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STATE VS ATA ULLAH ETC.
FIR No. 101 | Dated: 30.09.2024 | U/S: 11-B of the Khyber
Pakhtunkhwa CNSA 2019 | Police Station: Kalaya

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

SPECIAL CASE NO. : 32/3 OF 2024
DATE OF INSTITUTION : 26.11.2024
DATE OF DECISION : 03.02.2025

STATE THROUGH MUHAMMAD YOUNAS SHO, POLICE
STATION KALAYA
.....(COMPLAINANT)

-VERSUS-

1. ATA ULLAH S/O NAJAL KHAN, AGED ABOUT 36/37 YEARS, R/O
CASTE FERAZ KHEL, DARA GARHI
 2. SHAH MUHAMMAD S/O KHIAL MUHAMMAD, AGED ABOUT
39/40 YEARS, R/O CASTE MALAK DIN KHEL, EERI
- (ACCUSED FACING TRIAL)

Present: Umar Niaz, District Public Prosecutor for the State.
: Abdullah Shahab Advocate for accused facing trial.

FIR No. 101 **Dated: 30.09.2024** **U/S: 11-B of the Khyber**
Pakhtunkhwa Control of Narcotic Substances Act, 2019
Police Station: Kalaya

JUDGEMENT
03.02.2025

The accused named above faced trial for the offence
u/s 11-B of the Khyber Pakhtunkhwa Control of Narcotic
Substances Act, 2019 vide FIR no. 101, dated 30.09.2024 of
Police Station Kalaya.

- (2). The case of the prosecution as outlined in the
Murasila based FIR is as follows: On 30.09.2024, the
complainant, Muhammad Younas SHO followed by the
information regarding presence of accused Ata Ullah, the
then absconding accused in two separate FIRs, in his hujra
for selling ice, conducted a raid on his house at 15:30 hours.

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The complainant accompanied by SDPO, Orakzai and other police personnel located the above-named accused and one, Shah Muhammad who were searched by the complainant, but nothing incriminating was recovered from accused Ata Ullah while a white plastic shopper containing 100 grams of ice was found in the other person's side pocket. The complainant separated 01 gram of ice from it for chemical analysis through FSL, sealed the same in parcel no. 1 whereas the remaining quantity of ice weighing 99 grams was sealed in parcel no. 2. The complainant also recovered a white colour plastic shopper from beneath a pillow during search of the hujra. It contained 600 grams of ice wherefrom the complainant separated 01 gram for chemical analysis through FSL, sealed the same in parcel no. 3 while the remaining quantity of ice weighing 599 grams was sealed in parcel no. 4. The spot proceedings were filmed by driver Inshad Ali which was kept in a USB in parcel no. 5. Monogram of 'MY' was affixed/placed on all parcels. The complainant took into possession the case property vide recovery memo. Subsequently, the accused were arrested on the spot by issuing their joint card of arrest. Murasila was drafted and sent to the police through Constable Fazal Hameed which was converted into FIR by Asmat Ali AMHC.

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(3). After registration of FIR, it was handed over to PW-2, Aftab Hassan IO 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 03.10.2024, he sent the samples of ice in parcels no. 1 and 3 containing 01 grams of ice to the FSL for chemical analysis through Constable Ameen Nawaz/PW-3 along with application Ex. PW 2/2 vide road permit certificate Ex. PW 2/3 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.

(4). Upon receipt of the case file for the purpose of trial, the accused were summoned through addendum-B from Sub-Jail, Orakzai, the provision of section 265-C Cr.P.C was complied with and formal charge was framed against them to which they pleaded not guilty and claimed trial. Accordingly, the prosecution examined as many as 05 witnesses. The gist of the evidence is as follow;

I. Muhammad Younas SHO is the complainant of the instant case. He as PW-1 repeated the same story as narrated in the FIR. He has submitted complete challan Ex. PW 1/2 in the instant case against the accused facing trial.


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Syed Qasim Shah
District & Sessions Judge
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II. The second witness was the Investigation Officer Aftab Hassan 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 applications Ex. PW 2/1 and Ex. PW 2/6, sent the representative samples to the FSL along with the application Ex. PW 2/2 vide road permit certificate Ex. PW 2/3 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 4/1, copies of FIRs regarding involvement of accused Ata Ullah in other cases and submitted the case file to the SHO for onward proceedings

III. Constable Ameer Nawaz is PW-3. On 03.10.2024 he has taken parcels no. 1 and 3 containing samples of ice to the FSL for chemical analysis, and after submission of the same, he was given the receipt of the parcels which was handed over by him to the Investigation Officer upon his return.

Asmat Ali AMCH appeared in the witness box as PW-4. He has incorporated the contents of


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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, by making its entry in register no. 19 Ex. PW 4/1. He has handed over parcels no. 1 and 3 to the Investigation Officer for sending it to the FSL.

V. Lastly, Constable Fazal Hameed 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 has taken into possession the case property. He also reiterated the contents of FIR in his statement.

