

(58)

STATE VS INZAMAM UL HAQ ETC.

FIR No. 69 | Dated: 03.12.2024 | U/S: 9 (d) of the Khyber Pakhtunkhwa CNSA 2019 |
Police Station: Mishti Mela

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

SPECIAL CASE NO. : 7/3 OF 2025
DATE OF INSTITUTION : 03.03.2025
DATE OF DECISION : 21.04.2025

STATE THROUGH AZMAT KHAN SHO, POLICE STATION MISHTI
MELA

.....(COMPLAINANT)

-VERSUS-

1. INZAMAM UL HAQ S/O NOORMAT KHAN, AGED ABOUT 19/20 YEARS, R/O CASTE ZAKHA KHEL, LANDI KOTAL, DISTRICT KHYBER
2. SADEEQ ULLAH S/O FAZAL AKBAR, AGED ABOUT 19 YEARS, R/O CASTE FEROZ KHEL, TAPA QEEMAT KHEL, LARHI

..... (ACCUSED FACING TRIAL)

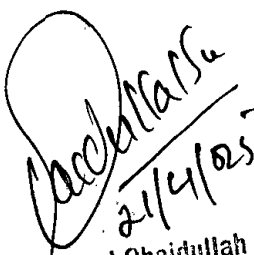
Present: Umar Niaz, District Public Prosecutor for the state.
: Sana Ullah Khan Advocate for accused facing trial.

FIR No. 69 **Dated:** 03.12.2024 **U/S:** 9 (d) of the Khyber
Pakhtunkhwa Control of Narcotic Substances Act, 2019.
Police Station: Mishti Mela

JUDGEMENT
21.04.2025

The accused named above faced trial for the offence
u/s 9 (d) of the Khyber Pakhtunkhwa CNSA Act, 2019 vide
FIR no. 69, Dated 03.12.2024 of Police Station Mishti Mela.

- (2). The case of the prosecution as unfolded in the Murasila
based FIR is as follows: On 03.12.2024 the complainant,
Azmat Khan SHO accompanied by Constables Muhammad
Sulaiman No. 2135 and Hameed Ullah No. 1198 in official
vehicle driven by Mikael Khan HC No. 1211 set up a picket
on the crime scene, where at about 14:20 hours a motorcycle
boarded by two persons travelling from Mishti Mela towards


21/4/25
Syed Obaidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

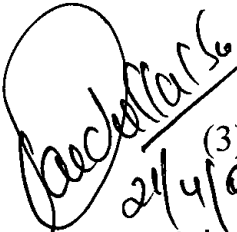
56

STATE VS INZAMAM UL HAQ ETC.

FIR No. 69 | Dated: 03.12.2024 | U/S: 9 (d) of the Khyber Pakhtunkhwa CNSA 2019 |
Police Station: Mishti Mela

the crime scene was stopped for checking. The pillion passenger was having a white bag in his lap. Both of them were disembarked, but nothing incriminating were recovered from their personal search. The motorcyclist disclosed his name Inzamam Ul Haq s/o Noormat Khan whereas the person occupying the pillion seat revealed his identity as Sadeeq Ullah s/o Fazal Akbar. Upon search of the bag, the complainant recovered 11,000 grams of chars garda. The complainant separated 10 grams of chars from the same and sealed it in parcel no. 1 whereas the remaining quantity of chars weighing 10,990 grams along with the bag were sealed in parcel no. 2. Constable Muhammad Sulaiman used a cell phone to record the spot proceedings, which the complainant sealed in parcel no. 3 after converting it into a USB. Monogram of 'AR' was affixed/placed on all parcels. The complainant took into possession the case property i.e., chars and the motorcycle without registration number having Engine No. 8874870 and Chassis No. EA357089 vide recovery memo. The accused were accordingly arrested on the spot by issuing their joint card of arrest. Murasila was drafted and sent to the Police Station through Constable Muhammad Sulaiman which was converted into FIR by Moharrir Saeed.

