

**IN THE COURT OF BAKHT ZADA**  
**ADDITIONAL SESSIONS JUDGE-I, ORAKZAI AT BABER MELA**

SPECIAL CASE NO. : 10/02  
DATE OF ORIGINAL INSTITUTION : 06.12.2023  
DATE OF PRESENT INSTITUTION : 17.10.2024  
DATE OF DECISION : 26.11.2024

STATE THROUGH NASEEB KHAN SHO POLICE STATION  
MISHTI MELA  
.....(COMPLAINANT)

**-VERSUS-**

KHAN ZADA S/O ASHRAF KHAN, RESIDENT OF QAUM STORI  
KHEL, ANJANI, DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL)

**JUDGEMENT**

**26.11.2024**

Accused Khan Zada S/O Ashraf is facing trial in case FIR No. 07, dated 22.02.2022, registered U/S 468, 471 PPC of PS Mishti Mela, District Orakzai.

- (2). Facts of the prosecution case as reported in Murasila by the complainant Naseeb Khan, SHO are that he along with Constables Murad Gul No. 1264, Muhammad Umar No. 252 and Khyber Khan No. 170 were on patrolling in the official vehicle and in the meanwhile the complainant received spy information that today ICE and Chars would be smuggled in huge quantity through pick-up vehicle. The complainant on receiving the said information along with other police contingent laid barricade for the purpose of checking at Serhi Mord main road Sangrah. At about 1330 hours, one white colour pick-up bearing registration No. W-7481/Peshawar came from Mishti side which was stopped by the

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complainant for the purpose of checking. The driver of the vehicle disclosed his name as Khan Zada, while two other persons present in the front seat of the vehicle disclosed their names as Aqib and Kamal Hussain. The rear portion/body of the vehicle was found in suspicious condition which was searched by opening the same through screw driver, screw wrench and plier. On opening the body, fourteen (14) white colour plastic boxes wrapped with white colour scotch tape and twenty (20) packets of Chars wrapped in yellow colour scotch tape were recovered from the secret cavities of the vehicle. The plastic boxes were checked and high quality ICE was recovered. Each box was found to be 1770/1770 grams on weighing through digital scale and the total was found to be 24780 grams. One gram ICE from each box was separated and sealed the same in parcel No. 1 to 14 for sending the same to FSL for chemical analysis. Remaining ICE were sealed into parcel No. 15 to 28. Similarly, each packet of Chars was found to be 1250/1250 grams and total was found to be 25000 grams by weighing through digital scale. 10/10 grams from each packet were separated and sealed the same into parcel No. 29 to 48 for sending the same to FSL for chemical analysis, while remaining Chars 24800 grams was sealed into parcel No. 49. One monogram seal of "AR" was placed in each parcel, while three "AR" monogram seals

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were affixed on each parcel. Body search of the accused was conducted, but nothing incriminating was recovered. National ID cards presented by all the three accused facing trial and during initial interrogation, the pick-up driver disclosed that the vehicle and recovered narcotics including ICE and Chars are the ownership of one Younas S/O Sherdil, caste Stori Khel. All the recovered case property i.e., ICE, Chars, registration book of the vehicle, three CNICs of the accused were separately taken into possession and sealed in parcel No. 50. The pick-up bearing registration No. W-7481/Peshawar along with keys was taken into possession through memorandum of recovery. All the three accused were arrested. Their card of arrest was prepared. Accused Younas is at large, while Murasila, card of arrest and recovery memo were sent to PS through constable Khyber Khan No. 170 for registration of FIR.

- (3). Later on, the IO sent the vehicle to FSL for chemical analysis of its chassis through application dated 26.02.2022. Similarly, vide application of the even date, the registration book of the vehicle was also sent to Excise & Taxation Officer for verification and determination of ownership of the vehicle. The Excise & Taxation Officer vide letter No. 7481/ETO-V/Peshawar, reported that the registration certificate is fake/ bogus and not issued by their office. FSL report of the vehicle also received,

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wherein it was opined that :-A forged chassis plate bears No. "YN80-0002095" has been pasted with adhesive material was removed and the original chassis No. became visible after chemical treatment which is "YN86-1009504". After receiving the FSL and report of the concerned Excise & Taxation officer, the investigation officer issued parwana dated 13.04.2022 for addition of Section 471, 468, 420 PPC in the FIR.

