

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

SPECIAL CASE NO. : 15/3 OF 2024
DATE OF ORIGINAL : 07.05.2024
DATE OF DECISION : 18.12.2024

STATE THROUGH NASIR AHMAD SHO, POLICE STATION
KALAYA

.....(COMPLAINANT)

-VERSUS-

1. JANAB GUL S/O NAZIR KHAN, AGED ABOUT 37 YEARS, R/O
AKA KHEL, SHER MATAK KHEL, PO BARA, MELWAT CAMP,
TEHSIL BARA, DISTRICT KHYBER
2. SPEEN GUL S/O BEHRAM GUL, AGED ABOUT 39 YEARS, R/O
AKA KHEL, SHER KHEL, KHAWANDGAI, PO BARA, TEHSIL
BARA, DISTRICT KHYBER

..... (ACCUSED FACING TRIAL)

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

FIR No. 16 **Dated: 20.03.2024** **U/S: 9 (d) of the Khyber**
Pakhtunkhwa Control of Narcotic Substances Act, 2019

Police Station: Kalaya

JUDGEMENT

18.12.2024

The above-named accused faced trial for the offence
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA, 2019 vide FIR
No. 16, dated 20.03.2024 of Police Station Kalaya.

- (2). The case of the prosecution as per contents of
Murasila based FIR is as follows: On 20.03.2024, the
complainant Nasir Ahmad SHO accompanied by other
police officials in official vehicle driven by Zeeshan Haider,
acting on information regarding smuggling of narcotics from
Kalaya towards Kurez, laid a picket on main road near
Nanawar where at about 14:45 hours a Honda motorcycle
boarded by two persons, on way from Kalaya towards the

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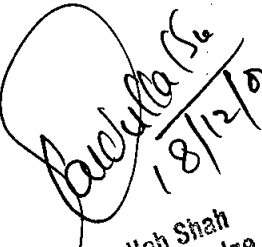
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picket, was stopped for the purpose of checking. The person occupying the pillion passenger was in possession of a blue colour plastic shopper wherefrom 05 packets of chars wrapped with yellow colour scotch tape, were recovered which were weighed through digital scale and each of the packet turned 1000 grams, making a total of 5000 grams. The complainant separated 10 grams of chars from each packet for chemical analysis through FSL, sealed the same into parcels no. 1 to 5 whereas the remaining quantity of chars weighing 4950 grams was sealed in parcel no. 6, by placing/affixing of monograms of 'NA' on all parcels. The complainant took into possession the recovered chars and the motorcycle vide recovery memo. The person on pillion seat disclosed his name as Janab Gul s/o Nazir Khan while the driver disclosed his name as Speen Gul s/o Behram Gul who were arrested on the spot by issuing their joint card of arrest. Murasila was drafted and sent to Police Station through Constable Muhammad Irshad which was converted into FIR by Muhammad Jameel MHC.

- (3). After registration of FIR, it was handed over to Investigating Officer Aftab Hassan for investigation. Accordingly, after receipt of FIR, he reached the spot, prepared site plan on pointation of the complainant and recorded the statements of PWs u/s 161 Cr.P.C. On 25.03.2024, the IO sent the samples of chars for chemical

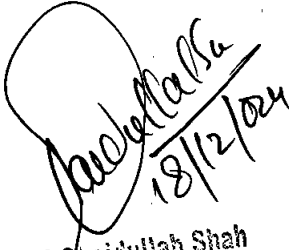

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analysis to FSL through constable Sajid Khan, the result whereof was received and placed on file by him. The IO also sent the motorcycle to FSL for its examination. The result of which was received and placed on file by him. After completion of investigation, he handed over the case file to SHO who submitted complete challan against the accused facing trial.

- (4). Upon receipt of the case file for the purpose of trial, the accused were summoned, copies of the record were provided to them in line with section 265-C CrPC and formal charge was framed against them to which they pleaded not guilty and claimed trial. Accordingly, the witnesses were summoned and examined. The gist of the evidence is as follow;

I. Constable Sajid Khan appeared as PW-1. He has taken the samples of chars in parcels no. 1 to 5 to the FSL for chemical analysis on 25.03.2024 and after submission of the same, he has handed over the receipt of the parcels to the IO.

