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**IN THE COURT OF JAMAL SHAH MAHSOOD,**  
**ADDITIONAL SESSIONS JUDGE-I, ORAKZAI**

**Special Case 4/3 of 2019**

Date of Institution 12-11-2019  
Date of Decision 07-02-2020

**STATE**

**VS**

**Sufian** s/o Khial Muhammad (aged about 32 years); r/o of Bazar Zakhakhel, Mohalla Sultan Khel, Landi-Kotal, District Khyber.

**(Accused)**

Case FIR No. 37  
Dated: 21-10-2019  
Under Section: 9 (d) of KP-CNSA  
Police Station: Lower Orakzai

DPP Umar Niaz for State.

Akbar Yousaf Khalil and Sana Ullah Khan Advocates for defense.

**JUDGMENT:**

1. The accused, Sufian, is facing trial for the alleged recovery of 6900 grams of Chars from his possession, with further allegation that he was smuggling the same on a motorcycle.
2. The first information of the case was sent to the police station by SHO Ishtiaq Hassan (PW-1) through a Murasila (Ex. PW 1/3) on 21-10-2019, at 12:30 hours. The SHO reported that he was on patrol of the area, along with other police officials; that he received information to the effect that someone would smuggle Chars any time on that day, through a motorcycle; that the police party laid a naka on the main Kalaya-Kohat road near Wachpul; that one rider of motorcycle approaching from Anjari side was stopped for checking; that the rider seemed suspicious and he was searched; that he was wearing a waistcoat, having 04 pockets - 02 on front and 02

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at back; that 01 packet of Chars was recovered from each of the 02 front pockets and 02 packets of Chars were recovered from each of the 02 back pockets (total 06 packets). That the recovered substance was weighed through digital scales and each packet was found to be 1150 grams; that a 10 grams sample was separated from each packet for FSL analysis and sealed into parcels (parcels no. 1 to 6) and the remaining bulk (6840 grams) was sealed into parcel no. 7. That the narcotics, the waistcoat and motorcycle (Honda CC-125 no. B-8630/Karak) were taken into possession by police. That the rider of the motorcycle revealed his name as Sufian (accused facing trial); that he was arrested on the spot and that the Murasila was sent to the PS through a constable.

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3. The FIR of the case was registered and on completion of investigation, challan was submitted against the accused who was summoned from District Sub-Jail Orakzai (at Baber Mela), to answer the charge; he pleaded not guilty and claimed trial. In order to prove the charge against the accused, the prosecution produced 05 PWs during the trial.

4. The gist of prosecution evidence is as follows:

**PW-1** is the SHO/Complainant (seizing officer). He repeated the narration of his Murasila in his examination in chief. He produced parcel No. 7 (Ex. P-1) containing the bulk of substance (6840 grams) and the motorcycle with key (Ex. P-2 and P-3). He also got exhibited

Murasila (Ex. PW 1/3), recovery memo (Ex. PW 1/2) and card of arrest (Ex. PW 1/1).

PW-2 is ASI Hakim Ali, who was present with the SHO during the relevant time. He is a witness of the recovery proceedings and the recovery memo Ex. PW 1/2.

PW-3 is the constable who took parcels No. 1 to 6 to FSL Peshawar (road certificate Ex. PW 5/4 and application to FSL Ex. PW 5/3).

PW-4 is the constable who was serving as *madad muharrir* in PS Lower Orakzai during the relevant days. He drafted the FIR (Ex. PA) in the case and later on deposited the 07 parcels of the case in *mal khana* - after weighing the same.

PW-5 is Shal Muhammad SI, the investigating officer of the case.

He conducted the following proceedings in investigation:

- Visited the spot and prepared site plan (Ex. PB), on the pointing of the seizing officer (PW-1).
- Recorded statements of marginal witnesses and inspected the case property on the spot.
- Returned to PS and handed over the case property to the Muharrir.
- Recorded statements of concerned witnesses.
- Interrogated the accused and obtained his further custody from Judicial Magistrate concerned.
- Dispatched the samples (parcels No.1 to 6) to FSL Peshawar for report (application Ex. PW 5/3, road certificate Ex. PW 5/4 and FSL report Ex. PK).

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- Produced the accused before the concerned Judicial Magistrate, who order the accused to be sent to Judicial Lockup.
- Placed on case file the FSL report (Ex. PK).
- Sent an application to the ETO Karak, for verification of motorcycle used in the occurrence; the report of which was not received.
- Handed over the case file to SHO for onward submission of challan.

