

48

STATE VS ZARIF KHAN  
FIR No. 1 | Dated: 02.01.2024 | U/S: 9 (d) CNSA  
| Police Station: Mishti Mela

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

SPECIAL CASE NO. : 4/3 OF 2024  
DATE OF ORIGINAL : 02.02.2024  
DATE OF DECISION : 14.10.2024

STATE THROUGH NASEEB KHAN SHO, POLICE STATION  
MISHTI MELA

.....(COMPLAINANT)

-VERSUS-

ZARIF KHAN S/O AKBAR JAN, AGED ABOUT 50 YEARS,  
R/O CASTE SHEIKHAN, TAPA UMARZAI, MIANKHEL  
TANRA, DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL)


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

**FIR No. 01** Dated: 02.01.2024 U/S: 9 (d) of the  
Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019  
**Police Station: Mishti Mela**

JUDGEMENT  
14.10.2024

The above-named accused faced trial for the offence  
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR  
No. 01, dated 02.01.2024 of Police Station Mishti Mela.

(2). The case of the prosecution as outlined in Murasila  
based FIR is as follows; On 02.01.2024, the complainant  
Naseeb Khan SHO along with constables Fazal Shah and  
Shah Munawar in official vehicle driven by Mikael having  
laid a picket were present on main road leading from Mishti  
Mela to Dabori at Tagha Sam where at about 1530 hours a

  
14/10/2024  
Syed Obaidullah Shah  
District & Sessions Judge  
Orakzai at Baber Mela

(46)

STATE VS ZARIF KHAN

FIR No. 1 | Dated: 02.01.2024 | U/S: 9 (d) CNSA

| Police Station: Mishti Mela

person holding a white colour bag in his hand on way from Isa Khel towards the picket, on seeing the police party tried to run away but was overpowered. Nothing incriminating was recovered from his personal search; however, the search of the bag led the complainant to the recovery of 4010 grams of chars. The complainant separated 10 grams of chars from total quantity for chemical analysis through FSL, sealed the same into parcel no. 1 whereas the remaining quantity of chars weighing 4000 grams were sealed in parcel no. 2, by placing/affixing of monograms of 'NK' on both parcels. The spot proceedings were captured through a cellular phone converting it into USB which was sealed in parcel no. 3 and was taken into possession vide recovery memo Ex. PW 3/2. The complainant took into possession the recovered chars vide a separate recovery memo Ex. PW 3/1. The person disclosed his name as Zarif Khan s/o Akbar Jan who was accordingly arrested by issuing his card of arrest. Murasila was also drafted by the complainant which was sent to police station through Constable Shah Munawar; it was converted into FIR by Saeed MHC.

(3). After registration of FIR, it was handed over to Investigating Officer Shal Muhammad for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan on pointation of the complainant and recorded the statements of PWs u/s 161 Cr.P.C. On

Syed Obaidullah Shah  
District & Sessions Judge  
Orakza at Babar Mela  
14/01/2024

(47)

STATE VS ZARIF KHAN

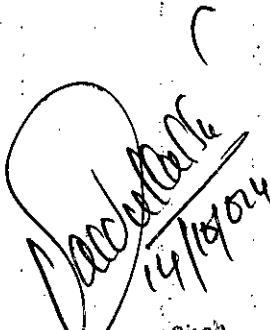
FIR No. 1 | Dated: 02.01.2024 | U/S: 9 (d) CNSA

| Police Station: Mishti Mela.

04.01.2024, the IO sent the sample of chars for chemical analysis to FSL through constable Saeed Khan, the result whereof was received and placed on file by him. After completion of investigation, he handed over the case file to SHO who submitted complete challan against the accused facing trial.

(4). Upon receipt of case file for the purpose of trial, the accused was summoned, copies of the record were provided to him in line with section 265-C CrPC and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned and examined. The gist of the evidence is as follow;

I. Muhammad Saeed MHC appeared in the witness box as PW-1. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He has received the case property from the complainant/PW-3 which was kept by him in mal khana in safe custody. The witness further deposed that he has recorded entry of the case property in Register No. 19 Ex. PW 1/1, entries in the DDs which is Ex. PW 1/2 and has handed over the sample of the case property to the IO for sending it to FSL on 04.01.2024.

  
14/01/2024  
Syed Obaidullah Shah  
District & Sessions Judge  
Orakzai at Baber Mela


(48)

STATE VS ZARIF KHAN

FIR No. 1 | Dated: 02.01.2024 | U/S: 9 (d) CNSA

| Police Station: Mishti Mela

- II. Constable Saeed Khan appeared as PW-2. He has taken the sample of chars in parcel no. 1 to the FSL for chemical analysis on 04.01.2024 and after submission of the same, he has handed over its receipt to the IO.
- III. Naseeb Khan 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 3/5 against the accused facing trial in the instant case.
- IV. Constable Shah Munawar appeared as PW-4. He besides being eyewitness of the occurrence is marginal witness of recovery memo Ex. PW 3/1 as well vide which the complainant/PW-3 has taken into possession the recovered chars. He also reiterated the contents of FIR in his statement.
- V. Investigating Officer Shal Muhammad 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 Ex. PB on pointation of the complainant, recorded the statements of witnesses on the spot, produced the accused before the court of Judicial