II. Muhammad Jameel MHC 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 duly packed and sealed which he had kept in mal khana in safe custody besides parked the


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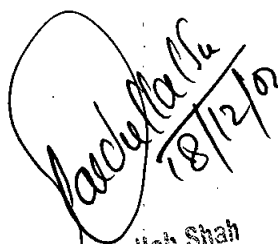
motorcycle in vicinity of the police station. The witness further deposed that he has recorded entry of the case property in Register No. 19 Ex. PW 2/1, entries in the DDs which are Ex. PW 2/2 & Ex. PW 2/3 and has handed over the samples of the case property and the motorcycle to the IO for sending it to FSL.

III. Nasir Ahmad SHO is the complainant of the case. He as PW-3 repeated the same story as narrated in the FIR.

IV. Constable Muhammad Irshad appeared as PW-4. He besides being eyewitness of the occurrence is marginal witness of recovery memo Ex. PC as well vide which the complainant has taken into possession the recovered chars and the vehicle. He also reiterated the contents of FIR in his statement.

V. Shal Muhammad SHO is PW-5. He has submitted complete challan Ex. PW 5/1 against the accused facing trial in the instant case.

VI. Investigating Officer Aftab Hassan was examined as PW-6 who in his evidence deposed in respect of the investigation carried out by him in the instant case. He has prepared the site plan Ex. PB on pointation of the complainant, recorded the statements of witnesses on the spot, produced the


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accused before the court of Judicial Magistrate vide his applications Ex. PW 6/1 and Ex. PW 6/2, sent the representative samples to FSL along with application addressed to the incharge FSL Ex. PW 6/3 and road permit certificate Ex. PW 6/4 and result of the same Ex. PK was placed on file by him, sent the motorcycle to the FSL and the result whereof was received and placed on file by him as Ex. PK/1, placed on file copy of Register No. 19 Ex. PW 2/1, copies of daily diaries and submitted the case file to SHO for onward proceedings.

(5). Prosecution closed its evidence whereafter the statements of accused were 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 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 are directly nominated in the FIR, huge quantity of chars has been recovered from possession of the accused facing trial, the recovered chars were sealed and sampled on the spot by the complainant, the IO has conducted investigation on the spot, the samples for chemical analysis have been transmitted to the FSL within the prescribed period and it has been found positive for chars vide report of


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FSL Ex. PK. The complainant, the witnesses of the recovery, the official transmitted the samples to the FSL and the IO has been produced by the prosecution as witnesses, whom have fully supported the case of the prosecution and their statements have lengthy been cross examined but nothing contradictory could be extracted from the mouth of any of the 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 are directly nominated in the FIR and the report of FSL supports the case of prosecution; however, the accused facing trial are falsely implicated in the instant case and nothing has been recovered from their 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 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). Viewing the arguments advanced by learned counsel for parties and record available before the court, it is concluded that it is bounden duty of prosecution to prove its case against the accused beyond shadow of a reasonable doubt from the moment of presence of all police officials on


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the spot, receiving spy information by local police to the interception of accused, their transportation of chars, taking of samples from recovered chars, preparation of recovery memo, drafting of the Murasila, witnessing of whole proceedings by marginal witnesses, registration of case, safe custody of recovered articles, investigation of the case and laboratory reports etc. To prove this, prosecution has led the evidence of many witnesses and court has to see the mode and manner of the recovery of contraband and chain of safe transmission of the contraband from spot to the police station and then FSL and consistency of the witnesses in their depositions, which are the most important aspects of the case.

As per available record and the statement of complainant/PW-3, he was accompanied by six police personnel, leaving the police station, reaching the spot of occurrence where he has allegedly recovered the contraband from possession of the accused in presence of marginal witnesses; however, none of these officials have been mentioned in the Murasila. The Daily Diary showing the departure of the complainant/PW-3 from the police station, also contradicted the version of complainant/PW-3 as only five names are mentioned therein. This makes the presence of complainant/seizing officer/PW-3 on the spot at the time of occurrence doubtful.


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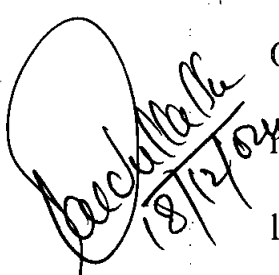
Besides above, the prosecution's version is that the accused were intercepted on the spot, the recovery of contraband have been effected from their possession and the spot proceedings were filmed through a cellular phone through Constable Zeeshan Haider, but astonishingly neither the name of the police personnel who made videography has been mentioned in the Murasila nor his statement u/s 161 CrPC has been recorded nor he has been produced before the court, which not only creates serious doubt about the mode and manner about the commission of offence but also presence of complainant at the crime scene at given time as well. Additionally, the site plan prepared by the Investigation Officer/PW-6 shows that the place of occurrence is a straight road; thus, a question arises that why the accused facing trial, despite being in possession of a huge quantity of narcotics, would straightaway move towards the police party especially in the circumstances where the police officials were visible to them.

