

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

CNSA CASE NO. : 27/3 OF 2020  
DATE OF INSTITUTION : 27.10.2020  
DATE OF TRANSFER-IN : 16.12.2020  
DATE OF DECISION : 06.04.2021

STATE THROUGH MUHAMMAD ANWAR SI, INCHARGE SOG TOP,  
KALAYA, UPPER ORAKZAI  
.....(COMPLAINANT)

-VERSUS-

1. ZARMA JAAN S/O USMAN KHAN, AGED ABOUT 49 YEARS, R/O  
TRIBE ZAKHA KHEL, LANDI KOTA DISTRICT KHYBER
2. IRHSAD KHAN S/O REHMAN SHAH, AGED ABOUT 38 YEARS, R/O  
TRIBE ZAKHA KHEL, LANDI KOTA DISTRICT KHYBER

..... (ACCUSED FACING TRIAL ON BAIL)

**Present:** Umar Niaz, District Public Prosecutor for state.  
: Jabir Hussain Advocate for accused facing trial.

**FIR No. 34**                      **Dated:** 18.08.2020    **U/S:** 9 (d) of the Khyber  
Pakhtunkhwa Control of Narcotic Substances Act, 2019  
**Police Station:** Ghiljo Upper Orakzai

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**JUDGEMENT**  
06.04.2021

The story of the prosecution as per contents of Murasila Ex. PA/1 converted into FIR Ex. PA are that; on 18.08.2020, complainant, Muhammad Anwar SI alongwith other police officials were present at Naka bandi on SOG top when meanwhile the complainant received spy information about smuggling of chars through motorcycle from Dabori side. On receipt of information, the local police tightened the security at the barricade. At about 1400 hours, the local police saw two persons riding on a motorcycle coming towards the naka

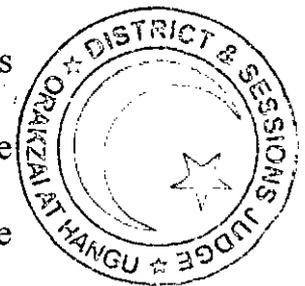
  
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bandi who were signalled to stop by the local police but they did not stop rather accelerated the speed of the motorcycle. The local police somehow manage to stop them. The local police found one flowery clothed sack in lap of accused sitting on the rear seat of the motorcycle. Upon search of the flowery clothed sack, the local police found chars garda therein and were weighed through digital scale, which came out to be 4000 grams total whereas the empty sack came out to be 70 grams. The police officials separated 10 grams chars from each packet and packed and sealed the same into parcel no. 1 for chemical analysis of FSL, whereas remaining quantity of 3990 grams of chars alongwith empty clothed sack was packed and sealed in separate parcel bearing no. 2. Similarly, the complainant also took into possession motorcycle bearing no. 1413/Peshawar alongwith contraband through recovery memo Ex. PC. The person disclosed his name as Zarma Jaan whereas driver of the motorcycle disclosed his name as Irshad Khan. Both the accused were accordingly arrested by issuing their card of arrest Ex. PW 3/1. Murasila Ex. PA/1 was drafted and sent to the PS which was converted into FIR Ex. PA. Hence, the case in hand.



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(2). Upon the receipt of case file for the purpose of trial, notice was issued to the accused facing trial and upon their appearance, proceedings were initiated and they were charge sheeted to which they pleaded not guilty and claimed trial and

accordingly the witnesses were summoned and their evidence was recorded. The gist of their statements recorded in evidence is as;

- I. Abdul Manan HC as PW-1 deposed in respect of registration of FIR Ex. PA from the contents of Murasila and handing over copy of Murasila, FIR, recovery memo and card of arrest to the incharge investigation besides deposed in respect of receipt of case property i.e., motorcycle and chars duly packed and sealed from the complainant which he thereafter kept in mal-khana in safe custody. The witness further deposed in respect of recording of entry regarding the safe custody of case property in register 19.
- II. Abdul Janan SI appeared as PW-2 and deposed that he has taken one sample of recovered chars alongwith application Ex. PW 6/2 addressed to the incharge FSL and road permit certificate Ex. PW 2/1 to the FSL for chemical analysis on 24.08.2020 and after submission of the same, he was given the receipt of the parcel which he handed over to the IO upon return.
- III. Complainant, Anwar Khan SI and eyewitness, constable Dilawar Khan, in their evidence as PW-

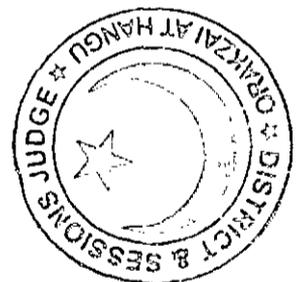
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3 and PW-4 respectively, repeated the story of FIR.

- IV. Naseem Khan SI SHO as PW-5 deposed in respect of submission of complete challan Ex. PW 5/1 in the instant case against the accused facing trial on 25.08.2020.
- V. Lastly, Muhammad Ishaq IO was examined as PW-6 who in his evidence deposed in respect of the investigation carried out by him in the instant case including preparation of site plan Ex. PB, recoding statements of PWs, production of accused before the court through application Ex. PW 6/1, handing over sample of chars to Abdul Janan SI for FSL Peshawar alongwith application Ex. PW 6/2 and road permit certificate Ex. PW 2/1, receipt of FSL report Ex. PK, placing on file ETO Peshawar report Ex. PW 6/3 regarding the recovered motorcycle, information slip Ex. PW 6/4 and Superdari order of motorcycle Ex. PW 6/5, copy of register 19 Ex. PW 6/6 and submission of case file upon completion of investigation to the SHO for onward submission of complete challan against the accused facing trial in the court.

