 1/1. PW-2 is the statement of Jamshidullah, who has taken the parcels no. 1-130 to FSL Peshawar for chemical analysis and obtained its receipt on road permit certificate, Exh.PW 2/1. Statement of Akhtar Munir ASHO was recorded as PW-3, who after receiving *murasila*, card of arrest, and recovery memo from Naseeb Khan SHO, incorporated its contents in shape of FIR, Exh.PA-1. The statement of Muhammad Naseeb Khan SHO (complainant) was recorded as PW-4, who confirmed his initial report, Ex.PA-1, to be true; he has recovered and taken into possession the contraband and Shehzore Pickup vide recovery memo, Ex.PW-4/1; he arrested the accused and issued his card of arrest, Exh.PW-4/2; he drafted the *murasila*, Exh.PW 4/3, took photographs of the spot proceedings and produced same before the court, Exh.PA. After the completion of

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investigation, he submitted complete challan against the accused. Muhammad Riaz SI, investigation officer of the case appeared in the witness box as PW-5, who has prepared site plan, Exh.PW 5/1, on pointation of complainant and examined the witnesses under section 161 CrPC; he had produced the accused before the Area Judicial Magistrate vide applications, Ex.PW-5/2 & Exh.PW 5/3, and drafted application to FSL, Exh.PW 5/4; the FSL result is Exh.PK; he also produced daily diary, Exh.PW 5/5, the FSL result about the vehicle, Exh.PK/1, where after, sections 468 and 471 were added through memo, Exh.PW 5/6, and letter to DPO, Exh.PW 5/7, was made by him for issuing letter to excise; on completion of investigation, he handed over the case file to SHO for onward submission of complete challan against accused. Statement Khyber Khan HC was recorded as PW-6; he has testified that recovery was made from accused and was documented vide recovery memo in his presence; he took the recovery memo, card of arrest and murasila from the spot to the police station and handed over the same to ASHO Akhtar Munir for registration of FIR. PW-7 is Muhammad Asif, who is marginal witness to the recovery memo; he stated that 130 packets of chars weighing 130000 grams was recovered from Shahzore pickup driven by accused and taken into possession by complainant vide recovery memo, which he had signed. Muhammad Umar appeared as PW-8, who is co-marginal witness to the recovery memo and stated that on 30.01.2022, he along with Khyber Khan, Muhammad Asif and SHO stopped a Shahzore pickup and recovered 130 packets of chars weighing 130000 grams; that recovered Shahzore pickup along with

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registration book and keys were also taken into possession through recovery memo; that driver disclosed his name Muhammad Almas and that the recovery memo correctly bears his signature.

8. Prosecution closed its evidence. The statement of accused facing trial was recorded under section 342 CrPC, wherein, he again denied from the charges and adhered to his innocence. In replies to the questions, he neither wished to be examined under oath nor to produce evidence in defense.

9. Arguments heard and record perused.

10. Learned Dy.PP for State argued that the prosecution has proved the case against accused beyond shadow of reasonable doubt; that recovery of contrabands is proved from the vehicle driven by the accused; The prosecution witnesses are consistent in their statements in respect of recovery of narcotics and tampered vehicle from the possession of accused; That FSL result in respect of samples taken from chars and the vehicle are in positive; that there is no malafide on the part of the prosecution to falsely involve the accused in the case, thus, requested to award him maximum punishment.

11. Counsel for accused argued that prosecution has failed to prove its case against accused beyond shadow of doubt; that the prosecution evidence contradicts and suffers from major inconsistencies; that the prosecution case is full of doubts because prosecution witnesses have materially contradicted each other; that recovery is not effected from the immediate possession of accused; that accused has not confessed his guilt; that the case against the accused is not proved and request is made for acquittal of accused.