As discussed above, the complainant/PW-3 have taken samples from each packet, packed and sealed each test sample in separate parcels, which, as per register no. 19 Ex. PW 2/1, shows that these were taken to FSL Peshawar by Constable Sajid Ullah/PW-1, who stated that these parcels were delivered to him by OII Aftab Hassan for onward submission to FSL, Peshawar. There is, however, nothing on


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record that as to when and by whom those test parcels were delivered to the OII for onward delivery to Sajid Ullah, which not only creates doubt in delivery of these parcels by Moharrir of the police station to the investigation officer (OII) but also shows the break in chain of safe custody of samples and transmission thereof to the laboratory; thus, forensic laboratory report cannot be believed.

Though, there is no mandatory provision in CNSA cases to associate private witnesses; however, their association is also not expressly barred, where there is availability of the public on the spot. In the instant case, record shows that the recovery has allegedly been made from public place i.e. on road during daylight and absence of public is not expected at the spot at the relevant time; therefore, the local police was supposed to associate private witnesses but they did not. Even, the statement of complainant/PW-3 suggests that Murasila Carrier has taken the Murasila alongside other documents to the police station by taking a lift from a private motorcyclist, who could have been cited as marginal witness to the recovery memo and other proceedings of the case. Likewise, the Investigation Officer/PW-6 has also not recorded the statement of said motorcyclist under section 161 CrPC, which shows that the local police have intentionally not cited him as witness due to fear that the true facts of the case might be disclosed.


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Neither the vehicle was registered in the name of accused nor there was any document which could show any nexus with them nor there was any receipt through which the vehicle was given to them on rent. Moreover, no driving license was taken into possession from the accused which is repellent to the common sense that without driving license a person would drive a vehicle or whether he is able to drive or not, which aspect of the case has created reasonable doubt in the prosecution case.

Since, the mode and manner of the occurrence has been doubted due to differences in the statements of prosecution witnesses; therefore, the most reliable and helping evidence in such scenario could have been the call data record of the complainant, accused and investigation officer, which could have led their presence on the spot, movement of the Murasila Carrier from police station back to the spot either in person or with the Investigation Officer and also the movement of Investigation Officer from police station to the spot, however, the investigation officer has not collected any CDR data of the accused and police officials present on the spot at the time of occurrence.

From above appreciation of evidence and lacunae noted above, it is evident that the prosecution has badly failed to prove the mode and manner of making arrest and seizure of narcotics from accused, which has become


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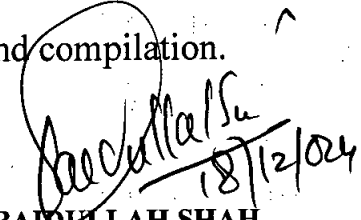
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doubtful. Moreover, there are many discrepancies and contradictions in prosecution case, which have been discussed in detail above. In view of above facts, it is held that admittedly a huge quantity of chars has been shown to be recovered by police but the accumulative effect of lacunae noted above makes the prosecution case doubtful and this is the cardinal principle of law that benefit of the slightest doubt in criminal case would be extended to the accused being favourite child of law. It is, therefore, held that prosecution has failed to bring home the guilt against accused facing trial beyond shadow of doubt; hence, accused **Janab Gul** and **Speen Gul** are acquitted of the charges levelled against them. They are on bails; thus, their sureties are discharged from the liability of the bail bonds. Case property i.e., chars be destroyed while the motorcycle be returned to its lawful owner, after the period provided for appeal/revision.

Judgment announced. File of this court be consigned to record after its necessary completion and compilation.

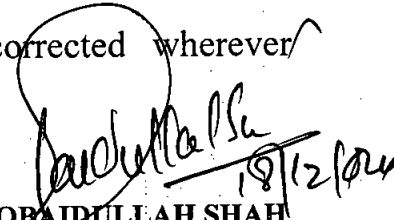
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CERTIFICATE

Certified that this judgement consists of eleven (11) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 18.12.2024


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Sessions Judge/Judge Special Court,
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