- (4). After registration of FIR No. 07, dated 22.02.2022, registered U/S 11 (C) CNSA, 9-D CNSA, 420, 468, 471 PPC of PS Mishti Mela, District Orakzai, the same was handed over to Investigating Officer, who visited the spot, prepared site plan Ex. PW-6/1 on pointation of complainant and recorded his statement U/S 161 Cr. PC. He also recorded statements of PWs U/S 161 Cr. PC. On 24.02.2022, he sent parcel No. 1 to 14 (ICE) and 29 to 48 (Chars) for chemical analysis vide his application Ex. PW-6/5 through constable Saeed Khan No. 167(PW-01), vide road permit certificate Ex. PW-6/6, the FSL report whereof is placed on file as Ex. PW-6/21. The ETO report in respect of the vehicle was sought through application dated 26.02.2022 Ex. PW-6/12, similarly, permission for FSL/chemical analysis of chassis number of the vehicle was sought through another application Ex. PW-6/17 of the even date 26.02.2022. The report of ETO is Ex. PW-6/14 and FSL report of the vehicle is Ex. PW-6/18. After

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completion of investigation, the case file was handed over to SHO Naseeb Khan, who submitted complete challan Ex. PW-7/2 against the accused.

(5). Accused Khan Zada being in custody was summoned through Zamima Bay, who was produced before the court.

(6). Provisions of 265-C of the Code of Criminal Procedure, 1898 was complied with and copies of documents supplied to the accused free of cost. Formal charge against the accused was framed on 31.05.2022 where after, the prosecution witnesses were summoned and statements of PWs (1). Jamshed Ullah Constable, (2). Koko Rehman, (3). Muhammad Ayub, ASI, (4). Naseeb Khan, Inspector/SHO PS Mishti Mela were recorded as PW-01 to PW-04 respectively.

(7). My learned predecessor in the court vide his order dated 25.11.2023 realized after perusal of the case file that the accused has been charged under special and general laws in the same set of challan, therefore he directed the prosecution to submit separate challans under special law (9-D KP CNSA and 11-A CNSA) and general law (420, 468, 471 PPC) which was submitted.

(8). Fresh formal charge was framed against the accused Khan Zada for the offence U/S 468/471 PPC on 14.11.2023, to which he pleaded not guilty and claimed

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trial. Where after, the prosecution produced and recorded the statements of as many as eight (08) PWs. The gist of the evidence is as follow;

- I. PW-01 Saeed Khan FC: He has taken parcel No. 1 to parcel No. 14 and parcel No. 29 to parcel No. 48 containing alleged ICE and Chars to FSL on 24.02.2022 along with application and transit receipt to FSL and delivered the same to the concerned official and obtained acknowledgment receipt in respect of the same. He is also marginal witness to the pointation memo Ex. PW-1/1 vide which accused Khan Zada, Aqib and Kamal Hussain made pointation to the investigation officer. His statement was recorded U/S 161 of the Code of Criminal Procedure, 1898. He was cross examined by the defense counsel.
- II. PW-02, Koko Rehman. On 22.02.2022, he received Murasila, recovery memo and card of arrest from Naseeb Khan SHO, PS Mishti Mela and one, Muhammad Saeed incorporated the contents of Murasila into FIR Ex. PA at his dictation. His statement was recorded U/S 161 of the Code of Criminal Procedure, 1898 and was cross examined by the defense counsel.

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III. PW-03, Muhammad Ayub ASI, PS Mishti Mela.

He was posted as AMHC of the PS Mishti Mela. SHO, Naseeb Khan on 22.02.2022 brought the case property consisted of parcel No. 1 to 50 duly packed and sealed having monogram of "AR" and handed over the same to him. Vehicle No. W-7481/ Peshawar was also handed over to him. He made entry of the above-mentioned case property in register-19. The attested copy of the relevant page of register-19 is Ex. PW-3/1. He kept the case property in Mall Khana and put the accused in the Lock-up of the PS. The vehicle was parked in the premises of the PS. He also received parcel No. 51 from the Incharge Investigation and kept the same in Mall Khana. He handed over the case property to investigation officer on 23.02.2022 for producing the same before the Ilaqa Judicial Magistrate and thereafter, depositing the same in District Mall Khana. DD No. 5 to 12 dated 23.02.2022 consisted of 03 pages Ex. PW-3/2 were entered in this regard. On 24.02.2022, he handed over parcel No. 1 to 14 each containing 1/1-gram ICE duly packed and sealed and parcel No. 29 to 48 each containing 10/10-grams Chars, to the IO for sending the same to FSL, Peshawar for chemical

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analysis. His statement was recorded by the IO U/S 161 of the Code of Criminal Procedure, 1898. He was thoroughly cross examined by the defense counsel.