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12. Viewing the arguments advanced by learned counsel for parties, the evidence and record before the court, it is concluded that the local police on spy information had arranged a barricade and intercepted the Shehzore pickup, to be referred the vehicle, wherefrom recovered 130000 grams (130 kilograms) chars placed inside the secret cavity made over the back floor/farsh of the vehicle, which was taken into possession and accused was arrested on the spot. Huge quantity of chars has been recovered from the vehicle allegedly driven by the accused; therefore, the prosecution, in order to bring home the guilt against accused, has to prove its case against him beyond shadow of doubt from the moment of receiving the spy information by local police to the interception of accused, his transportation of chars in the vehicle, taking samples from chars, the preparation of recovery memo, the drafting of murasila, witnessing the whole proceedings by marginal witnesses, registration of case, safe custody of recovered articles, investigation of 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 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, which are the most important aspects of the case because in narcotics cases, the chain of safe custody is the fundamental as the report of Government Analyst is the main evidence for the purpose

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of conviction. The prosecution must establish that chain of custody was unbroken, unsuspecting, safe and secure. Any break in the chain of custody i.e. safe custody or safe transmission impairs and vitiates the conclusiveness and reliability of the report of the Government Analyst, thus, rendering it incapable of sustaining the conviction, the reliance is place on Zahir Shah versus The State (2019 SCMR 2004).

13. As per record, complainant has allegedly recovered 130 packets of chars, taken samples from each packet, packed and sealed each test sample in separate parcel bearing no. 1-130, whereas, the balance chars was collectively packed and sealed in parcel no. 131; however, there is nothing on record that which test sample was separated from which packet because the complainant (PW-4) has admittedly did not mark corresponding number to the packets from which the test samples were separated. Though extract of register no. 19 suggests that the chars and vehicle were handed over to Muharrir of the police station by complainant, who admitted to have signed the register but there is admittedly no signature of the complainant found in the said register. It is evident from statement of Muhammad Ayub (PW-1) that during those days he was posted as AMHC in the police station and Muhammad Fayaz was Muharrir of the police station, whereas, complainant had handed over him chars for safe custody in the *malkhana*, the vehicle along with registration book and key to park the same in the police station and accused to keep him in the police lock-up; however, statement of complainant and daily diary report no. 13, Exh.PW 5/5, provides that complainant had handed over the case property etc. to Muharrir of the police station and not to AMHC

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and himself locked the accused in police lock-up, which is in conflict with prosecution version. Likewise, in reply to a question, PW-1 stated that he had withdrawn the case property from the *malkhana* of police station and shown to the investigation officer, which he again placed back in the *malkhana*; however, neither this fact had been brought on record nor fact of withdrawal and placing back the case property in the *malkhana* is entered in register no. 19 of the police station. Investigation officer (PW-5) had also deviated stating that he had checked the case property inside the *malkhana* and did not bring outside from the *malkhana*, which not only vitiates the credibility of the statements of both witnesses but also questions the safe custody of the case property in *malkhana*. Still, contents of register no. 19 only provide about taking away the parcels no. 1-130 for chemical test through Jamshedullah (PW-2), who stated that the investigation officer had delivered him those parcels; however, there is no detail and record on file as to when, where and at what time the Muharrir of police station had handed over parcels no. 1-130 to investigation officer and for how long time these were kept with him. Although, Jamshedullah (PW-2), the sample carrier, stated that Muhammad Riaz/IO had handed over him those parcels but he admitted that this fact was not mentioned in his statement recorded under section 161 CrPC. Even, test samples carrier did not know as to where from the investigation officer had brought the test samples and handed over him, which leads to inference that those tests samples were already lying with the investigation officer that creates serious doubt about the safe custody of the test samples.

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14. On similar footings, there is no record as to how, when and by whom the parcel no. 131 was shifted from *malkhana* of the police station to the district malkhana of Orakzai at Baber Mela, Hangu nor any daily diary produced in this respect. There is admittedly no date and time mentioned about receipt of chars and the vehicle in the police station neither the particulars of the vehicle were entered in register no. 19. In same manner, there are no details given in the register no. 19 as to when, where and to whom the vehicle was handed over for chemical analysis and therefore the chain of safe custody of samples and delivery of the vehicle was found broken and transmission thereof to laboratory had become doubtful; therefore, the forensic laboratory report cannot be relied against the accused despite being positive.
15. Statement of Naseeb Khan (PW-4), complainant, is also very shaky and questions the truthfulness because he did not mention as to how did he bring the recovered vehicle to the police station unless asked by the defence counsel, to which he replied that his driver Sami-ul-Haq brought the vehicle from the spot to the police station; however, Muhammad Asif (PW-7), the marginal witness to recovery memo, contradicted him stating the official vehicle was driven back to the police station by the driver Sami-ul-Haq and the recovered vehicle was handed over to investigation officer on the spot. The statement of Khyber Khan (PW-6) also speaks about the presence of only four police officials with complainant including him, complainant, Umar and Asif and he did not show the presence of Sami-ul-Haq on the spot at the time of occurrence though he deposed that the recovered vehicle was brought by the driver of complainant but he did not