5. The defense counsels were given opportunity to cross-examine the PWs. On close of prosecution evidence, the statement of accused was recorded u/s 342 Cr.PC. He did not wish to be examined on oath nor opted to produce any evidence in defense. Thereafter, the DPP for State and the defense counsel presented their respective arguments on trial and the record of the case was perused.

6. In every criminal case, the prosecution is bound to prove the guilt of the accused beyond shadow of any reasonable doubt. In the present case, all the PWs are police officials, who were subordinate of the seizing officer/SHO and serving in the same police station, therefore, their testimony is to be scrutinized strictly.

7. The safe and proper custody of the parcels of narcotics was of utmost importance for the prosecution to prove. In the present case, the parcels were allegedly prepared by the SHO (PW-1) in presence

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of an ASI Hakim Ali (PW-2) and another police official, namely Sadar Ali HC (abandoned PW). The investigating officer (PW-5) admitted during his statement in trial that when he went to the spot after occurrence, he examined the parcels of the case there. However, these parcels were not taken into possession by the IO and were brought to the PS by the SHO/seizing officer. This fact casts a doubt on the conduct of prosecution witnesses, as to why were the parcels kept in possession by the seizing officer and not immediately handed over to the investigating officer or placed in *mal-khana* soon.

8. The muharrir of the PS (PW-4) admitted that in his statement recorded under 161 CrPC, he had mentioned that the parcels were handed over to him by the SHO but that in his examination in chief, before this court, he had stated that the parcels were handed over to him by IO – for placing in *mal-khana*. This muharrir also admitted that before placing the parcels in *mal-khana* he had de-sealed the parcels and weighed the substance inside. This fact casts further doubt on the integrity of the parcels and the seals placed on the same. It remains unexplained as to how the parcels sealed by the SHO and affixed with monograms of a specific initials (MK) were opened by the muharrir for weighing and again sealed and affixed with the same monograms having same initials.

9. The case property was examined by this court during examination of the seizing officer/SHO (PW-1) and the substance inside was

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found to be powdery material in light brown color. Whereas, the FSL report shows that the material sent there was brown solid. Thus, the samples (parcel no 1-6) did not correspond with the material produced before court (parcel no.7). Moreover, the protocols of chemical tests have not been mentioned; and the FSL report seems to be a stereotype production. Which has cast more doubts in the prosecution case by rendering the report of FSL (Ex. PK) inconclusive and unreliable.

10. The investigating officer (PW-5) stated that all the documents prepared during investigation were drafted by one Ilyas ASI. This Ilyas is new introduction in the prosecution case. This Ilyas ASI is not mentioned as PW or investigating officer in the record of the case. This new fact casts serious doubt on the conduct of the investigating officer and the local police in the present case.

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11. The waistcoat allegedly worn by the accused for carrying narcotics was examined by this court during trial, and the PW concerned admitted that the same looked suspicious at first sight. It was also admitted by the PWs that the accused had crossed a previous FC check-post/naka wearing the same waistcoat. The prosecution case is that the accused was wearing this waistcoat over his clothes, without any attempt to conceal the same. This fact does not appeal to prudent minds.

12. Failure to prove safe and reliable custody of case property, especially narcotics, from its seizure until its deposit in FSL and production before court is a sufficient doubt to warrant acquittal of accused. The prosecution case being riddled with suspicions and doubts, cannot be made a ground for conviction of accused.

13. Resultantly, the accused facing trial, **Sufian** s/o Khial Muhammad, is acquitted of the charge levelled against him. He is in custody; he shall be released forthwith if not required in any other case.

14. Case property (narcotics) shall be dealt with in accordance to law after the expiry of period of limitation for appeal/revision. While the motorcycle bearing no. B 8630/Karak, shall be returned/delivered to the accused, being last possessor of the same.

15. Let a copy of this judgement be sent to the office of DPP Orakzai in terms of section 373 CrPC and this file be consigned to the record room after its proper compilation.

**Announced**  
**07-02-2020**

  
**Jamal Shah Mansood**  
ASJ-I/Special Court, Orakzai

**CERTIFICATE**

It is hereby certified that above order consists of 07 pages, each of which has been signed and corrected, wherever necessary.

  
ASJ-I/Special Court, Orakzai