  
14/01/2024  
Syed Obaidullah Shah  
District & Sessions Judge  
Orakzai at Baber Mela

49

STATE VS ZARIF KHAN


FIR No. 1 | Dated: 02.01.2024 | U/S: 9 (d) CNSA

| Police Station: Mishti Mela

Magistrate vide his application Ex. PW 5/1, sent the representative sample to FSL along with application addressed to the incharge FSL Ex. PW 5/2 and road permit certificate Ex. PW 5/3 and result of the same Ex. PK was placed on file by him, placed on file copy of Register No. 19 Ex. PW 1/1, copies of daily diaries Ex. PW 1/2 and submitted the case file to SHO for onward proceedings.

(5). Prosecution closed its evidence whereafter the statement of 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 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 sample for chemical analysis has been transmitted to the FSL within the prescribed period and it has been found positive for chars vide report of FSL Ex. PK. The complainant, the witnesses of the recovery, the official transmitted the sample to the FSL and the IO have

  
14/1/2024  
Syed Obaidullah Shah  
District & Sessions Judge  
Orakzai at Baher Mela

(50)

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 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 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). The prosecution in order to establish its case in the alleged mode and manner, has presented the testimonies of Naseeb Khan SHO, the complainant of the case, as PW-3 who has reiterated the contents of Murasila Ex. PA/1 and Constable Shah Munawar, the eyewitness of the occurrence and marginal witness of recovery memos Ex. PW 3/1 and Ex. PW 3/2, as PW-4 who besides corroborating the

  
14/01/2024  
Syed Obairullah Shah  
District & Sessions Judge  
Orakzai at Baber Mela

(S)


STATE VS ZARIF KHAN  
FIR No. 1 | Dated: 02.01.2024 | U/S: 9 (d) CNSA  
| Police Station: Mishti Mela

narrative as outlined in the FIR, has stated to have taken the documents to the police station for registration of FIR and handed them over to Muhammad Saeed MHC/PW-1 who has registered the FIR Ex. PA.

The complainant/PW-3, at the outset of his cross examination, has stated that he had departed from the police station at about 09:10 am and made his entry in the daily diary (DD). However, no documentary evidence in the form of a DD is available on file which validates this statement, raising doubts regarding the presence of the complainant's party on the spot of occurrence. Moreover, as per Murasila Ex. PA/1, the distance between the spot of occurrence and the police station is 2/3 kilometres (km) and the report has been made at 1630 hours, yet, paradoxically, the Murasila Carrier/PW-4, according to the complainant/PW-3, left the spot at 16:30 hours, presenting an inconsistency. This raises questions about how two interdependent tasks could have been performed simultaneously or how the distance of 2/3 km could have been covered within no time<sup>1</sup>.

In addition to this, the complainant/PW-3 in his examination in chief has stated to have handed over the documents to Constable Shah Nawaz but the name of this constable is nowhere mentioned in the case of prosecution.

He stated that;

  
14/01/2024  
Syed Chaikhan Shah  
District & Sessions Judge  
Orakzai at Mishti Mela

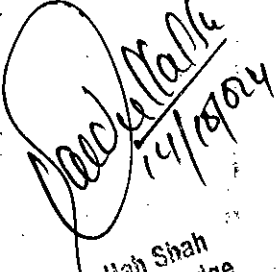
<sup>1</sup> 2023 MLD 2047

S2

STATE VS ZARIF KHAN  
FIR No. 1 | Dated: 02.01.2024 | U/S: 9 (d) CNSA  
| Police Station: Mishti Mela

*"I handed over the above-mentioned documents to constable Shah Nawaz for onward submission to Moharrir of the PS for registration of FIR."*

The contents of Murasila shows that the spot proceedings were captured through a mobile phone which was sealed in parcel no. 3. Astonishingly, the complainant/PW-3 in his cross examination affirmed that he himself made the videography creating further doubt that how an individual who is engaged in recovering contraband from the accused could simultaneously record the proceedings besides this stance of the complainant/PW-3 is contradicted by marginal witness/PW-4, claiming that the video was made by driver Mikael. The prosecution asserts that the complainant/PW-3 prepared Murasila, card of arrest and two separate recovery memos, after which a recovery memo with Murasila and card of arrest was handed over to the marginal witness/PW-4 for taking it to the police station. However, both PW-4, who transported the documents and PW-1, who received them at the police station, were unable to clarify which of the two recovery memos i.e., recovery memo of the alleged recovered chars in parcel no. 2 or recovery memo of USB in parcel no. 3, was actually taken to the police station.