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remember his name, which is unbelievable because if he remembers names of all others then how come he can forget name of the driver. Here, it is important to note that neither in the murasila report nor in the site plan, the presence of driver Sami-ul-Haq had been shown, whereas, the investigation officer also did not bother to record the statement of Sami-ul-Haq nor his name is mentioned in the calendar of witnesses, which indicates that either constable Sami-ul-Haq was not present on spot at the time of occurrence or he had not brought the recovered vehicle from the spot to the police station.

16. In addition to above, complainant had admittedly did not mention the chases and engine numbers of the recovered vehicle in murasila report and recovery memo and to justify this he stated that it was duty of investigation officer; however, when he was confronted with the recovery memo, the chases and engine numbers were found present there, to which he improvised his statement deposing that he do not use to write chases and engine numbers in murasila report but mention it in the recovery memo. In same manner, at one place he stated that he did not pack and seal balance case property separately but little ahead deposed that he had sealed the balance case property in parcel no. 131. Similarly, in reply to a question, he stated that he could not tell that from whose mobile the pictures/snapshots, Ex.PA, were taken but afterwards stated that he had taken the pictures. If it is admitted that he had taken the pictures, then, he had also admitted that he was also visible in one of the picture, which is not possible because how one can take his own picture being not a *selfie*, which all facts above not only amounts to blowing hot and cold at the same breath but also questions his credibility.

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17. So far top floor/back *farsh* used as shield for placing the chars in the secret cavity is related, it is held that complainant had admittedly did not take the top floor of the vehicle used as a shield to create a secret cavity through recovery memo nor did he mention the width and length of secret cavity. Record provides that though a huge quantity of chars has been allegedly recovered from possession of accused but the complainant admittedly did not mention the color and kind of chars in his report that as to whether the recovered chars was in *pukhta* or *garda* form. Likewise, he did not mention in the *murasila* report as to where the accused was smuggling the chars nor this fact is brought on file by investigation officer in investigation.

18. There is also conflict about the time of occurrence because as per contents of the FIR, the occurrence had allegedly taken place at 1630 hours and report was made at 1720 hours availing the fact that the complainant would have delivered *murasila* etc. to constable Khyber Khan after 1720 hours or later; however, statement of Khyber Khan (PW-6) first provides that despite being police official he did not know that what documents were handed over to him by complainant and at second place, he deposed that complainant had handed over him those documents at 1630 hours (04.30 pm), which he took to the police station and case was registered, which is unbelievable because 1630 hours is the time of occurrence and it was not possible for seizing officer to conduct the whole recovery proceedings etc. in one minute duration, which reflects that the occurrence had not taken place in the mode and manner as alleged by the prosecution. Even, Khyber Khan deposed that he was standing at distance of 50 paces

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from the place of occurrence and the investigation officer had not given him any point in the site plan; however, the site plan suggests that he was shown present at point no. 4 and they were standing next to each other without any space. This is further strange to note that though Khyber Khan was shown present on the spot; however, he deposed that packing and sealing of the parcels were not made in his presence, which is totally in contrast to the contents of murasila because murasila report suggests that packing and sealing of parcels had already made in presence of Khyber Khan, where after, recovery memo, card of arrest and murasila were prepared and handed over to him for taking to the police station for registration of the case but his denial therefrom leads to adverse inference. Similarly, he deposed that first the investigation officer had left the spot having availed the fact that they had left the spot after investigation officer. More so, he deposed that investigation officer recorded his 161 CrPC statement on the spot but investigation officer (PW-5) contradicted him stating that he had only recorded the statement of Muhammad Asif, marginal witness to recovery memo, on the spot. On the contrary, Muhammad Asif (PW-7) stated that his statement was recorded by investigation officer in the police station.