After registration of FIR, it was handed over to PW-5 Muhammad Hanif OII for investigation. Accordingly, after receipt of relevant documents, he visited the spot and prepared



24/4/25⁽³⁾
Syed Qasidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

site plan Ex. PB on pointation of the complainant. On 06.12.2024, he sent the test sample in parcel no. 1 to the FSL through Constable Muhammad Riaz/PW-1 along with application vide road permit certificate and recorded the statements of marginal witness u/s 161 CrPC. 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 were summoned through addendum-B from Sub-Jail, Orakzai, copies of the record were provided to them u/s 265-C CrPC and formal charge was framed against them to which they 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 Muhammad Riaz is PW-1. On 06.12.2024, he has taken parcel no. 1 containing test sample 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. Moharrir Muhammad Saeed testified against the accused 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


Syed Obaidullah
District & Sessions Judge
Orakzai at Mishti Mela

(58)

complainant and kept it in mal khana in safe custody by making its entry in register no. 19 Ex. PW 2/1 besides parked the motorcycle in vicinity of the Police Station. He has also made entries in daily diaries (DDs) besides handed over parcel no. 1 to the OII for sending it to FSL.

III. Azmat Khan SHO is the complainant of the 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 Sulaiman stands in the witness box as PW-4. He besides being eyewitness of the occurrence is the marginal witness of recovery memo Ex. PC as well vide which the complainant/PW-3 has taken into possession the case property. He also reiterated the contents of FIR in his statement.

V. Investigating Officer Muhammad Hanif 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 the site plan Ex. PB on pointation of the complainant, recorded the statements of witnesses u/s 161 CrPC,


Syed Ghaiyathullah Shah
District & Sessions Judge
Orakzai at Baber Mela
28/4/25

produced the accused before the court of Judicial Magistrate vide his applications Ex. PW 5/1 & Ex. PW 5/2, sent the representative sample to the FSL along with the application vide road permit certificate and the result whereof was received and placed on file by him as Ex. PK. He has also drafted letters Ex. PW 5/5 and Ex. PW 5/6 for verification of the motorcycle, placed on file DDs Ex. PW 2/2, register no. 19 Ex. PW 2/1 and has submitted the case file to the SHO for onward proceeding.

(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 have been recovered from possession of the accused facing trial, the recovered chars are sealed and sampled on the

spot by the complainant, the OII has conducted investigation on the spot, the sample for chemical analysis has been transmitted to the FSL which has been found positive for chars vide report of FSL. The complainant, the witness of the

Syed O. S. Mulla
Syed O. S. Mulla
District & Sessions Judge
Orakzai at Baher Mela

STATE VS INZAMAM UL HAQ ETC.

FIR No. 69 | Dated: 03.12.2024 | U/S: 9 (d) of the Khyber Pakhtunkhwa CNSA 2019 |
Police Station: Mishti Mela

recovery, the official who 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 lengthy been cross examined but nothing contradictory could be extracted from their mouths 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, the alleged chars have been shown recovered from their possession and the report of FSL support 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 counsels for the parties and record available before the court, it is concluded that it is the 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


21/4/25
Syed Qasim Shah
District & Sessions Judge
Orakzai at Gaber Mela

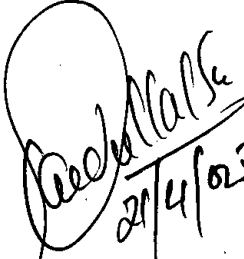
(61)

STATE VS INZAMAM UL HAQ ETC.

FIR No. 69 | Dated: 03.12.2024 | U/S: 9 (d) of the Khyber Pakhtunkhwa CNSA 2019 |
Police Station: Mishti Mela

the spot to the interception of the accused, their transportation of chars, taking of sample 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 the court has to see the mode and manner of the recovery of contraband, the mode and manner of the investigation and chain of safe transmission of the contraband from spot to the police station and then the FSL and consistency of the witnesses in their depositions, which are the most important aspects of the case.

- (9). As discussed above, Constable Sulaiman/PW-4 allegedly recorded the spot proceedings through his mobile after the complainant, Azmat Khan SHO/PW-3 allegedly set up a picket on the crime scene, intercepted the accused and retrieved contraband chars from their possession. A contradiction arose in the prosecution case when the statements of the eyewitness/PW-4 and the complainant/PW-3 regarding the beginning point of the videography, are examined. The eyewitness claimed that the video began to be recorded when the accused were disembarked from the motorcycle, while the complainant claimed that it was started from the moment the accused were approaching towards them. Moreover, both these witnesses also went apart from each


21/4/25
Syed Obaidullah Shah
District & Sessions Judge
Orakzai at Baber Mela

(62)

STATE VS INZAMAM UL HAQ ETC.