(5). After closure of prosecution evidence, statements of both the accused were recorded u/s 342 Cr.P.C; however, neither they wished to be examined on oath nor produced defence evidence. 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 are directly nominated in the FIR, huge quantity of ice has been recovered from possession of the accused facing trial, the recovered ice are sealed and sampled on the spot by the complainant, the IO has conducted investigation


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on the spot, the samples for chemical analysis have been transmitted to the FSL within the prescribed period which has been found positive vide report of FSL Ex. PK. The complainant, the witness of the recovery, the official transmitted the samples 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 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 are directly nominated in the FIR, the alleged ice have been shown recovered on the spot and the report 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 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


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Orakzai at Baber Melk
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prosecution leading to its failure to bring home the charge against the accused facing trial.

- (8). To determine the veracity of the events at the crime scene on the relevant day at the relevant time in the mode and manner as alleged, the mode and manner of the investigation, and the safe custody of the case property, this Court while applying its judicial mind has to unfold the prosecution's story in juxtaposition with the testimonies given by the prosecution witnesses in the Court.

The prosecution alleged that the complainant acting under the supervision of SDPO, Orakzai, raided the hujra of the accused Ata Ullah and recovered contraband ice from the accused facing trial on 30.09.2024 at about 15:30 hours; however, a Daily Diary (DD) documenting the departure of these law enforcement officers/official has neither been produced before the court at the time of recording their statements nor the IO/PW-2 has filed any DD in this regard. This casts suspicion on the complainant party's on-scene presence. The investigation officer has not gathered any CDR data of the accused facing trial and police officials present on the scene at the time of the incident, despite the fact that the presence of the complainant party has been questioned due to the lack of any DD. In such a situation, the

most trustworthy and beneficial evidence could have been

Syeda Ghaidullah Shah
3/2/25
District & Sessions Judge
Orakzai at Baber Mela

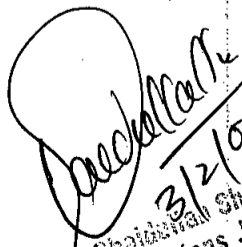


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the call data record of the complainant and the accused, which could have led to their presence on the spot. To my astonishment, there is no DD on file that shows the IO/PW-2's entrance and exit from the police station, which raises severe questions about his presence on the spot to conduct an investigation. Even the IO testified that he has departed the police station with two police officials, but surprisingly he did not remember the name of one of those officials. In these regards, 2023 MLD 2047 and 2020 P Cr. L J Note 184 are relied upon.

According to the available record, at the time of making recoveries from the accused facing trial, a police official namely, Inshad Ali was capturing the entire scenario at the crime scene through a mobile phone; however, the prosecution violated the **QANUN-E-SHAHADAT ORDER, 1984** by failing to produce the aforementioned witness to support their story.

The accusation of the prosecution regarding conducting raid and making recovery in the instant case is also dubious for the reason that the complainant/PW-1 and the eyewitness/PW-5 did not toe the line and went apart in respect of the time consumed by the complainant at the crime scene. The complaint indicated that the time was four hours, whereas PW-5 said it was one hour.


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Admittedly, the recovery of contraband ice has been made from the accused facing trial on 30.09.2024 whereas the samples of ice, as per statements of the Investigation Officer/PW-2 and Constable Ameer Nawaz/PW-3, have been transmitted to the FSL on 03.10.2024 i.e., on the fourth day of the occurrence, for which no plausible explanation has been furnished by the prosecution. As a result, the FSL report has lost its integrity. Thus, the accused facing trial's right to have the evidence tilted in their favour must be upheld.

The complainant/PW-1 admitted it correct that although the SDPO, Orakzai was present with him at the crime scene, but neither him nor his police personnel were cited as witness to the recovery. Moreover, PW-1 also admitted that he has not obtained any search warrant from the Court of Judicial Magistrate despite the police station and the Magistrate being in one compound. **Cr. Appeal No. 766-P of 2021** underlines the importance of all these facts, which the prosecution failed to gather resulting in a questionable and dubious stance.

Though the FSL report has been found positive for ice but it cannot alone be taken into consideration for conviction of the accused when the complainant and the Investigation Officer have failed to establish the mode and

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Syd *Handwritten initials* Shah
District & Sessions Judge
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manner in which the alleged occurrence took place and when the safe custody of the case property has been compromised, as the evidence presented remains inconclusive and lacking 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 have neither confessed their guilt nor any further recovery was affected at their pointation despite they being in police custody for some time. Also, no evidence was brought on record to prove their 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

Syed Abbas Ullah Shah
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District & Sessions Judge
Orakzai at Baher Mela

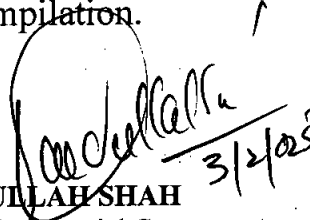
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namely, **Ata Ullah and Shah Muhammad** are acquitted of the charge levelled against them by extending them the benefit of doubt. Accused are in custody. They be released forthwith, if not required in any other case. The case property i.e., ice be 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.

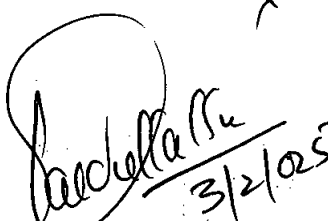
Dated: 03.02.2025


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

CERTIFICATE

Certified that this judgment consists of eleven (11) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 03.02.2025


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