19. Admittedly, in narcotics cases, recovery memo is the basic document, which should be prepared by the seizing officer at the time of the recovered articles, containing a list thereof, in presence of two or more witnesses and the memo to be signed by such witnesses at the spot. The main object of preparing the recovery memo on the spot and with signatures of the witnesses is to ensure that the recovery is

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effected in presence of marginal witnesses, honestly and fairly, so as to exclude the possibility of any false implication and fabrication. In this case, Muhammad Asif (PW-7), marginal witness to the recovery memo, stated that neither the complainant had given any number to the parcels in his presence nor he had signed the recovery memo on the spot but the SHO/complainant has taken his signature over the recovery memo in the police station. Even, he deposed that he signs only in English and not in Urdu, while, the recovery memo, Exh.PW 4/1, provides his signature in Urdu. Had he been present on the spot, he must have told that which document was prepared by complainant first and so on but he has shown ignorance to this fact and deposed that when he had signed the recovery memo, the co-marginal witness of the recovery memo was not present with him, which are not only glaring contradictions in the prosecution case but also provides that the recovery memo available on file was prepared somewhere else in absence of the marginal witnesses, it was signed by someone else at some other place and it is fake/forged one; therefore, recovery of the contraband in presence of marginal witnesses has become doubtful. There is also anomaly noted in the prosecution case because witness to the recovery memo (PW-7) deposed that complainant/SHO had handed over the pictures, Ex.PA, to investigation officer on the spot; however, investigation officer stated that complainant had delivered him the pictures in the police station. Undoubtedly, the prosecution has applied for declaring Muhammad Asif as hostile witness but the request was turned down & Muhammad Umar (PW-8), co-marginal witness to the recovery memo, was produced before the court but he

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alleged the recovery of contraband by complainant from the roof of the vehicle, which is completely in contrast to stated facts. Likewise, being marginal witness of the recovery proceedings, he was not aware about taking of any pictures about the occurrence, whereas, he has shown the recovered chars to be in different shapes as against the statement of complainant, who disclosed the recovery of all packets in round shape. This is further surprising to note that the occurrence had taken place on 30.01.2022 at 1640 hours and as per statement of complainant, the investigation officer had reached to the spot at 1810 hours, which is confirmed by investigation officer to be as 1800 hours, which was the time when the darkness is already prevailed and *Maghrib* prayer call had already been made at 1748 hours; however, Muhammad Umar told that when the investigation officer reached to the spot, it was a sunny day having sunlight, while, the investigation officer told the same as *Asr* time, which above facts are at variance and against the nature. On same footings, when the witnesses were asked about the time they had reached back from spot to the police station, Muhammad Umar deposed that they had reached back at 2010 hours, whereas, the complainant stated that they had reached back at 2030 hours. Moreover, complainant had categorically stated that he had recovered the registration book of the vehicle and had shown in the recovery memo but was not produced before the court; however, Muhammad Umar despite co-witness to recovery memo deposed that no registration book of the vehicle was recovered from the accused in his presence. Besides this, in reply to most of the questions, Muhammad Umar had shown ignorance,

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which depicts that either he was not present on the spot at the time of occurrence or had not participated in the recovery proceedings and was introduced in the case at later stage to fill up lacunae. Guidance in respect of above findings is taken from the case law enunciated in the Cr.A No. 1202-P/2023 decided by august Peshawar High Court, Peshawar on 16.05.2024 in criminal appeal titled Saeed Khan Vs The State and wisdom drawn from case law reported in 2022 SCMR 864.

21. As discussed above, the investigation officer had stated that he had only recorded the statement of Muhammad Asif on the spot but the complainant (PW-4) deposed that the investigation officer had also recorded the statements of Muhammad Umar and Khyber Khan on the spot. In like manner, Muhammad Asif (PW-7) stated that they had consumed 50 minutes on whole proceedings and investigation officer remained with them on the spot for about 30-40 minutes and they had left the spot for the police station at 1830 hours; however, complainant deviated stating that investigation officer had consumed around 1.30 hour on the spot. The complainant also deviated his own statement because at one place he stated that the investigation officer had visited the spot at 1810 hours but in reply to a question stated that they had returned from the spot at 1800 hours and reached to the police station at 1820 hours, while, daily diary, Exh.PW 5/5, speaks that they had reached back to the police station at 2030 hours, which all facts are so complex and so contradictory to ground the whole structure of the case; therefore, all above discussed suggests that prosecution has failed to prove the recovery of chars in the mode and manner from accused.

