

(46)

STATE VS MUHAMMAD HAYAZ
FIR No. 05 | Dated: 17.04.2024 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

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

SPECIAL CASE NO. : 19/3 OF 2024
DATE OF INSTITUTION : 18.07.2024
DATE OF DECISION : 10.12.2024

STATE THROUGH IMTIAZ KHAN SHO, POLICE STATION
DABORI

.....(COMPLAINANT)

-VERSUS-

MUHAMMAD HAYAZ S/O MUHAMMAD JAN, AGED ABOUT 29
YEARS, R/O CASTE MALA KHEL, AZIZ KHEL, KASKI ZAR,
TEHSIL UPPER, DISTRICT ORAKZAI

..... (ACCUSED FACING TRIAL)

Present: Umar Niaz, District Public Prosecutor for state.
: Khursheed Alam Advocate for accused facing trial.

FIR No. 05 **Dated: 17.04.2024** **U/S: 9 (d) of the Khyber**
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Dabori

JUDGEMENT
10.12.2024

The accused named above faced trial for the offence
u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic
Substances Act, 2019 vide FIR no. 05, dated 17.04.2024 of
Police Station Dabori.

- (2). The case of the prosecution as outlined in the
Murasila based FIR is as follows: On 17.04.2024, the
complainant, Imtiaz Khan SHO along with Constables Sami
Ullah and Muhammad Mustafa were present on a picket on
the spot where at about 1900 hours, a suspicious person
having a white colour plastic bag on his shoulder on way
from Mishti Mela towards the picket, was stopped. Upon
checking of the said bag, the complainant recovered 3500

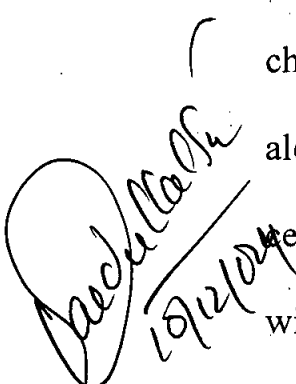
Syed Obaidullah Shah
19/12/2024
Syed Obaidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

(47)

STATE VS MUHAMMAD HAYAZ
FIR No. 05 | Dated: 17.04.2024 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

grams of chars. The complainant separated 10 grams of chars from it for chemical analysis through FSL, sealed the same in parcel no. 1 whereas the remaining quantity of chars weighing 3490 grams and the bag were sealed in parcel no. 2. Monogram of 'DB' was affixed/placed on all parcels. The complainant took into possession the case property vide recovery memo. The accused disclosed his name as Muhammad Hayaz s/o Muhammad Jan, who was accordingly arrested on the spot by issuing his card of arrest. Murasila was drafted and sent to the police through Constable Sami Ullah which was converted into FIR by Waqas Khan AMHC.

- (3). After registration of FIR, it was handed over to PW-6, Gul Asghar OII for investigation. Accordingly, after receipt of Murasila, card of arrest, recovery memo and copy of FIR, he visited the spot, prepared site plan Ex. PB on pointation of the complainant. On 19.04.2024, he sent the sample of chars in parcel no. 1 containing 10 grams of chars to the FSL for chemical analysis through Head Constable Abdullah/PW-1 along with application Ex. PW 6/2 vide road permit certificate Ex. PW 6/3 and recorded statements of marginal witnesses u/s 161 Cr.P.C. After completion of investigation, he handed over the case file to SHO for submission of challan.


19/4/2024
Syed Omaidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

(48)


(4). Upon receipt of the case file for the purpose of trial, the accused was summoned, copies of the record were provided to him u/s 265-C Cr.P.C and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the prosecution examined as many as 06 witnesses. The gist of the evidence is as follow;

I. Head Constable Abdullah is PW-1. On 19.04.2024 he has taken parcel no. 1 containing sample of chars to the FSL for chemical analysis, and after submission of the same, he was given the receipt of the parcel which was handed over by him to the Investigation Officer upon his return.

II. Waqas Khan AMCH appeared in the witness box as PW-2. He has incorporated the contents of Murasila Ex. PA/1 into FIR Ex. PA. He has received the case property from the complainant and kept it in Mal Khana in safe custody. He has also made entries in daily diaries (DDs) besides handed over parcel no. 1 to the Investigation Officer for sending it to the FSL.

