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

SPECIAL CASE NO. : 2/2 (J) OF 2024  
DATE OF INSTITUTION : 17.04.2024  
DATE OF DECISION : 04.11.2024

STATE THROUGH NASEEB KHAN SHO, POLICE STATION  
MISHTI MELA

.....(COMPLAINANT)

-VERSUS-

SHAHID NOOR S/O OLAS MIR, AGED ABOUT 16 YEARS, R/O  
CASTE UTMAN KHEL, TAPA FATEH KHAN KHEL, YARLI KHEL,  
PO FERAZ KHAN, ABA KHEL, TEHSIL LOWER, DISTRICT  
ORAKZAI

..... (ACCUSED FACING TRIAL)

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

**FIR No. 05**                      **Dated: 20.02.2024**      **U/S: 9 (d) of the Khyber**  
**Pakhtunkhwa Control of Narcotic Substances Act, 2019**  
**Police Station: Mishti Mela**

**JUDGEMENT**  
**04.11.2024**

The accused named above faced trial for the offence  
u/s 9 (d) of the Khyber Pakhtunkhwa Control of Narcotic  
Substances Act, 2019 vide FIR no. 05, dated 20.02.2024 of  
Police Station Mishti Mela.

- (2). The case of the prosecution as outlined in Murasila  
based FIR is; that on 20.02.2024, the complainant, Naseeb  
Khan SHO along with Fazal Shah HC and Muhammad  
Shafiq duly armed in official vehicle driven by Sami Ul Haq  
were present on a picket on the spot where at about 1600  
hours, a person holding a plastic bag in his hand on way from  
Sangra, on seeing the police party, attempted to decamp from

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the spot but he was overpowered. Upon checking of the said bag, the complainant recovered 3000 grams of chars. The complainant separated 10 grams of chars from it for chemical analysis through FSL, sealed the same in parcel no. 1 whereas the remaining quantity of chars weighing 2990 grams and the bag were sealed in parcel no. 2. The spot proceedings were filmed through a cellular phone in a USB which was packed and sealed by the complainant in parcel no. 3. Monogram of 'NK' was affixed/placed on all parcels. The complainant took into possession the case property vide recovery memo. The accused disclosed his name as Shahid Noor s/o Olan Mir who was accordingly arrested on the spot by issuing his card of arrest. Murasila was drafted and sent to the police through Constable Muhammad Shafiq which was converted into FIR by Ihsan Ullah MM.

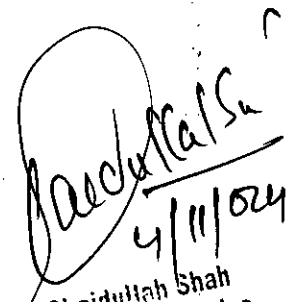
- (3). After registration of FIR, it was handed over to PW-5, Shal Muhammad OII for investigation. Accordingly, after receipt of Murasila, card of arrest, recovery memo and copy of FIR, he visited the spot, prepared site plan Ex. PB on pointation of the complainant. On 21.02.2024, he sent the sample of chars in parcel no. 1 containing 10 grams of chars to the FSL for chemical analysis through constable Rahim Ullah/PW-1 along with application Ex. PW 5/1 vide road permit certificate Ex. PW 5/2 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 was summoned, copies of the record were provided to him u/s 265-C Cr.P.C and formal charge was framed against him to which he pleaded not guilty and claimed trial. Accordingly, the prosecution examined as many as 05 witnesses. The gist of the evidence is as follow;

I. Constable Rahim Ullah is PW-1. On 21.02.2024 he has taken parcel no. 1 containing sample of chars to the FSL for chemical analysis, and after submission of the same, he was given the receipt of the parcel which was handed over by him to the Investigation Officer upon his return.

II. Ihsan Ullah MM appeared in the witness box as PW-2. He has incorporated the contents of 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 2/1. He has also made entry in daily diaries (DDs) Ex. PW 2/2 besides handed over parcel no. 1 to the Investigation Officer for sending it to the FSL.