IV. PW-04, Constable Jamshed Ullah. He stated that on 22.02.2022, he along with constable Abdullah were present with Muhammad Riyaz OII in the PS and in the meanwhile, Naseeb Khan SHO handed over a plier, screw driver and screw wrench to the IO which were sealed into parcel No. 51. The recovery memo was signed by him and his co-marginal witness Constable Abdullah. His statement was recorded U/S 161 of the Code of Criminal Procedure, 1898. He was cross examined by the defense counsel.

V. PW-05, Constable Khyber Khan: He took the Murasila, handed over to him by the SHO at the place of occurrence, to PS and he handed over the same to Moharrir, Muhammad Ayub and returned to the spot. His statement was also recorded U/S 161 of the Code of Criminal Procedure, 1898. He was also cross examined by the defense counsel at length.

VI. PW-06, Muhammad Riaz SI/OII: He was posted as OII at PS Mishti Mela. After receiving copy of

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FIR, Murasila, card of arrest and recovery memo, he proceeded to the spot and prepared the site plan at the pointation of the complainant Naseeb Khan SHO. The site plan is Ex. PW-6/1. The SHO shown to him the recovered contrabands in sealed condition, the recovered vehicle/pick-up bearing registration No. W-7481/Peshawar and the arrested accused. He recorded the statements of PWs U/S 161 of the Code of Criminal Procedure, 1898, on the spot. On return to PS, he took into possession the plier, screw driver and screw wrench vide recovery memo from the SHO and sealed the same into parcel No. 51 Ex. P1, the recovery memo is Ex. PW-6/2. He recorded the statements of the marginal witnesses 161 Cr. PC. The accused along with case property was produced before the Ilaqa Judicial Magistrate with application for grant of physical custody and three days custody was granted. The application is Ex. PW-6/3. Vide application Ex. PW-6/4, warrant U/S 204 Cr. PC was issued against accused Muhammad Younas. He recorded the statement u/s 161 Cr. PC of the DFC concerned regarding service of the warrant. PW-6 sent samples parcels no. 1 to 14 and 29 to 48 for chemical analysis to FSL vide application and

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road certificate Ex. PW 6/5 and Ex. PW 6/6 respectively through constable Saeed Khan (PW-01). Statements of Saeed Khan and Constable Muhammad Ayyub Moharrir were recorded u/s 161 Cr. PC. He obtained CDR data of all the accused vide his application Ex. PW 6/7 and the CDR consisted of 17 pages is Ex. PW 6/8. He went to the spot where the accused made pointation of the place of occurrence. The pointation memo is already exhibited PW 1/1. Search memo of the Hujra of accused Muhammad Younas was prepared which is Ex. PW 6/9. Sketch of the Hujra is Ex. PW 6/10. The accused were produced before the Illaqa Judicial Magistrate for their confessional statements but the accused refused to confess their guilt. The application for recording confessional statement of accused is Ex. PW 6/11. Application for verification of vehicle addressed to ETO Peshawar is Ex. PW 6/ 12. The Excise report regarding the vehicle is Ex.PW 6/14. In the light of ETO report, the IO issued Parwana for insertion of section of law i.e., 420/468/471 PPC, which is Ex. PW 6/15 and Ex. PW 6/16. Application for conducting FSL for the vehicle is Ex. PW 6/17. The FSL report is Ex. PW 6/18.

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The statement of DFC was recorded u/s 164 Cr.PC by the Judicial Magistrate vide application Ex. PW 6/19. Proclamation notice u/s 87 Cr. PC is Ex. PW 6/20. Report overleaf the same is Ex. SW 1/4. The FSL report regarding narcotics is Ex. PW 6/21. After completion of investigation, he handed over the case file to SHO for submission of challan.

