

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

SPECIAL CASE NO. : 20/3 OF 2024
DATE OF ORIGINAL : 18.07.2024
DATE OF DECISION : 29.11.2024

STATE THROUGH IMTIAZ KHAN SHO POLICE
STATION DABORI

.....(COMPLAINANT)

-VERSUS-

1. **JAN HAIDER S/O YAR HAIDER, AGED ABOUT 31/32 YEARS, R/O CASTE BAR QAMBAR KHEL, DISTRICT KHYBER.**
2. **RAEES KHAN S/O SAID JAN, AGED ABOUT 33/34 YEARS, R/O CASTE BAR QAMBAR KHEL, DISTRICT KHYBER.**
3. **KASWAR KHAN S/O FAZAL KARIM, AGED ABOUT 27/28 YEARS, R/O CASTE BAR QAMBAR KHEL, DISTRICT KHYBER.**

..... (ACCUSED FACING TRIAL)

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

FIR No. 04


Dated: 01.04.2024

U/S: 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic Substances Act, 2019

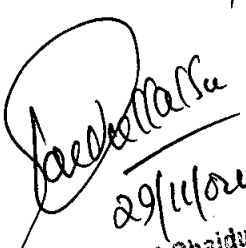
Police Station: Dabori

JUDGEMENT
29.11.2024

The above-named accused faced trial for the offence u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR No. 04, dated 01.04.2023 of Police Station Dabori.


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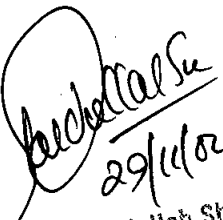
(2). The case of the prosecution as outlined in the Murasila based FIR is as follows: on 01.04.2024, the complainant Intiaz Khan SHO along with constables Sami Ullah, Irfan Ullah and other police officials, during routine patrolling received spy information regarding the smuggling of huge quantity of chars and ammunition on Arhanga road through Land Cruiser No. LWE-875/Lahore. Acting on the same information, they laid a picket on main road near CP2 check-post, where at about 2000 hours, a Land Cruiser mentioned above on the way from Arhanga towards the picket was stopped for the purpose of checking. The persons sitting on front seat and rear seat were duly armed with Kalashnikov. A person occupying the front seat of the vehicle disclosed his name as Raees Khan and from his possession, the police recovered a Kalashnikov folding butt bearing No. 006152 along with a fixed charger containing 28 live rounds of 7.62 bore while the person occupying the rear seat of the vehicle disclosed his name as Jan Haider who was searched and a Kalashnikov without butt bearing No. 03409 along with a fixed charger containing 29 live rounds of 7.62 bore was recovered from his possession. Both the accused could not produce any permit of license for the rifles. The driver of the vehicle disclosed his name as Kaswar Khan who was searched but nothing incriminating material recovered from his personal possession. The


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complainant searched the vehicle and recovered 04 packets of chars wrapped with yellow colour scotch tape from side doors of the vehicle and 03 packets chars wrapped with yellow colour scotch tape from beneath the tire placed in trunk of the vehicle. All the packets were weighed which turned 1100 grams each, making a total of 7700 grams. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 01 to 07 whereas the remaining quantity of chars weighing 7630 grams were sealed in parcels no. 08. The ammunitions were sealed into parcel No. 09. The videography of the spot proceeding was made through mobile phone and saved into USB which was sealed into parcel No. 10 by placing/affixing of monograms of 'DB' on all parcels. The complainant took into possession the recovered chars, ammunition and the vehicle in question vide recovery memo. The accused were arrested on the spot by issuing their joint card of arrest. Murasila was drafted and sent to Police Station through Constable Sami Ullah which was converted into FIR by Waqas Khan AMHC.