  
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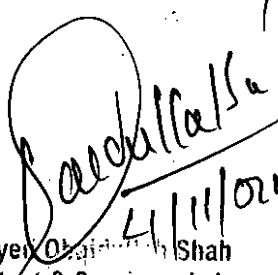
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III. Naseeb Khan SHO is the complainant of the instant case. He as PW-3 repeated the same story as narrated in the FIR. He has submitted complete challan Ex. PW 3/2 in the instant case against the accused facing trial.

IV. Constable Muhammad Shafiq appeared in the witness box as PW-4. He besides being eyewitness of the occurrence is the marginal witness of the recovery memo Ex. PC as well as vide which the complainant/PW-3 has taken into possession the case property. He also reiterated the contents of FIR in his statement.

V. Investigation Officer Shal Muhammad OII was examined as PW-5 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 5/3, sent the representative sample to the FSL along with the application Ex. PW 5/1 vide road permit certificate Ex. PW 5/2 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 2/1, DDs

  
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regarding departure and arrival of police officials/officer from and to the police station and submitted the case file to the SHO for onward proceedings.

(5). Prosecution closed its evidence whereafter statement of the accused was recorded U/S 342 Cr.P.C but the accused neither wished to be examined on oath nor opted to produce any evidence in defence. 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 is directly nominated in the FIR, huge quantity of chars has been recovered from possession of the accused facing trial, the recovered chars are sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, the sample for chemical analysis have been transmitted to the FSL within the prescribed period which has been found positive for chars vide report of FSL Ex. PK. The complainant, the witness of the recovery, the official transmitted the sample 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

  
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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 is directly nominated in the FIR, the alleged chargs have been shown recovered from his possession and the report of FSL supports the case of prosecution; however, the accused facing trial is falsely implicated in the instant case and nothing has been recovered from his 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 prosecution leading to its failure to bring home the charge against the accused facing trial.

- (8). The prosecution in order to prove its case, has examined Naseeb Khan SHO, the complainant of the case, as PW-3 who has reiterated the contents of Murasila Ex. PA/1 and Constable Muhammad Shafiq, the eyewitness witness of the occurrence and marginal witness of recovery memo Ex. [Signature] as PW-4 who besides repeating the same story as narrated in the FIR, has stated to have taken the documents to the police station for registration of FIR and handed over the

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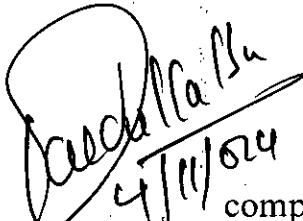
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documents to Ihsan Ullah MM/PW-2 who has registered the FIR as Ex. PA and Shal Muhammad OII as PW-5 who have carried out the investigation in the instance.

It appears from the record that the recovery of contrabands chars has been effected from the accused facing trial on the spot and the complainant/PW-3 has arrested the accused by issuing his card of arrest Ex. PW 3/1. He stated that he had not described the education of the accused facing trial in his documents including the card of arrest. In his next breath, he stated to have written the education of the accused in the card of arrest, indicating that this document was not prepared by the complainant/PW-3. Additionally, this witness deposed that after registration of the instant FIR, the IO/PW-5 arrived on the spot for conducting investigation proceeding. He/PW-3 seems unsure about his statement recorded by the IO u/s 161 CrPC by providing two different answers one after the other in the following manner;

*"The IO recorded my statement u/s 161 CrPC first. Again, stated that my statement was not recorded by the IO and he recorded statements of marginal witnesses on the spot."*

Let's assume that the statement of the complainant/PW-3 was not recorded by the IO/PW-5 then how would the prosecution justify the statement of the