VII. PW-07, Naseeb Khan (Complainant), SHO, PS

Mishti Mela: On the day of occurrence i.e., on 22.02.2022, he along with constable Murad Gul No. 1264, Muhammad Umar No. 252 and Khyber Khan No. 170 were on patrol duty, meanwhile the complainant received spy information that ICE and Chars would be smuggled in huge quantity through pick-up. He laid barricade for the purpose of checking at Serhi Morr, main road Sangrha. At 1330 hours, one pick-up bearing registration No. 7481/Peshawar, white colour came from Mishti Mela bazar side was stopped by the complainant for the purpose of checking. The driver of the vehicle disclosed his name as Khan Zada, while two other persons present in the front seat disclosed their names as Aqib and Kamal Hussain. Being in suspicious condition, he

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deboarded all the three persons named above from the vehicle. The rear portion of the vehicle (body) was checked due to suspicion by opening the body of the vehicle through screw driver, screw wrench and plier. He recovered, 14 plastic boxes of white colour wrapped with white colour scotch tape and twenty packets of Chars wrapped in yellow colour scotch tape, from the secret cavities of the vehicle. The plastic boxes were consisted of ICE. He weighed each plastic box containing ICE which came out to be 1770/1770 grams each and total came out to be 24780 grams. He separated 1/1 gram from each box for FSL and packed and sealed the same into parcel No. 1 to 14. He packed and sealed the remaining quantity of ICE along with plastic boxes in parcel No. 15 to 28. He also weighed each packet of chars through digital scale, which came out to be 1250/1250 grams each and total chars were found to be 25000 grams. He separated 10/10 grams from each packet and packed and sealed the same into parcels No. 29 to 48. He packed and sealed the remaining quantity of Chars i.e., 24800 grams into parcel No. 49. He put one monogram seal in each parcel and affixed 03 monogram seals of "AR" on each parcel. He also took into

  
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possession ID cards of all the three accused and packed and sealed the same into parcel No. 50. Accused Khan Zada disclosed during interrogation that the Chars and ICE are the ownership of one Younas S/O Sher Dil, Tribe Stori Khel. He took into possession the ICE and Chars mentioned above in the parcels, along with vehicle, ID cards, keys of the vehicle and registration documents. He prepared recovery memo Ex. PC on the spot. Joint card of arrest of all the three accused is Ex. PW-7/1. Murasila is Ex. PA-1. The Murasila along with card of arrest and recovery memo were sent to PS for registration of FIR through constable Khyber Khan. After registration of FIR, the IO proceeded to the spot and the case property was shown to him in sealed condition along with vehicle of the accused. The IO prepared site plan on pointation of the complainant. He handed over the case property to Moharrir of the PS along with accused. He handed over screw driver, screw wrench and plier to the IO, who packed and sealed the same into parcel No. 51 and took the same into possession vide recovery memo in presence of marginal witnesses. After completion of investigation, he submitted complete challan in

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the instant case which is Ex. PW-7/2. Today, he produced the case property before the court i.e., parcel No. 15 to 28 which are Ex. P1 to Ex. P14. Parcel No. 49 is Ex. P15. Three ID cards of the accused sealed in parcel No. 50 is Ex. P16. Vehicle bearing registration No. 7481/Peshawar along with keys is Ex. P17. He was thoroughly cross examined.

VIII. PW-08, Murad Gul Constable, PS Mishti Mela:

He is marginal witness to the recovery memo Ex. PC vide which the complainant recovered the narcotics mentioned therein. He was present with the SHO (complainant) at the time of occurrence and has narrated all the story as alleged in the Murasila word by word. His statement is subjected to lengthy cross examination by the defense counsel.

- (9). Learned DyPP for the state abandoned Constable Abdullah No. 143 and Muhammad Umar No. 252 being witnesses of the same facts as deposed by Constable Murad Gul No.1264 and Jamshed No.151. He closed the prosecution evidence.

Statements of accused were 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.