FIR No. 69 | Dated: 03.12.2024 | U/S: 9 (d) of the Khyber Pakhtunkhwa CNSA 2019 |
Police Station: Mishti Mela


other when they were asked about the direction wherefrom the video was recorded. PW-3 mentioned the direction as eastern side whereas it was mentioned as western side by the eyewitness.

It is also important to note that the monogram mentioned on the parcels is of the name of 'AR' while the name of the complainant/PW-3 is Azmat Khan; thus, the said parcels should have contained stamp of 'AK' instead of 'AR'.

Wisdom is drawn from **2018 MLD 1740** which quotes that;

"It is also important to note that the parcels mentioned in recovery memo. (Ex.PW 3/1) mentioned the stamps in the name of "SK", whereas, the name of PW-4 complainant is Junaid Khan, thus, the said parcels should have contain stamp of (JK) instead of (SK)."

It is also worth mentioning that allegedly after effecting recovery of contraband from accused's possession, the complainant prepared recovery memo Ex. PC, card of arrest Ex. PW 3/1 and Murasila Ex. PA/1 on the crime scene. When these are felt with bare hand, one will realize that the quality of paper used for drafting card of arrest and Murasila is one and the same whereas the paper used for drafting the recovery memo is of the different quality, which means that the proceedings are either not carried out on the crime scene or


20/4/25
Syed Qasidullah Shah
District & Sessions Judge
Orakzai at Mishti Mela

have been carried out by somebody else at some various unknown places.

When the complainant as PW-3, the eyewitness as PW-4 and the IO as PW-5 are questioned regarding transporting the motorcycle from the crime scene to the police station, the recovery of contraband chars is called into question even more. They all went apart while corroborating this fact. The complainant stated that;

"The motorcycle of the accused was taken to the PS by Sulaiman."

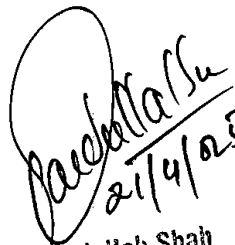
While the eyewitness narrated a different story in the following words;

"The SHO left the motorcycle on the spot to the IO and we had not taken the same with us."

Astonishingly, the IO showed complete ignorance of the fact that who has driven the motorcycle from the spot to the police station. He told that;

"I do not remember as to whether the SHO himself drove the motorcycle to the PS or someone else among his nafree took the same to the PS."

It is admitted on record that the investigation was carried out in the instant case by Muhammad Hanif OII/PW-5. As per daily diary (DD) No. 24 Ex. PW 2/2 which documents the departure of OII/PW-5 shows that the IO was accompanied by Constables Muhammad Riaz (PW-1) and Khalil Ur


21/4/25
Syed Ozaiddullah Shah
District & Sessions Judge
Jalalpur at Bahawalpur

(64)

STATE VS INZAMAM UL HAQ ETC.

FIR No. 69 | Dated: 03.12.2024 | U/S: 9 (d) of the Khyber Pakhtunkhwa CNSA 2019 |
Police Station: Mishti Mela

Rehman who reached the crime scene for conducting investigation. However, when Muhammad Riaz/PW-1 was asked if he had ever visited the crime scene with the IO/PW-5 during the investigation in the instant case, he denied, which raises doubts about the IO's presence on the crime scene. In addition, the complainant/PW-3, in response to a question, claimed that the IO/PW-5 had re-weighed the case property at the time he arrived on the spot. In contrast, the IO/PW-5 denied doing so, mushrooming further doubts on the branches of prosecution case. The IO/PW-5, being Investigation Officer, was supposed to verify that whether the articles recovered from the accused facing trial was actually contraband or otherwise but he also did not bother to even check the same with close eyes which shows malice on the part of prosecution. Wisdom is drawn from **Cr.A. No. 109-P/2012**. If the statements of PWs in juxtaposition with the available record is gone through, it is observed that the eyewitness told that his statement under section 161 CrPC was recorded by the IO/PW-5 on 04:00 pm; however, the IO as PW-5 mentioned the time of his arrival to the spot as 1610 hours (04:10 pm) which is ironic that how a statement can be recorded if the person who is supposed to record it, is not even present. It is also surprising to note that the complainant/PW-3 vaguely stated that IO arrived on the crime scene at about 1720 or 1730 hours. When the entire record is further scanned with a judicial


Syed Obaidullah
District & Sessions Judge
Muzai a/Baher Mela

(68)


STATE VS INZAMAM UL HAQ ETC.

