

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

SPECIAL CASE NO. : 10/3 OF 2020  
DATE OF INSTITUTION : 17.03.2020  
DATE OF DECISION : 30.04.2020

STATE THROUGH INSPECTOR ZAHID AMEEN SHO, POST KRAPA  
UPPER ORAKZAI (GHILJO)

.....(COMPLAINANT)

-VERSUS-

MAQBALI KHAN S/O KASHMIR KHAN, AGED ABOUT 60  
YEARS, TRIBE MALIKDEEN KHEL DOALAT KHEL BARA  
MAIDAN KALAY, DISTRICT KHYBER.

..... (ACCUSED FACING TRIAL)

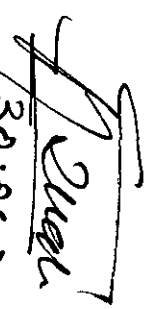
**Present:** Syed Aamir Shah, Assistant Public Prosecutor for state.  
: Shaheen Muhammad Advocate, for accused facing trial.

**FIR No. 24 Dated:** 17.12.2019 **U/S:** 9 (c) KP CNSA  
**Police Station:** Upper Orakzai

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APP Syed Aamir Shah for the state present.

Shaheen Muhammad Advocate for accused Maqbali Khan present and requested exemption for accused on account of Covid-19 which is allowed accordingly. PWs Saleem Khan SI, constable Fazal Malik, IO Malik Janan and Muhammad Ishaq SI present and examined as PW-1 to PW-4. During the evidence some discrepancies appeared in the evidence and accordingly notice was issued u/s 265-K Cr.P.C as to why the accused shall not be acquitted on the strength of evidence recorded and accordingly arguments heard and case file perused.

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(2). The local police as per facts of the case recovered 150 grams chars from the possession of accused facing trial, Maqbali Khan and accordingly he was charged through case FIR no. 24 dated 17.12.2019 u/s 9 (c) KP CNSA in police station Ghiljo Upper Orakzai. In the Murasila Ex. PA, it is mentioned that the recovery of chars was affected by Inspector, Zahid Ameen but Saleem Khan SI (PW-1) in his examination in chief alleged that he himself recovered the recovered chars from the side pocket of the accused. But however, in his cross examination, he resiled from his statement by deposing that the chars was recovered by constable Zubair and constable Fazal Malik. The constable Fazal Malik as PW-2, in his cross examination, denied to have recovered the subject chars and deposed that it was recovered by the SHO himself. As such the whole process of recovery of chars became doubtful. The PW-1 Saleem Khan in his cross examination with regard to the case property further deposed that it was handed over to the IO in open condition and that's too in the police station. As such the very sealing of the case property at the spot was denied. Though the recovery memo Ex. PW 1/2 as well as Murasila Ex. PA is showing that the case property was sealed at the spot. The marginal witness of recovery memo Ex. PW 1/2

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namely constable Fazal Malik in his cross examination deposed that he was not examined by the IO u/s 161 Cr.P.C though the said fact was alleged in affirmative in his examination in chief. Thus, when the marginal witness was not examined, it means that he is not the witness of anything. The PW-1 in his statement deposed that regarding the preparation of site plan upon his pointation by the IO but the IO PW-3 in his evidence did not utter a single word regarding the site plan.

(3). The report of FSL Ex. PK shows that the sample of chars was received to the FSL on 23.12.2019 i.e. after 06 days of the recovery and no reasons were shown for the late dispatch of sample to the FSL. The surprising factor is that the witness Muhammad Ishaq SI PW-4 in his statement deposed that he handed over the sample of chars in the FSL Peshawar on 18.12.2019 which proved wrong as per entries made in the report of FSL Ex. PK. Moreover, Rule 6 of Control of Narcotic Substances (Government analysts) Rules, 2001 provides that full protocols ought to be mentioned in the report of the government analysts and its non-compliance in such context would render the report as inconclusive and unreliable. Reliance is placed upon 2018 SCMR page 2039. In the present case no protocols are mentioned in the FSL report vide which the tests of the recovered case

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property was conducted. Thus, the report of the FSL is inconclusive and unreliable.

(4). Accused facing trial is neither previous convict nor involved in any such case in the past besides he has not confessed his guilt. 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 regarding recovery of chars, its sealing at the spot, late sending of sample of chars to the FSL 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.

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(5). Accordingly, in the light of above, the above-named accused is acquitted u/s 265-K Cr.P.C of the charges levelled against him through the FIR in question in absentia u/s 366 (2) Cr.P.C. Accused is on bail but exempted on account of Covid-19. The Chars be destroyed after the expiry of period provided for appeal/revision in accordance with law.

(6). File be consigned to Sessions Record Room after its necessary completion and compilation.

**Announced**  
30.04.2020



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Sessions Judge/Judge Special Court,  
Orakzai at Baber Mela

**CERTIFICATE**

Certified that this judgment consists of five (5) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 30.04.2020.



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Orakzai at Baber Mela

30/04/20.