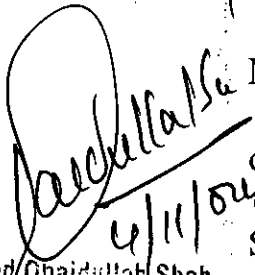
  
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marginal witness/PW-4 who deposed that the statement u/s 161 CrPC of the complainant/PW-3 was recorded by the IO/PW-5, which further shattered its case. Moreover, as discussed earlier, the complainant/PW-3 has prepared recovery memo, card of arrest and Murasila on the spot after intercepting the accused. It seems very strange when the IO/PW-5 testified that the card of arrest and the recovery memo do not bear the FIR number, however it do, besides the copies provided to the accused which is Ex. PW 5/x-1 also do not bear the FIR number. The relevant portion of his statement is;

*"It is correct that the card of arrest, recovery memo available on police file does not bear FIR number."*

To my surprise, the testimony provided by Ihsan Ullah MM/PW-2 further weaken the case of prosecution who on one hand admitted to have written the FIR number in the recovery memo and card of arrest following the registration of FIR by him while on the other hand he correctly admitted these documents does not bear any FIR number. There is a clear contradiction between the statements of the Moharrir/PW-2 and the eyewitness/PW-4 regarding recovery of articles from the accused; the moharrir deposed that the SHO handed over the cell phone and the CNIC of the accused to him in the police station while the eyewitness

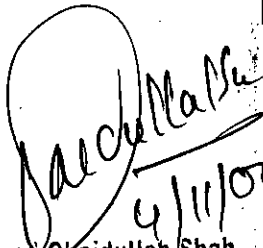
  
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negated this version by stating that the SHO have seen these articles and return it back to the accused.

It is manifest from the statements of the witnesses that after drafting the documents by the complainant/PW-3, these were taken to the police station by constable Muhammad Shafiq/PW-4, and after registration of the FIR, he returned back to the spot. According to the complainant/PW-3, the IO/PW-5 reached the spot prior to the arrival of Muhammad Shafiq/PW-4. Contrary to this, PW-4 testified that he arrived on the spot at 1730 hours while the IO/PW-5 has been to the spot at 1800 hours. Moreover, the distance between the place of occurrence and the police station, as per Murasila, is 4/5 km and the FIR was chalked out at 1720 hours while the Murasila Carrier returned to the spot at 1730 hours. But astonishingly no explanation has been given or no source has been mentioned in his statement that how he travelled a distance of 4/5 km within 10 minutes.

As per available record, after effecting recovery of chars from the accused by the complainant, he prepared different parcels and taken it to the police station where he handed it over to the Moharrir/PW-2. The IO/PW-5 has taken the parcel containing sample of chars from Moharrir/PW-2 and transmitted it to the FSL through constable Rahim Ullah/PW-1 resulting in positive result of FSL. But the safe custody of the sample of chars from the police station to the


  
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FSL has not been proved for the reason that no daily diary is available on file or has been produced by the witnesses of prosecution which could establish their stance regarding the departure of PW-1 from the police station for taking the sample to the FSL.

(9). It is also necessary to mention here that accused facing trial is neither previous convicted nor involved in any such case in the past besides neither he has confessed his guilt nor any further recovery was affected at his pointation despite he being in police custody for some time. 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 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 alleged recovery of chars from possession of the accused facing trial in the mode and manner as detailed in the report. Similarly, the prosecution has also failed to prove the alleged mode and manner of the transmission of the sample of chars from the

  
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police station to the FSL. All these facts lead to the failure of prosecution to prove the case against the accused beyond shadow of doubt. Therefore, the accused namely, **Shahid Noor** is acquitted of the charge levelled against him by extending him the benefit of doubt. Accused is on bail. His bail bonds stand cancelled and his sureties are discharged of the liabilities of the bail bonds. The case property i.e., chargs 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: 04.11.2024

*[Signature]*  
4/11/2024

**SYED OBAIDULLAH SHAH**  
Sessions Judge/Judge Special Court/Judge  
Juvenile 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: 04.11.2024



*[Signature]*  
4/11/2024

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