III. Khalil MASI is PW-3. He has entered the details of the case property in register no. 19 Ex. PW 3/1.

IV. Imtiaz Khan SHO is the complainant of the instant case. He as PW-4 repeated the same story as


19/12/2024
Syed Olaidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

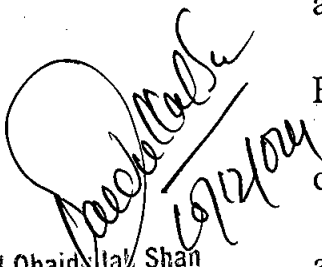
09

STATE VS MUHAMMAD HAYAZ
FIR No. 05 | Dated: 17.04.2024 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

narrated in the FIR. He has submitted complete challan Ex. PW 4/2 in the instant case against the accused facing trial.

V. Constable Sami Ullah appeared in the witness box as PW-5. He besides being eyewitness of the occurrence is the marginal witness of the recovery memo Ex. PC as well as vide which the complainant/PW-4 has taken into possession the case property. He also reiterated the contents of FIR in his statement.

VI. In last, the Investigation Officer Gul Asghar was examined as PW-6 who in his evidence deposed in respect of the investigation carried out by him in the instant case. He has prepared site plan Ex. PB on pointation of the complainant, recorded statements of witnesses u/s 161 CrPC, produced the accused before the court of Judicial Magistrate vide his application Ex. PW 6/1, sent the representative sample to the FSL along with the application Ex. PW 6/2 vide road permit certificate Ex. PW 6/3 and its result was received and placed on file by him as Ex. PK. He has placed on file the attested copies of register no. 19 Ex. PW 3/1, DDs regarding departure and arrival of police officials/officer from and to the police station and

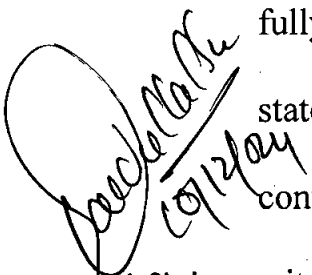

Syed Obaidul Haq
District & Sessions Judge
Orakzai at Baber Mela

50

submitted the case file to the SHO for onward proceedings.

(5). Prosecution closed its evidence whereafter statement of the accused was recorded U/S 342 Cr.P.C but the accused neither wished to be examined on oath nor opted to produce any evidence in defence. Accordingly, arguments of the learned DPP for the State and learned counsel for the accused facing trial heard and case file perused.

(6). Learned DPP for the state submitted that the accused facing trial is directly nominated in the FIR, huge quantity of chars has been recovered from possession of the accused facing trial, the recovered chars are sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, the sample for chemical analysis has been transmitted to the FSL within the prescribed period which has been found positive for chars vide report of FSL Ex. PK. The complainant, the witness of the recovery, the official transmitted the sample to the FSL and the IO have been produced by the prosecution as witnesses, whom have fully supported the case of the prosecution and their statements have 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.

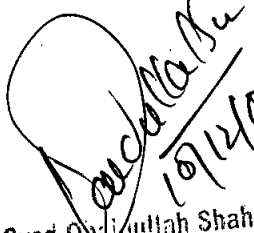

Syed Obaidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

(S1)

STATE VS MUHAMMAD HAYAZ
FIR No. 05 | Dated: 17.04.2024 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

(7). Learned counsel for the defence argued that though the accused facing trial is directly nominated in the FIR, the alleged chars have been shown recovered from his possession and the report of FSL supports the case of prosecution; however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his possession. He argued that the prosecution has failed to prove the mode and manner of recovery and the mode and manner of investigation allegedly conducted by the IO on the spot, as detailed by the prosecution on the case file. He further submitted that the safe custody of the case property and its transmission from the spot to the PS has not been proved. He concluded that there are various dents in the case of prosecution leading to its failure to bring home the charge against the accused facing trial.

(8). The prosecution in order to prove its case, has examined Imtiaz Khan SHO, the complainant of the case, as PW-4 who has reiterated the contents of Murasila Ex. PA/1 and Constable Sami Ullah, the eyewitness witness of the occurrence and marginal witness of recovery memo Ex. PC, as PW-5 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-2 who has registered the FIR as


17/4/2024
Syed Owaisullah Shah
District & Sessions Judge
Orakzai at Baber Mela


(52)

STATE VS MUHAMMAD HAYAZ
FIR No. 05 | Dated: 17.04.2024 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

Ex. PA and Investigation Officer Gul Asghar as PW-6 who have carried out the investigation in the instance.