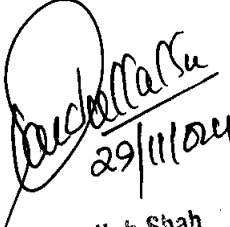
- (3). After registration of FIR, it was handed over to Investigating Officer Gul Asghar for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan on pointation of the complainant and recorded the statements of PWs u/s 161 Cr.P.C. On


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02.04.2024, the IO sent the samples of chars for chemical analysis to FSL through constable Khaleel Rehman, 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 the case file for the purpose of trial, the accused were summoned, copies of the record were provided to them in line with section 265-C CrPC and formal charge was framed against them to which they pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned and examined. The gist of the evidence is as follow;

I. Waqas Khan AMHC 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 duly packed and sealed which he had kept in mal khana in safe custody besides parked the vehicle in vicinity of the police station. 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 are Ex. PW ½, handed over the samples of the case property to the IO for sending the same to FSL and prepared road permit certificates Ex. PW 1/3 and


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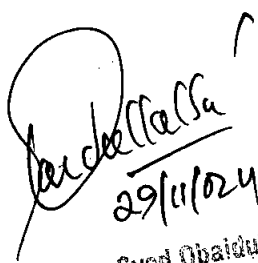
Ex. PW 1/4 regarding parcels no. 1 to 7 and parcel no. 9.

II. Imtiaz Khan SHO is the complainant of the case who appeared as PW-2. He repeated the same story as narrated in the FIR. He has submitted interim challan and later on complete challan against the accused facing trial in the instant case.

III. Constable Sami Ullah appeared as PW-3. He besides being eyewitness of the occurrence is marginal witness of recovery memo Ex. PC as well. He has taken the documents to the PS and handed over to the Moharrir for registration of FIR. He also reiterated the contents of FIR in his statement.

IV. Constable Khaleel Ur Rehman is PW-4. He has taken the samples of chars in parcels no. 1 to 7 and parcel no. 9 containing recovered Kalashnikovs to the FSL for chemical analysis on 02.04.2024 and after submission of the same, he has handed over the receipt of the parcels to the IO.

V. Lastly, Investigating Officer Gul Asghar 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

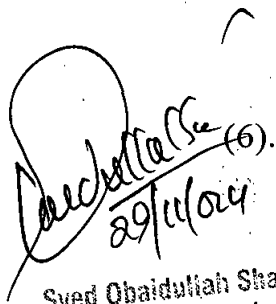

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statements of witnesses on the spot, sent the representative samples to FSL along with application addressed to the incharge FSL Ex. PW 5/1 and road permit certificates Ex. PW 1/3 & Ex. PW ¼, produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 5/2, drafted applications Ex. PW 5/3 to Ex. PW 5/5 to his high-ups for examination of the vehicle from FSL, the FSL report in this regard is Ex. PK, the report of MVE District Orakzai is Ex. PW 5/6 and vehicle verification is Ex. PW 5/7, placed on file the FSL results of the chars and Kalashnikov as Ex. PK/1 and Ex. PK/2, deleted section 419 PPC in the instant case through parwana qalam zangi e jurm Ex. PW 5/9, placed on file copy of Register No. 19 Ex. PW 1/1, copies of daily diaries and submitted the case file to SHO for onward proceedings.

- (5). Prosecution closed its evidence whereafter the 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. Accordingly, arguments of learned DPP for the State and learned counsel for the accused facing trial heard and case file perused.

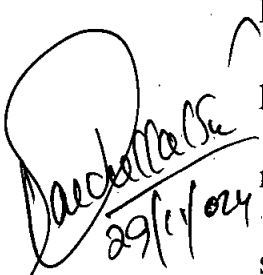
Learned DPP for the State submitted that the accused facing trial are directly nominated in the FIR, huge quantity


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of chars and two Kalashnikovs along with ammunitions have been recovered from possession of the accused facing trial, the recovered chars, Kalashnikovs and ammunitions were sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, the samples for chemical analysis and the Kalashnikovs have been transmitted to the FSL within the prescribed period and the reports of FSL were placed on file as Ex. PK/1 and Ex. PK/2. The complainant, the witnesses of the recovery, the official transmitted the case property 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 lengthy been 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 reports of FSL supports the case of prosecution; however, the accused facing trial are falsely implicated in the instant case and nothing has been recovered from their 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


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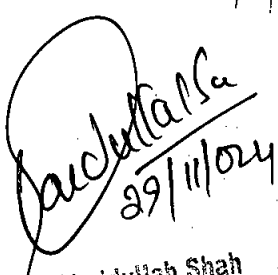
concluded that there are various dents in the case of prosecution leading to its failure to bring home the charge against the accused facing trial.

(8). In the light of arguments advanced by learned DPP for the State, arguments of 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 occurrence has taken place in the mode and manner as alleged by the prosecution?
- (ii). Whether the investigation has been carried out in the mode and manner as alleged by the prosecution?
- (iii). Whether the case of prosecution is substantiated through report of FSL?