  
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(3). Thereafter, prosecution closed their evidence whereafter statements of both the accused were recorded U/S 342 Cr.P.C but the accused neither wished to be examined on oath nor produced any evidence in defence. Accordingly, arguments of the learned DPP for the state and counsel for the accused facing trial heard and case file perused.

(4). From the arguments and record available on file it reveals that the local police in the recovery memo Ex. PC as well as in Murasila Ex. PA/1 have mentioned that the recovered chars were in Gardah (Powder) form but the report of FSL Ex. PK overleaf shows that the form of the contraband received and examined in the FSL was brown solid as such the FSL report cannot be based as evidence for the conviction of accused facing trial as the same is not pertains to Chars Gardah which was allegedly recovered from the accused facing trial. Moreover, the alleged chars were recovered on 18.08.2020 whereas the sample of the same received on 24.08.2020 as such there is unexplained delay of 6 days in sending sample to the FSL Peshawar. As per rule 4 (2) of the Control of Narcotic Substances (Government Analysts) Rules, 2001, samples may be dispatched for analysis at the earliest, but not later than seventy-two hours of the seizure which was not done in the instant case. Thus, the report of the FSL is inconclusive and unreliable.

  
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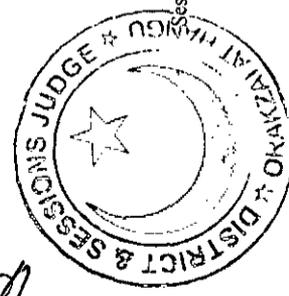


(5). The recovery memo Ex. PC is showing that one parcel was prepared at the spot which was sealed with three seals having abbreviation of G.J. However, the seal of G.J. is not mentioned in the Murasila Ex. PA/1 to determine that the recovered contraband was sealed and Murasila was prepared at the spot. Thus, the proceeding of sealing and affixing the seal of G.J. at the spot as alleged by the complainant failed to establish and it contradicts the very mode and manner of the occurrence besides it would denote that the proceedings of packing and sealing has not been conducted at the spot but in PS.

(6). The complainant, Anwar Khan, SI PW-03 in his evidence deposed that he himself effected recovery of chars from the possession of accused Zarma Jan but however the said stance was contradicted by the eye witness Constable, Dilawar Khan who in his cross examination stated that Constable, Asim took chars from the accused. Moreover, the complainant alleged in his evidence that the Murasila, Recovery memo and Card of arrest were prepared upon his dictation by Constable, Muhammad Asim. However, no reasons were cited as to why the complainant himself could not draft the same documents. More interestingly the Constable, Asim to whom the role of drafting of said documents is attributed has also <sup>been</sup> ~~be~~ attributed the role of taking said documents from the spot to the PS for registration

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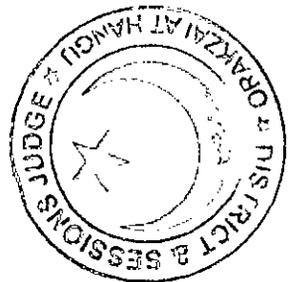


of FIR but the said Constable, Asim was not produced for evidence. The evidence of the said witness was of utmost importance and by withholding the same, adverse inference under Article 129 of the Qanoon-e-Shahadat Order 1984 would be drawn that had such witness was produced his evidence would be gone against the version of the prosecution? Furthermore, the daily dairies pertaining to departure and arrival from the check post to the spot and from the spot to the check post were not produced to determine the presence of the ocular account and their proceedings carried out on the spot on the eventful day. Thus, the very availability of ocular account, accused, the process of recovery of chars, its scaling and sealing are doubtful and is against the mode and manner of the occurrence alleged by the prosecution.

(7). Also, the proceedings of the IO at the spot are also questionable as in his cross examination as PW-6 he deposed that he received copy of FIR, Murasila, card of arrest and recovery memo at about 1540 hours and he proceeded to the spot at 1550 hours and reached there within 40 minutes i.e., 1630 hours. The complainant PW-03 as well as eye witness Constable, Dilawar Khan PW-04 also deposed in their cross examinations that they were present at the spot till 04:00 pm with the accused. By the said calculation, it means that the IO started investigation at the spot at 1630 hours when



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admittedly neither the complainant, nor the eye witness nor the accused were present there. Meaning is clear that nothing was conducted at the spot by the IO or by the ocular account and the whole proceedings have been carried out in the PS.

(8). It is also necessary to mention here that nothing was recovered from the possession of co-accused Irshad Khan besides the recovered motorcycle is clear as per report of ETO and the same has already been returned to the owner. Moreover, accused facing trial are neither previous convict nor involved in any such case in the past besides neither they have 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. As per discussion above it is established that the evidence of the witnesses has contradicted the very mode and manner of the occurrence and thereby created serious dents and doubts in their version regarding the involvement of the accused facing trial in the commission of offence charged for.

  
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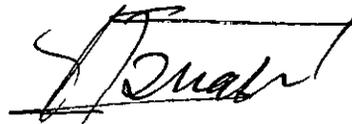


(9). Accordingly, in the light of above, both the above-named accused are acquitted of the charges levelled against

them through the FIR in question. Accused are on bail, their bail bonds stand cancelled and their sureties stand discharged from the liabilities of bail bonds. The Chars be destroyed after the expiry of period provided for appeal/revision in accordance with law.

(10). File be consigned to Session Record Room after its necessary completion and compilation.

**Announced**  
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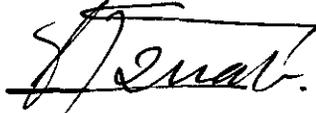


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**CERTIFICATE**

Certified that this judgment consists of eight (08) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 06.04.2021



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