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

CRIMINAL APPEAL NO. : 2/10 OF 2024  
DATE OF INSTITUTION : 03.12.2024  
DATE OF DECISION : 11.12.2024

SHAKEEL AHMED S/O GUL BAT SHER, R/O CASTE MISHTI,  
TAPA DARWI KHEL, SHALZARA, DISTRICT ORAKZAI

..... (APPELLANT/CONVICT)

-VERSUS-

STATE THROUGH MUNIR KHAN ASHO, POLICE STATION  
MISHTI MELA

..... (RESPONDENT)


**Present** : Abid Ali Advocate, the counsel for appellant/convict.  
: DPP, Umar Niaz for the State.

**JUDGMENT**  
**11.12.2024**

Impugned herein is the judgment/order dated

31.07.2024 of learned Judicial Magistrate-I, Tehsil Kalaya,  
District Orakzai vide which the appellant/convict has been  
convicted and sentenced for offense u/s 11-A CNSA with  
simple imprisonment of 01-year and fine of Rs. 300,000/-.

- (2). Brief summary of the case is, that on 11.08.2023 the  
complainant, Akhtar Munir ASHO along with other police  
personnel were present on a picket where at about 1040  
hours a suspicious person on way from Sangra towards the  
picket, was stopped and a 30-bore pistol with a fixed  
charger containing 07 live rounds were recovered from his  
trouser-fold for which he could not produce any valid  
license or permit and a white colour plastic shopper  
containing 30 grams of ice was also recovered from his side  
pocket.

  
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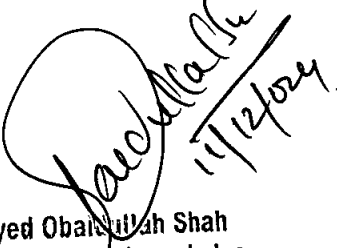
The instant case against the appellant/convict was submitted for trial and formal charge was framed against him on 27.10.2023 whereafter he has gone through the agonies of a long-protracted trial for a period of about almost one year where the prosecution has examined as many as 06 witnesses. The statement of the appellant/convict has been recorded u/s 342 CrPC wherein he has not admitted his guilt. Arguments were heard by learned trial court and the appellant/convict was convicted and sentenced through the impugned judgment of 31.07.2024. The appellant/convict, feeling himself aggrieved of the impugned judgment, filed the instant appeal.

- (3). Perusal of the case file reveals that the appellant/convict has been intercepted by the police on 11.08.2023 at about 10:40 am, the report has been made at 11:00 am and the FIR has been chalked out at 11:20 am. According to the statement of Muhammad Ayyub Investigation Officer/PW-1, he received the copy of FIR along with other documents at 11:30 am whereafter he proceeded to the spot; however, the complainant/PW-3 contradicted the prosecution's version during cross examination, stating that the IO arrived on the spot at about 11:10 am, casting a serious doubt in the case of prosecution. The complainant made his proceedings further doubtful in

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the words that the Murasila Carrier returned from the police station to the spot at 11:15 am, which was before the FIR had even been registered. Upon closer examination of the record, it is revealed that the Murasila Carrier in his cross examination as PW-5 mentioned the name of the Investigation Officer as Shal Muhammad while the prosecution produced Muhammad Ayyub as an investigation officer. The chain of custody from the spot to the police station and from the police station to the FSL, has been compromised in the prosecution case as no Daily Diary has been placed on file or exhibited by the prosecution showing the departure or arrival of Constable Raheem Ullah/PW-2 from the police station for transportation of the sample of ice or the pistol to the FSL for chemical examination.

- (4). Thus, keeping in view these contradictions in the case of prosecution regarding the mode and manner of the occurrence and safe custody of the case property and keeping in view that the accused/convict is a first-time offender with no prior history of involvement in similar cases and he has not made any confession regarding the charges, and there is no evidence to suggest any acknowledgment of guilt and keeping in view the fact that the appellant/convict has already gone through the agonies of a long-protracted trial, the appeal is partially accepted to

  
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the extent of quantum of sentence awarded to the convict/accused which is reduced from one-year to four months and fine of Rs. 300,000/-. In default of payment of the fine, he shall undergo one-month simple imprisonment. The accused/convict **Shakeel Ahmed** be dealt with in accordance with law.

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

Dated: 11.12.2024

*[Signature]*  
11/12/24

**SYED OBAIDULLAH SHAH**  
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**CERTIFICATE**

Certified that this judgment consists of four (04) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 11.12.2024

*[Signature]*  
11/12/24

**SYED OBAIDULLAH SHAH**  
Sessions Judge/Judge Special Court,  
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