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22. Daily diaries, Exh.PW 5/5, are handwritten and allegedly reproduced from the original record but admittedly the original register of daily diaries was not produced before the court for court inspection nor the fact that complainant had left the spot for the bazar to develop the picture nor the arrival and departure of constable Khyber Khan is brought in the daily diaries. Even, neither the complainant nor the investigation officer had brought on file the photocopy of single daily diary. Likewise, there are no diaries about sending the vehicle from the police station to the FSL, which creates serious dent on prosecution case. Likewise, PW-1 admitted the non-production of original daily diary register and register no. 19 before the court and thus avails that prosecution failed to produce the register no. 19 of the police station so as to prove that the case property was ever received and kept in the *maalkhana* of the police station and thus further puts dent in prosecution story. The wisdom is drawn from Criminal Appeal No. 1253-P of 2019 titled Shakeel Ahmad Vs The State decided by august Peshawar High Court on 06.10.2022.

It is known to all that when recovery is effected from the accused, the seizing officer prepares the recovery memo, card of arrest and murasila report on the spot, where after, murasila is sent to police station for registration of the case and an FIR is registered. In the instant case, perusal of recovery memo and card of arrest of the accused provide that it contains the FIR number. More so, when the complainant was asked about mentioning of the name of accused over the parcel no. 131, he replied that he had properly mentioned the FIR number over the same, which suggests that writing of FIR

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number was not possible before registration of the case and therefore apprehends that recovery memo and card of arrest of the accused were prepared in the police station and not on the spot and further creates doubt about mode and manner of transportation of alleged contraband by the accused.

24. The investigation officer though stated that he had sent the recovered vehicle for FSL through SP Investigation but there is no application as such available on file showing his forwarding the vehicle for FSL. Likewise, the investigation officer at one place deposed that murasila report etc. were handed over to him by Muharrir of the police station, who was Muhammad Ayub in those days but at another place stated that Akhtar Munir/ASHO had handed over him those documents. This is astonishing to note that complainant had charged the accused for transporting narcotics and specifically mentioned the section of law i.e. 9-D CNCA in the murasila report, whereas, the investigation officer had conducted whole investigation about the alleged offence but neither they know the full form of the CNSA nor as to what is CNSA.

25. The investigation officer (PW-5) admitted that he had conducted the investigation in the case till submission of challan on 25.02.2022 and had written the diaries/*zimnis* up to *zimni* no. 6, whereas, the rest of the case was investigated by Asif Wazeer/OII/SI, who had prepared *zimnis* no. 6 to 9 as well as drafted and signed the applications dated 28.03.2022 and 19.04.2022, Exh.PW 5/6 (inadvertently mentioned as Exh.PW 5/5 in the evidence) and 5/7 respectively, on the basis of which the addition of charges was made in the case and the vehicle

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was sent to the Excise Department for verification; however, this is surprising to note that he had not been made witness of the case. Likewise, constable Sami-ul-Haq was an important witness of the case, who had allegedly driven the police vehicle, accompanied the complainant to the spot and shifted the recovered vehicle from spot to the police station but neither his statement was recorded by the investigation officer nor he was made witness of the case nor the prosecution bothered to record his statement, which not only creates serious doubts in the prosecution story but also leads to the adverse inferences ultimately supporting the plea of innocence of accused.

26. It is obvious from the evidence that Akhtar Munir after receiving the murasila had chalked out the FIR and AR is the monogram of his name. Naseeb Khan (PW-4) admitted that monogram of his name is NK; however, he had used monogram AR while sealing the parcels on the spot that creates doubt that as to why he had used monogram AR while sealing the parcels instead of the monogram of his name on one hand and also infers that he would have packed and sealed the parcels in police station; therefore, he had used the monogram of Akhtar Munir (AR) being in his access.

27. As far recovery of the vehicle and its ownership is related, it is held that though the vehicle is found tampered with different number but there is nothing on record as to from where the complainant had recovered the alleged registration book, nor did the registration book was produced before the court during evidence, nor is there any ETO report about the ownership of the vehicle so as to brought on record that who was the actual owner of the vehicle in question.