  
14/01/2024  
Syed Obaidullah Shah  
District & Sessions Judge  
Orakzai at Baber Mela

The complainant/PW-3 contradicted his own document i.e., card of arrest in terms of scripting the cell



(53)

STATE VS ZARIF KHAN  
FIR No. 1 | Dated: 02.01.2024 | U/S: 9 (d) CNSA  
| Police Station: Mishti Mela

number and CNIC number of the accused on it. These two numbers are mentioned on the card of arrest, but yet PW-3 denied having written either of them. His words are rewritten below;

*"I have not mentioned the cell number and CNIC number in the card of arrest."*

Furthermore, during cross-examination, the eyewitness/PW-4 further weakened the prosecution's case by stating that he did not observe the colour of the recovered chars. This inconsistency raises further doubts, as it is difficult to comprehend how an eyewitness, who was present on the spot, could fail to notice such a crucial detail regarding the contraband. The relevant portion of his statement is reproduced below;

*"I have not seen the colour of recovered contraband."*

According to the details in Murasila Ex. PA/1, the accused, upon noticing the police party, attempted to flee from the scene. However, when the complainant/PW-3 was questioned about the accused trying to escape, he denied it by stating that;

*"The accused did not try to escape."*

Above all, the eyewitness/PW-4, in whose presence the contrabands were seized by the complainant/PW-3 vide recovery memo Ex. PW 3/1 which was allegedly signed by

*Syed Obaidullah Shah*  
14/01/2024

Syed Obaidullah Shah  
District & Sessions Judge  
Orakzai at Baber Mela

54

STATE VS ZARIF KHAN

FIR No. 1 | Dated: 02.01.2024 | U/S: 9 (d) CNSA

| Police Station: Mishti Mela


him on the spot as per version of the complainant/PW-3, further shattered the case of prosecution regarding signing the above-mentioned document. He stated that;

*"I have only signed the recovery memo in the PS."*

All the aforementioned facts significantly undermine the case of prosecution in respect of the mode and manner of recovery and the mode and manner of proceedings conducted on the spot.

- (9). With respect to process of investigation on the spot, as per contents of Murasila Ex. PA/1, the IO/PW-5 has visited the spot and prepared site plan Ex. PB on pointation of the complainant/PW-3. Nevertheless, careful examination of the site plan Ex. PB reveals that the place of occurrence is a straight road leading to a crucial question: how could a person in possession of a large quantity of chars, visible to the police, proceed directly towards them without any attempt to evade detection?

PW-4 on one hand stated to have taken the documents to the police station at 1630 hours while on the other hand stated that the IO/PW-5 has recorded his statement u/s 161 CrPC at the same time. PW-5 in his cross examination has mentioned the time of his arrival on the spot as 1730 hours which is totally negated by the marginal witness/PW-4. According to this PW, the IO/PW-5 had left the spot at about 1700 hours which definitely means that he

  
14/01/24  
Syed Obaidullah Shah  
District & Sessions Judge  
Orakzai at Baber Mela


55

STATE VS ZARIF KHAN  
FIR No. 1 | Dated: 02.01.2024 | U/S: 9 (d) CNSA  
| Police Station: Mishti Mela

has arrived on the spot prior to 1700 hours. This discrepancy is compounded by further contradictions regarding the time of the IO's arrival by PW-3 who testified that the IO arrived at 18:30 hours. These contradictions shows that either the occurrence has not taken place on the spot or the IO has not visited the spot at all.

Though the FSL report Ex. PK regarding chars is positive but these glaring contradictions between the statements of prosecution witnesses and the record significantly undermine the strength of the prosecution's case and the FSL report alone, in light of these discrepancies, cannot be regarded as sufficient ground for the conviction of the accused.

- (10). The investigating officer failed to obtain any documentation regarding the accused's prior involvement in similar offenses, nor were any records produced to indicate that the accused had previously been charged or convicted in such cases. Therefore, it is reasonable to conclude that the accused is a first offender. In light of this, it is crucial to take this into account when assessing the evidence presented by the prosecution. As 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

  
Syed Obaidullah Khan  
District & Sessions Judge  
Orakzai at Baber Mela  
14/01/24

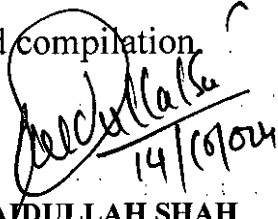
56

**STATE VS ZARIF KHAN**  
**FIR No. 1 | Dated: 02.01.2024 | U/S: 9 (d) CNSA**  
**| Police Station: Mishti Mela**

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, **Zarif Khan** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is on bail. His bail bonds stand cancelled and his sureties are discharged of the liabilities of bail bonds. Case property i.e., chars be destroyed after the period provided for appeal/revision.

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

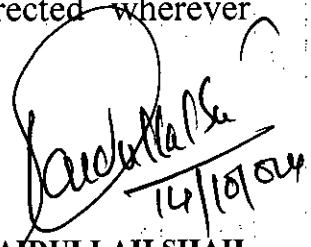
Dated: 14.10.2024

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

**CERTIFICATE**

Certified that this judgment consists of twelve (12) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 14.10.2024

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

