IN THE COURT OF JUDICIAL MAGISTRATE-I, KALAYA, ORAKZAI

Case No .....15/3 of 2021.

Date of institution.....07.10.2021.

Date of decision.....08.05.2023.

Case FIR No. 84 Dated: 01.07.2021 U/S 15AA, PS Kalaya

Order. No. 22
08.05.2023

APP for the state present. Accused on bail along with counsel present. Re-examination of PW-01 (SI Shal Muhammad) recorded. FSL report exhibited as Ex.PZ. PW Zahid is absent. Counsel for accused submitted application u/s 249-A Cr.PC. Arguments on application heard and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that on the day of occurrence, SHO/complainant Shal Muhammad along with Raza Ali, Abdul Sattar, Mohib Ali and Noor Sharif were on area patrol at Qalat, Behram Zai road when received information that accused Yaseen S/O Jawad Ali R/O Qaum Mani Khel, wanted in case FIR No. 41, dated 29.03.2021, U/S 324/34 PPC, PS Kalaya is present in front of his house at Qalat. On this information, they rushed to the spot where accused Yaseen was present. He was formally arrested. During his body search, one 30 bore pistol without number along with 15 cartridges were recovered from possession of accused in presence of marginal witnesses. Accused failed to produce any license regarding the recovered arms and ammunitions. The recovered pistol and cartridges were packed and sealed into parcel No. 1. Accused was arrested in the above cited case as well.

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On the strength of Murasila, the instant case was registered against the accused.

After completion of investigation, complete challan was put in court against accused. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused.

SI Shal Muhammad was examined as PW-01. He stated that on the day of occurrence, he along with Constable Raza Ali, Abdul Sattar, Mohib Ali and Noor Sharif were on area patrol duty at Qalat, Behram Zai road when received information that accused Yaseen S/O Jawad Ali R/O Qaum Mani Khel, wanted in case FIR No. 41, dated 29.03.2021, U/S 324/34 PPC, PS Kalaya is present in front of his house at Qalat. On this information, they rushed to the spot where accused Yaseen was present. He was formally arrested. During his body search, one pistol 30 bore without number along with 15 cartridges were recovered from possession of accused in presence of marginal witnesses. Accused failed to produce any license regarding the recovered arms and ammunitions. The recovered pistol and cartridges were packed and sealed into parcel No. 1. Parcel is Ex. P1. Accused was arrested in the above cited case as well. Recovery memo is Ex. PW-1/1. Murasila is Ex. PW-1/2. Murasila was sent to the PS through Constable Raza Ali for registration of the case. Card of arrest of accused is Ex. PW-1/3. He also prepared site plan in presence of marginal witnesses. Site plan is Ex. PB. He interrogated the accused and recorded his statement U/S 161 Cr. PC. Accused was produced before the Judicial Magistrate with request for judicial remand. Accused was committed to Judicial Lock-up. Application is Ex. PW-1/4.

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The recovered pistol and cartridges were sent to FSL. Copy of the application is Ex. PW-1/5. Road certificate is Ex. PW-1/6. Mad report dated 21.07.2021 is Ex. PW-1/7. Attested copy of FIR No. 41 is Ex. PW-1/8. He also recorded statements of PWs U/S 161 Cr. PC. After completion of investigation, he submitted complete challan against accused. Challan form is Ex. PW-1/9.

Raza Ali appeared and deposed as PW-02. He stated that during the days of occurrence, he was posted at PS Kalaya. On the day of occurrence, he was present with SHO/complainant and in his presence SHO/complainant recovered and took into possession one pistol 30 bore without number along with 15 cartridges from the personal possession of accused. The accused facing trial was also wanted in case FIR No. 41, dated 29.03.2021, U/S 324/34 PPC, PS Kalaya. The recovered pistol and cartridges were in a bandolier. Accused failed to produce any license regarding the recovered arm and ammunitions. The recovered pistol and cartridges were packed and sealed into parcel No. 1. Murasila was drafted by SHO/complainant at the spot. Murasila, card of arrest and recovery memo were handed over to him by SHO/complainant and he took the same to PS Kalaya and handed over it to Moharrir of PS. His statement was recorded U/S 161 Cr. PC.

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Later on, APP for the state submitted application for re-examination of PW-01 and summoning PW constable Zahid. Application was allowed. PW-01 was re-examined. FSL report was exhibited as Ex.PZ. PW, constable Zahid did not appear before the court for evidence.

Perusal of record transpires that the alleged occurrence took place on 01.07.2021 at 15:45 hours at Qalat, Behram Zai and it was reported

through Murasila at 16:15 hours and FIR was registered at 16:50 hours. The distance between spot and PS Kalaya is 5/6 KM.

PW-01, who is complainant as well as IO of the case, stated in his cross examination that he cannot tell the exact time of receiving information regarding presence of accused at the spot. He was present at Kalaya Bazar when received information. He admitted that he has not mentioned the factum of presence at Kalaya Bazar in the murasila. On the other hand, constable Raza Ali, one of the marginal witnesses to the recovery memo, who deposed as PW-02, stated that they received information regarding presence of accused at the spot during gasht. They were on gasht at Behram Zai road. PW-02 contradicts PW-01 on material points. Similarly, PW-01 stated in his cross examination that he has not mentioned house of the accused in the site plan. Per contents of murasila Ex.PW-1/2, it is alleged that accused was present in front of his house but house of the accused has not been mentioned in the site plan Ex.PB. PW-01 deposed that he remained at the spot for about 1-1/2 hours in connection with spot proceedings. On the other hand PW-02 deposed that they remained at the spot for about 30 minutes. Despite of prior information regarding presence of the accused at the spot, no private person was associated as witness during spot proceedings. Mandatory provisions of 103 Cr.PC have not been complied with.

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Per record, the recovered pistol is not weapon of offence in case FIR No. 41 dated 29.03.2021 u/s 324/34 PPC. The pistol and cartridges were sent to FSL vide application Ex.PW-1/5 on 27.09.2021. The occurrence took place on 01.07.2021. The pistol and cartridges were sent

to FSL with a delay of 02 months and 27 days which is fatal to the case of prosecution.

There are so many dents and doubts in case of prosecution benefit of which goes to the accused. There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused facing trial is acquitted from the charges levelled against him. He is on bail. His sureties stand discharged from their liability.

Case property i.e., one 30 bore pistol without number along with fixed charger containing 15 cartridges be dealt with in accordance with the law.

File be consigned to record room after necessary completion and compilation.

Announced.
08.05.2023

(Zahir Khan)
Judicial Magistrate-I,
Tehsil Kalaya, Orakzai