

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

SPECIAL CASE NO. : 18/3 OF 2020
DATE OF INSTITUTION : 02.09.2020
DATE OF DECISION : 23.12.2020

STATE THROUGH SALEEM KHAN ASHO, POLICE
STATION, UPPER ORAKZAI
.....(COMPLAINANT)

-VERSUS-

REHMAT ULLAH S/O NAZEER KHAN, AGED ABOUT 26
YEARS, R/O TRIBE DARA DAR MAMOZAI, SUB-TRIBE
KHADI NAWASI ARKHIYO KALAY, UPPER ORAKZAI
..... (ACCUSED FACING TRIAL IN CUSTODY)

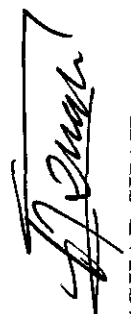
Present: Umar Niaz, District Public Prosecutor for state.
: Sana Ullah Khan Advocate for accused facing trial.

FIR No. 13 Dated: 12.04.2020 **U/S:** 9 (c) of the
Khyber Pakhtunkhwa Control of Narcotic Substances Act,
2019

Police Station: Upper Orakzai

JUDGEMENT
23.12.2020

The story of the prosecution as per contents of Murasila
Ex. PA/1 converted into FIR Ex. PA are that; on 12.04.2020,
complainant, Saleem Khan ASHO alongwith other police
officials were present on Krappa check-post. At about 1130
hours, the police officials stopped one flying coach for
checking which was approaching from Dabori side. The
police found one person in suspicious condition and



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

deboarded him; upon his search, the police officials recovered one white plastic shoper from his trouser-fold, inside which 01 packet of chars wrapped with yellow scotch tape was found. Upon weighment, the said packet came out 660 grams of chars. The police officials separated 10 grams chars from the packet and packed and sealed the same into parcel no. 1 for chemical analysis of FSL, whereas remaining quantity 650 grams of chars was packed and sealed in separate parcel bearing no. 2. The local police took into possession the recovered chars. Accused disclosed his name as Rehmat Ullah, who was accordingly arrested by issuing 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.



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

(2). Upon the receipt of case file for the purpose of trial, notice was issued to the accused facing trial and upon his appearance, proceedings were initiated and he was charge sheeted to which he pleaded not guilty and claimed trial and accordingly the witnesses were summoned. The gist of their statements is as;

(3). Gul Asghar ASI as PW-1 stated to have reduced the contents of Murasila Ex. PA/1 into FIR Ex. PA. Jahanzeb Khan SI as PW-2 stated that he has submitted complete challan Ex. PW 2/1 in the instant case. Complainant, Saleem Khan ASHO as PW-3 and constable Muhammad Inam as PW-

4, both narrated the story of FIR in their statements. Muhammad Ishaq SI as PW-5 stated regarding drafting of site plan Ex. PB. The witness also deposed in respect of production of accused before JM vide an application Ex. PW 5/1 and Ex. PW 5/2, annexation of copies of naqal mad no. 4 Ex. PW 1/2 and naqal mad no. 9 Ex. PW 1/3 and copy of register 19 Ex. PW 1/1. He further deposed regarding taking the samples of chars in parcel no. 1 to the FSL alongwith application addressed to the incharge FSL Ex. PW 5/3 and road permit certificate Ex. PW 5/4 as well as receipt of report of FSL in positive which is Ex. PK. Lastly, the prosecution examined the investigating officer, Shal Muhammad as PW-6 who in his evidence deposed in respect of the investigation carried out by him in the instant case.

(4). Thereafter, prosecution closed their evidence where after statement of the accused was recorded u/s 342 Cr.P.C but the accused neither wished to be examined on oath nor produced evidence in defence. Accordingly, arguments of the learned DPP for the state and counsel for the accused facing trial heard and case file perused.