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**ARGUMENTS:**

(11). Learned Sr. PP for the state contended that the chassis number of the vehicle in question was concealed by the accused facing trial Khan Zada by pasting a false chassis plate bearing number "YN80-0002095" with adhesive material and after removing the same, the original chassis became visible after chemical treatment as "YN86-1009504". He further contended that the registration certificate was also verified through ETO concerned and was also reported as fake/bogus and not issued by the office of Excise and Taxation. He further argued that the fake chassis plate and fake registration certificate is used by the accused only to conceal the original identity of the vehicle in order to use the same for illegal activities such as transportation of narcotics. He argued that being in possession of the vehicle, the driver/accused Khan Zada was certainly in the knowledge about the status of the vehicle and despite of knowledge he presented the same as genuine, therefore, he may be convicted as the prosecution has proved the instant case against him.

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On the other hand, learned defense counsel argued that the accused facing trial Khan Zada is charged for offence U/S 468/471 PPC which is forgery for the purpose of cheating and using as genuine a forged document which is known to be fake, but except the FSL report about

chassis number of the vehicle and ETO report about the registration certificate a single word has not been uttered by any of the prosecution witness to the effect that who has made such forgery. There is no evidence on the case file that whether such forgery is made by the accused facing trial or the same was done by some other person. He prayed for acquittal of the accused facing trial in the instant case.

(13). After hearing arguments of the learned counsel for the parties, available record perused.

(14). It is the case of prosecution that complainant Naseeb Khan SHO after taking the vehicle in question into his possession in the narcotics case U/S 9-d CNSA and 11 (c) CNSA, he handed over the same to Moharrir of the PS and during the course of investigation, OII Muhammad Riaz sent the same to FSL vide his application Ex. PW-6/17. Similarly, he sent the registration certificate of the vehicle in question for verification to concerned Excise and Taxation Officer vide his application Ex. PW-6/12 and it was reported by the concerned Excise and Taxation Officer vide his letter No. 7481/ETO-V/Peshawar dated 07.03.2022 Ex. PW-6/14 that the said registration certificate is fake, bogus and not issued by their office. Similarly, the FSL report of the vehicle was also received according to which the vehicle in question was subjected to chemical treatment and observed the following

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**BEFORE CHEMICAL TREATMENT OF CHASSIS**

**NUMBER "YN80-0002095"**

**AFTER CHECMICAL TREATMENT OF CHASSIS**

**NUMBER "YN86-1009504"**

Opinion: Chemical examination of the chassis number of the vehicle in question revealed that

**"A FORGED CHASSIS PLATE BEARS NUMBER "YN80-0002095" HAS BEEN PASTED WITH ADHESIVE MATERIAL WAS REMOVED AND THE ORIGINAL CHASSIS NUMBER BECAME VISIBLE AFTER CHEMICAL TREATMENT IS FOLLOWING.**

**"YN86-1009504"**

The FSL report is Ex. PW-6/18.

- (15). The perusal of case file shows that OII Muhammad Riaz has conducted the whole proceedings relating to the vehicle in question. He has sent the registration certificate for verification vide his application Ex. PW-6/12 to the concerned Excise and Taxation Officer in response to which Excise and Taxation Officer vide his letter No. 7481/ETO-V/Peshawar dated 07.03.2022 Ex. PW-6/14 reported that the registration certificate is fake, bogus and not issued by his office. PW-06 OII has also sent the vehicle in question to FSL for chemical examination vide his application Ex. PW-6/17 and resultantly the above mentioned FSL report Ex. PW-6/18 was received which is

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available on the case file. Apart from the said proceedings by the IO, the prosecution has neither collected and produced any evidence about the alleged forgery, nor any evidence is brought on the case file that whether the accused facing trial was in the knowledge of such forgery. A single PW has not deposed in respect of the alleged forgery to state that who has committed the same. There is no eye witness to state that such forgery was made in his presence or he is witness of the same. Furthermore, the record is also silent about the registration certificate that from where the accused facing trial managed to prepare the same. There is nothing on record that whether the vehicle in question is a stolen property or otherwise. In these circumstances, the prosecution failed to prove that such forgery is committed by the accused facing trial. The prosecution also failed to prove its case against the accused facing trial beyond shadow of doubt, I, therefore, acquit the accused facing trial in offences U/S 468/471 PPC. He is on bail. His sureties are discharged from liabilities of bail bonds. Case property be dealt in accordance with law.

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

Dated: 26.11.2024

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CERTIFICATE

Certified that this judgment consists of nineteen (19) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 26.11.2024

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