FIR No. 69 | Dated: 03.12.2024 | U/S: 9 (d) of the Khyber Pakhtunkhwa CNSA 2019 |
Police Station: Mishti Mela

eye, it is found that the occurrence has taken place on 03.12.2024 while certain documents available on file have November, 2024 dates on them. Although, possibly these could be clerical mistakes but it is equally possible that how can someone mention incorrect month on more than 02 documents. The Investigation officer/PW-5 did not bother to give any clarification in this regard.

It is alleged that at the time of arrest, one of the accused was driving the motorcycle but no driving license was secured from his possession nor any clarification about non-securing or non-production of driving license has been placed on record by prosecution. In terms of corroborating the connection of the motorcycle with the accused facing trial, the IO's investigation lacks specifics regarding its ownership and could not provide any document to verify any nexus of the motorcycle with the accused, suggesting gaps in the investigation process. These inconsistencies raise questions about the credibility of the prosecution's story regarding the events occurred on the crime scene.

With respect to the safe custody of the case property, it has been documented in the case file that the occurrence has taken place on 03.12.2024 whereas the test sample has been transmitted to the FSL on 06.12.2024 which is evident from the statements of prosecution witnesses and the FSL report available on file as Ex. PK. The sample, as per rule 4 (2) of the


21/9/25
Syed Qaidullah Shah
District & Sessions Judge
Mela

Control of Narcotic Substances (Government Analysts) Rules, 2001, is to be sent not later than 72 hours of its recovery which was not done in the instant case. The late sending of sample of chars to the FSL has created a doubt regarding the recovery and availability of the same for the purpose of FSL. Thus, the report of the FSL cannot be based as a piece of evidence for conviction of the accused facing trial.

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, the accused and the 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. The IO had not brought on record any fact regarding the accused's previous conviction nor involvement in any such case in the past besides neither they have confessed their guilt nor any further recovery was affected at their pointation despite they being in police custody for some time. It seems that either the witnesses were not present at the relevant place on the relevant date and time or

Syed Abdulhameed Shah
21/4/25
Syed Abdulhameed Shah
Magistrate & Sessions Judge
Mishti Mela

have not deposed in the mode and manner in which the occurrence was alleged to have had been committed.

- (10). It is well established settled law that an accused person would be entitled to acquittal if even one doubt rather than a mixture of multiple doubts, is deemed reasonable. Reliance is placed on **2008 SCMR 1221**, wherein, it has held that;

"It needs no reiteration that for the purpose of giving benefit of doubt to an accused person, more than one infirmity is not required, a single infirmity creating reasonable doubt in the mind of a reasonable and prudent mind regarding the truth of charge-makers the whole case doubtful. Merely because the burden is on accused to prove his innocence it does not absolve the prosecution to prove its case against the accused beyond any shadow of doubt in this duty does not change or vary in the case."

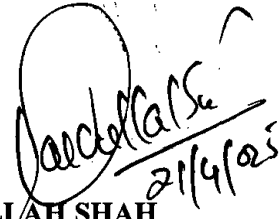
Hence, in view of all the discrepancies, doubts and uncertainties in the case of prosecution as discussed above, the accused namely, **Inzaman Ul Haq** and **Sadeeq Ullah** are acquitted of the charge levelled against them by extending them the benefit of doubt. Accused are in custody. They be released forthwith, if not required in any other case. The case property i.e., chars be destroyed after the period provided for

Sadeeq Ullah
21/4/25
Syed Ubaidullah Shah
District & Sessions Judge
Orakzai at Bahar Mela

appeal/revision while the motorcycle be returned to its lawful owner.

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

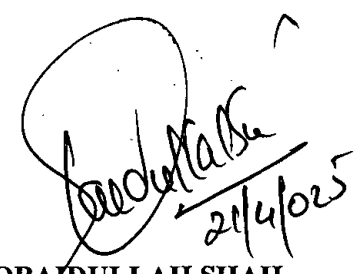
Dated: 21.04.2025


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

CERTIFICATE

Certified that this judgement consists of fourteen (14) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 21.04.2025


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