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28. It is settled principle of law that courts decide the disputes on the basis of evidence irrespective of nature of case. There is, however, difference of degree of the quantum of evidence to be considered in deciding civil and criminal disputes. In civil nature disputes, cases are decided on the basis of preponderance of evidence, while, in criminal nature disputes, cases are decided beyond any shadow of reasonable doubt irrespective of the heinousness of the offence. It is also 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, the wisdom is drawn from case law reported in 2023 YLR 2579 of Peshawar High Court [Mingora Bench] and 2023 MLD 2047 [Peshawar]

29. Record provides that accused was arrested for trafficking 130 kg chars in the vehicle; however, the evidence does not provide either the vehicle was registered in his name or any driving license was taken from his possession. Besides, registration documents of the vehicle had allegedly been recovered from the vehicle in question but it had not been clarified that from which place of the vehicle, it was recovered and who was owner of the vehicle as per registration documents. Even, no driving license had been recovered from the possession of accused; so in absence of any driving license, it could not be stated with certainty that who was on driving seat of the car at relevant time, so mere disclosing the accused as driver of the vehicle was not sufficient qua corroboration of the version of prosecution

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particularly when no recovery had been effected from the immediate possession of the accused. The material discrepancies existed in the statements of prosecution witnesses, which also gave a hint that the prosecution case was not free from doubt, the benefit of which is to be extended to accused, the wisdom is drawn from case law reported in 2022 MLD 1612 and the case law reported in 2023 PCrLJ 154 [Peshawar].

30. Record shows that though huge quantity of narcotics has purportedly been shown recovered from the secret cavity of the vehicle driven by the accused and it does not seem possible to implant such a huge quantity of chars against an accused; however, safe administration of justice also mandates the courts to be conscious of not the quantity of contraband but the quality of evidence produced before courts in reaching to correct and just conclusion of the case, wisdom is drawn from case law reported in 2021 PCrLJ 1461 [Peshawar]; therefore, it is held with heavy heart that the evidence discussed above not only doubts the mode and manner about the recovery of contraband and poor investigation by the police but also makes the arrest of accused and the seizure of narcotics extremely doubtful. Moreover, so many discrepancies and contradictions in the case of prosecution have been noted, the accumulative effect of which provides that prosecution has failed to bring home the guilt against the accused beyond shadow of reasonable doubt; therefore, in view of these facts, 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 Muhammad Almas

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son of Musa Khan is acquitted from the charges leveled against him. As the accused Muhammad Almas is in custody and behind the bars since his arrest; therefore, he be released forthwith if not required in any other case. *Zamima bay*, if any, issued against him in this case is cancelled.

31. Admittedly, the vehicle is found to have been deciphered with a different chassis number as per forensic laboratory report; therefore, the vehicle is confiscated in favour of the State and be dealt with in accordance with law and recovered parts are directed to be destroyed both after the expiry of period of appeal/revision.

32. Before parting with my judgment, I direct the Muharrir of this court to send one copy of this order to The Regional Police Officer/DIG, Kohat for information and second to The District Police Officer, Orakzai with a direction to go through the judgment, conduct inquiry in the case and take serious action against Naseeb Khan, the seizing officer/complainant, and Muhammad Asif & Muhammad Umar, the marginal witnesses to recovery memo, as per The Police Act, 2017 because either complainant had not adopted all necessary measures while making huge recovery of parts and documented a forged/fake recovery proceedings or the witnesses to recovery memo have deliberately went beyond the true facts paving way for acquittal of accused in such a heinous offence, which ultimately exploited the government machinery on one hand and losing the confidence of public over justice sector on another. Likewise, the way Muhammad Riaz, investigation officer, has conducted investigation in the case is also worth noting because this court while taking the judicial notice


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of timing of the prayers had reached to conclusion that when the investigation officer had visited the place of occurrence, a call for *Maghrib* prayer had already been made at 1748 and darkness had prevailed; however, the investigation officer was still living in a country, where he had observed sunlight/daylight and disclosed the same as *Asr* time when he reached there at 1800 hours in the month of January. Furthermore, he did not record the statements of driver Sami-ul-Haq being an important witness of the case. The DPO, Orakzai is also directed to make sure that the witnesses named above may not be made part of any recovery proceedings or assigned any task of investigation or to involve them in any serious matters so that ends of justice may be achieved and confidence of the public may be restored.

33. File consigned to record room after completion and compilation.


**Announced**  
05.10.2024

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

**CERTIFICATE**

It is certified that this judgment of mine consists of twenty one (21) pages. Each page is duly signed by me after necessary corrections.

**Announced**  
05.10.2024

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