(5). From the arguments and record available on file it reveals that the alleged recovery of contraband was affected on 12.04.2020 whereas as per report of the FSL Ex. PK, the samples of chars were received in the FSL Peshawar on 18.05.2020 i.e., after 36 days of the recovery. With regard to



ASGHAR SHAH

Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

the delay of 36 days, the IO Muhammad Ishaq as PW-5 deposed that the FSL Peshawar was closed on account of Covid-19, hence the delay occurred in sending the samples to the FSL Peshawar. However, no notification regarding the closure of FSL Peshawar on account of Covid-19 was produced. The samples as per rules are to be sent not later than 72 hours of its recovery which was not done in the instant case. The late sending of samples of chars to the FSL Peshawar has created a doubt regarding the recovery and availability of the same for the purpose of FSL. Moreover, 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 besides the eyewitness constable Muhammad Inam PW-4 in his cross examination deposed that chars in powder form was recovered and the complainant separated the 10 grams from through knife which is beyond the understandings of a prudent mind as if it was in powder form, there was no need to cut the same through knife. As such not only the form of chars recovered is doubtful but also 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 besides the difference



ASGHAR SHAH

Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

of nature of the recovered chars as mentioned in the Murasila and report of the FSL coupled with the late sending of samples to the FSL Peshawar has badly dented the version of the prosecution pertaining to the recovery of contraband, determination of its nature through FSL etc. Thus, the report of the FSL is inconclusive and unreliable.

- (6). The perusal of record further reveals that the recovery memo Ex. PC is showing that two parcels were prepared at the spot having 10 grams chars in parcel no. 1 while remaining quantity was packed and sealed in parcel no. 2 having abbreviation of G.J. However, neither the number of parcels nor the seal of G.J is mentioned in the Murasila Ex. PA/1 to determine that the recovered contraband was packed and sealed and Murasila was prepared at the spot or otherwise. Moreover, constable Muhammad Imtiaz through whom allegedly the Murasila was sent for registration of FIR has neither been shown in the site plan Ex. PB nor was produced to determine and support the version of the complainant and eyewitness. The evidence of constable Muhammad Imtiaz was the best evidence withheld by the prosecution. So, adverse inference under Article 129 of Qanoon e Shahadat Order, 1984 would be drawn that had such witness was produced, his evidence would have gone against the version of his producer. Moreover, the availability and safe custody of case property as well as mode



ASGHAR SHAH

Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

and manner of the occurrence have been doubted when the IO admitted in his cross examination that he recorded the statements of the Moharrir of the PS and constable Muhammad Imtiaz on 05.07.2020 i.e., after 2 months and 23 days of the occurrence. Moreover, the ocular account is in contradiction with regard to scaling of chars by means of digital scale or otherwise. The evidence of the ocular account is more or less contains dishonest improvements as the 161 Cr.P.C of the eyewitness PW-4, constable Muhammad Inam is silent with regard to the colour of flying coach from which the accused was deboarded, the scaling of chars through digital scale and affixing of monogram of G.J on the parcel but in the statement before the court he alleged the said things in affirmative. Thus, the very presence of the PWs and the mode and manner of the occurrence alleged at the relevant time is doubtful.

- (7). It is also necessary to mention here that accused facing trial is neither previous convict nor involved in any such case in the past besides neither he has confessed his guilt nor any further recovery was affected at their pointation despite he being in police custody for 01 day. 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



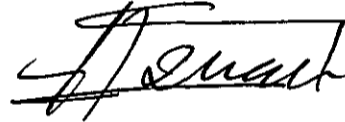
ASGHAR SHAH

Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

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.

- (8). Accordingly, in the light of above, the above-named accused is acquitted of the charges levelled against him through the FIR in question. Accused is in custody, he be released forthwith if not required in any other case. The Chars be destroyed but after the expiry of period provided for appeal/revision in accordance with law.
- (9). File be consigned to Session Record Room after its necessary completion and compilation.

Announced
23.12.2020



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela

CERTIFICATE

Certified that this judgment consists of seven (07) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 23.12.2020.



ASGHAR SHAH
Sessions Judge/Judge Special Court,
Orakzai at Baber Mela