(9). The prosecution in order to prove its case in the mode and manner as alleged, has examined Imtiaz Khan SHO, the complainant of the case, as PW-2 who has reiterated the contents of Murasila Ex. PA/1 and Constable Sami Ullah, the eyewitness of the occurrence and marginal witness of recovery memo Ex. PC as PW-3 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 Waqas Khan AMHC/PW-1 who has registered the FIR Ex. PA.

In accordance with Murasila Ex. PA/1, the complainant/PW-2 had stopped a vehicle driven by the


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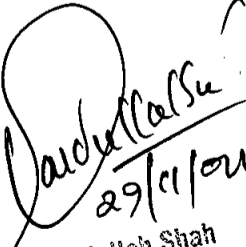
accused Kaswar Khan who was accompanied by two other accused individuals, Jan Haider and Raees Khan. The complainant/PW-2 disembarked them from the vehicle and conducted a search during which he had recovered contraband chars and Kalashnikovs along with ammunitions; however, the recovery of chars has not been effected on pointation of the accused. This witness of paramount importance has neither in his court statement as PW-2 nor in his report Ex. PA/1, has mentioned that whether the chars were pukhta or garda which were recovered in the instant case. The texture of the recovered chars was also not mentioned in the Murasila Ex. PA/1.

The FIR Ex. PA outlines that the incident occurred near CP2 Check-Post located at a distance of 01 km from the police station, where the report was filed at 2100 hours. After preparing the Murasila, card of arrest and recovery memo, the complainant/PW-2 have handed over these documents to Constable Sami Ullah/PW-3 at 2100 hours which creates a doubt about the feasibility of completing two separate tasks simultaneously although one of them depends upon the other. Moreover, as discussed earlier, the complainant/PW-2 made recovery from the accused facing trial whereafter the documents were prepared by him which were received by the Moharrir/PW-1 in the police station; however, as per statements of prosecution witnesses, none of them have


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written the FIR number either on the recovery memo Ex. PC or on card of arrest Ex. PW 3/1 which popped up a doubt that who among the witnesses have actually written the FIR number on these documents.

Additionally, the recovery of chars has not been made from personal possession of the accused but rather from the side doors and the trunk of the vehicle which were taken into possession by the complainant/PW-2 vide recovery memo Ex. PC. However, neither the vehicle was registered in the names of accused nor any documents were presented that could establish any connection between the accused and the vehicle nor there was any receipt through which the vehicle was given to them on rent. Moreover, no driving license was not taken into possession from the accused which is repellent to the common sense that without driving license a person would drive a vehicle or whether he is able to drive or not, which aspect of the case has created reasonable doubt in the prosecution case. With respect to process of search and recovery on the spot, as per contents of Murasila Ex. PA/1, the occurrence has taken place on 01.04.2024 at about 2000 hours (08:00 pm) with further addition made by the complainant/PW-2 in his statement about the spot proceedings being carried out with the assistance of a torch held by constable Sami Ullah/PW-3; however, when PW-3 was cross examined on this point he denied holding the torch


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while participating in the recovery process. While going through the statement of marginal witness/PW-3, it is found that his statement was recorded by the IO/PW-5 at 2130 hours which, as per DD of the IO/PW-5, corresponds to the exact time of his departure from the police station for investigation, which raises serious doubts about the credibility of the statement being recorded at a time when the IO/PW-5 had not yet arrived at the spot. As per version of the complainant/PW-2, the spot proceedings were captured through a mobile phone by Constable Ghani Ur Rehman; however, ironically this fact has not been mentioned by him/PW-2 in the Murasila Ex. PA/1.

In view of what is discussed above, it is held that there are glaring contradictions between the statements of PWs, creating doubts regarding the mode and manner of the occurrence as alleged by the prosecution.