The stance of the prosecution is that the recovery of contraband chars has been effected from the accused facing trial on the spot and the spot proceedings has been filmed by Constable Muhammad Shah using a mobile phone which was converted into USB. However, ironically the fact of the spot proceedings being recorded has not been mentioned in the Murasila. A closer examination of the site plan Ex. PB reveals that the place reserved for the name of constable who made videography, has been left blank, casting doubt on the presence of Constable Muhammad Shah on the spot.

Moreover, the complainant/PW-4, after effecting recovery of chars from the possession of the accused facing trial, has prepared the Murasila Ex. PA/1; however, this principal witness in his report Ex. PA/1, has not mentioned that whether the recovered chars were pukhta or garda. The texture of the recovered chars was also not mentioned in the Murasila Ex. PA/1. The Murasila indicates that the distance between the place of occurrence and the police station is $\frac{3}{4}$ km where the report was made at 19:40 hours while the FIR being chalked out at 20:00 hours. However, according to the statement of the complainant/PW-4, the Murasila Carrier/PW-5 has stated to have left the spot at the same time i.e., 19:40 hours which raises a question that how he could


17/04/24
Syed Obaid Wah Shah
District & Sessions Judge
Orakzai at Baber Mela


(53)

STATE VS MUHAMMAD HAYAZ
FIR No. 05 | Dated: 17.04.2024 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

cover the distance of 3/4 km within a blink of eye. Similarly, the Murasila Carrier/PW-5 in his cross examination mentioned the time of his return from the police station after handing over the documents to the Moharrir, as 07:10 pm (1910 hours) which is prior to the time of making a report which is 19:40 hours. In his next breath, he stated to have returned from the police station at 08:10 pm (1920 hours), indicating doubt regarding his presence on the spot.

According to the available record, the IO/PW-6, accompanied by four police personnel, left the police station, and the names of these personnel were recorded in the DD. However, neither the complainant/PW-4 nor the eyewitness/PW-5 mentioned the names of all four officials, instead only two names were provided. 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 possible for a person in possession of a large quantity of chars to go directly towards the police party, especially when the police would have been visible to him.

Though the FSL report has been found positive for chars but it cannot alone be taken into consideration for conviction of the accused when the complainant/PW-4 and the Investigation Officer/PW-6 have failed to establish the mode and manner in which the alleged occurrence took place as the evidence presented remains inconclusive and lacking


17/4/24
Syed Waqarullah Shah
District & Sessions Judge
Orakzai District, Peshawar Division

(59)

in detail. Furthermore, the investigation carried out by the IO are either inadequately explained or missing altogether. This failure to substantiate both the occurrence and the investigation raises serious doubts about the credibility and integrity of the case.

(9). It is also necessary to mention here that accused facing trial is neither previous convicted nor involved in any such case in the past besides neither he has confessed his guilt nor any further recovery was affected at his pointation despite he being in police custody for some time. Also, no evidence was brought on record to prove his connection with the recovered contraband rather the evidence led by the prosecution is full of doubts and contradictions which have denied the very presence of the witnesses and their proceedings at the spot at the relevant time. It seems that either the witnesses were not present at the relevant place on the relevant date and time or have not deposed in the mode and manner in which the occurrence was alleged to have had been committed.

(10). Thus, in view of the aforementioned discussion, it is held that the prosecution has failed to prove the case against the accused beyond shadow of doubt. Therefore, the accused namely, **Muhammad Hayaz** 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


Syed Waizullah Shah
District & Sessions Judge
Orakzai at Baber Mela

55

STATE VS MUHAMMAD HAYAZ
FIR No. 05 | Dated: 17.04.2024 | U/S: 9 (d) of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Dabori

sureties are discharged of the liabilities of the bail bonds. The case property i.e., chas be destroyed after the expiry of period provided for appeal/revision in accordance with law.

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

Dated: 10.12.2024

Syed Obaidullah Shah
10/12/2024

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

CERTIFICATE

Certified that this judgment consists of ten (10) pages.

Each page has been read, corrected wherever necessary and signed by me.

Dated: 10.12.2024

Syed Obaidullah Shah
10/12/2024

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