- (10). With respect to process of investigation on the spot, as per prosecution's version, the IO along with constables Abdullah and Ismail have visited the spot and conducted investigation. Nevertheless, perusal of the daily diary of their departure from the police station shows that the names of constables Abdullah and Ismail are neither mentioned in their departure nor in their arrival. Additionally, according to the site plan Ex. PB, the location of the incident is on a straight road, raising the question of how it would be

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possible for a person in possession of a large quantity of chars and arms/ammunition to drive directly towards the police party, especially when the police would have been visible to him. Furthermore, this witness testified that the complainant's party had left the spot prior to his/PW-5 arrival, but the marginal witness/PW-3 contradicted this statement, claiming that they left the spot at 10:30 pm, which coincided with the time the IO arrived at the police station. It is also noteworthy that, as previously mentioned, the samples of chars and the Kalashnikovs were taken by Constable Khalil Ur Rehman/PW-4 to the FSL on 02.04.2024; however, the IO/PW-5 failed to produce or attach any daily diary entries documenting his departure from the police station.

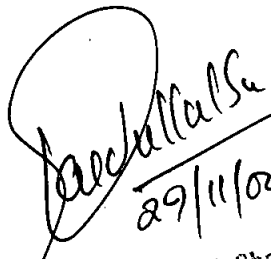
These contradictions in the statements of PWs show that either the occurrence has not taken place on the spot or the IO has not visited the spot at all.

- (11). With respect to safe custody of transportation of case property from the spot to the police station, entry of the same in register No. 19 Ex. PW 1/1 and later on sending the same to the FSL for chemical analysis, the case of prosecution is, that the complainant/PW-2 transported the case property from the spot to the police station and handed over the same to Moharrir who makes its entry in register no. 19 and the IO on 02.04.2024 sent the representative samples in parcels no.

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1 to 7 and the Kalashnikovs in parcel no. 9 to the FSL through constable Khalil Ur Rehman/PW-4 vide road permit certificates. In order to prove its case, the prosecution relied upon the statements of Imtiaz Khan SHO as PW-2, Waqas Khan AMHC as PW-1, constable Khalil Ur Rehman as PW-4 and Gul Asghar OII as PW-5.

As per cross examination of PW-1, he has received 08 parcels from the SHO in the instant case; however, there were 09 parcels prepared by the SHO on the spot. This PW did not utter a single word regarding receiving of the parcel containing the Kalashnikovs. The PW-1 deposed that parcel no. 8 containing the remaining quantity of chars were handed over to the IO/PW-5 for its production before the court of Judicial Magistrate whereafter it was deposited in the District Mal Khana; however, the IO refused to have had deposited this parcel in the District Mal Khana which breaks the chain of the safe custody. According to the version of prosecution, the vehicle was handed over to the IO/PW-5 for sending it to the FSL but no documentary evidence has been produced before the court to show that who has taken the vehicle for chemical analysis. In addition, as per statement of PW-1, some of the entries in register no. 19 has been made by Khalil Ur Rehman MASI but the said witness has not produced before the court to justify the stance of prosecution.


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Though the FSL report Ex. PK/1 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 cannot be taken into consideration for conviction of the accused.

- (12). The investigating officer did not gather any documentation regarding the accused's prior involvement in similar cases and no records were obtained indicating that the accused had been either charged or convicted in such like cases. Consequently, it is reasonable to conclude that the accused are first offenders. In these circumstances, it is imperative to consider this aspect when evaluating 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 on the spot. The prosecution also failed to prove the safe custody of case property. All these facts lead to the failure of prosecution to prove the case against the accused beyond shadow of doubt; therefore, the accused namely, **Jan Haider, Raees Khan and Kaswar Khan** are acquitted of the charge levelled against them by extending them the benefit of doubt. Accused Jan Haider and Raees Khan are on bail. Their bail

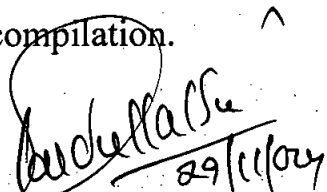

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bonds stand cancelled and their sureties are discharged of the liabilities of the bail bonds. Accused Kaswar Khan is in custody. He be released forthwith, if not required in any other case. Case property i.e., chars be destroyed after the period provided for appeal/revision.

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

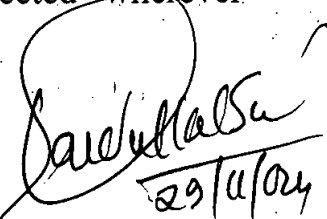
Dated: 29.11.2024


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CERTIFICATE

Certified that this judgement consists of fifteen (15) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 29.11.2024


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SYED OBAIDULLAH SHAH
Sessions Judge/Judge Special Court,
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