Service Appeal No. 7426/2021 titled "Arif Akbar...vs. Inspector General of Police Khyber Pakhtunkhwa Peshawar & other", decided on10.05.2022 by Division Bench comprising Kalim Arshad Khan, Chairman and Farecha Paul, Member Executive Khyber Pakhtunkhwa Service Tribunal, Peshawar

KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, <u>PESHAWAR.</u>

BEFORE: KALIM ARSHAD KHAN, CHAIRMAN FAREEHA PAUL, MEMBER (EXECUTIVE)

Service Appeal No.7426/2021

| | Ex-Constable | | | |
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| ··· | | | (Apj | pellant). 👘 |

Versus

1. Inspector General of Police, Khyber Pakhtunkhwa Peshawar.

2. Regional Police Officer, Mardan.

3. District Police Officer, District Mardan.

> Mr. Ali Azim Afridi, Advocate......For appellant. Respondents......Not represented.

| Date of Institution | 20.09.2021 |
|---------------------|------------|
| Dates of Hearing | 10.05.2022 |
| Date of Decision | 11.05.2022 |

SECTION APPEAL UNDER OF THE 4 PAKHTUNKHWA SERVICE KHYBER 1974 AGAINST TRIBUNAL ACT: THE IMPUGNED ORDER DATED 09.09.2021; WHEREFORE APPEAL AGAINST ORDER DATED 28.12.2020 WAS DISMISSED; BEING CONTRARY TO LAW AND JURISPRUDENCE.

JUDGEMENT

KALIM ARSHAD KHAN CHAIRMAN. This appeal has

been filed by Arif Akbar, Appellant against the order dated 28.12.2020,

Service Appeal No. 7426/2021 titled "Arif Akhar...vs. Inspector General of Police Khyber Pakhtunkhwa Peshawar & other", decided on 10:05:2022 by Division Bench comprising Kalun Arshad Khan, Chairman and Fareeha Paul, Member Executive Khyber Pakhtunkhwa Service Tribunal, Peshawar.

whereby, he was awarded major penalty of dismissal from service and against the order dated 09.09.2021, whereby, his departmental appeal was rejected.

2. Brief facts of the case are that the appellant while posted at Investigation Wing Mardan was implicated in a case vide FIR No. 270, dated 08.05.2020 u/s 9D KPCNSA/15-AA Police Station Tangi District Charsadda. Charge sheet coupled with statement of allegations was served upon the appellant and he was placed under suspension. He was also served with a final show cause notice. He was ultimately dismissed from service vide order dated 28.12.2020. Feeling aggrieved, the appellant preferred departmental appeal on 12.01.2021, which was rejected on 09.09.2021, hence, the present appeal on 20.09.2021.

3. On receipt of the appeal, notices were issued to the respondents to file their reply. The respondents submitted their joint parawise comments. The respondents mainly contended that the appellant was involved in a criminal case. He was issued charge sheet with statement of allegation and enquiry was entrusted to Mr. Bashir Ahmad, the then SDPO Takht Bhai, Mardan. The officer fulfilled all the legal and codal formalities by extending right of defence to the appellant and to produce evidence in his defence, but he failed. However, the enquiry officer recommended the appellant for award of major punishment. He was issued final show case notice to which reply of the appellant was received and he was also heard in orderly room but he failed to justify his innocence, therefore, he was awarded major penalty of dismissal from service. They further contended that criminal and departmental proceedings were through two different Service Appeal No. 7426/2021 titled "Arif-Akbar-.vs. Inspector General of Police Kliyber Pakhtiinkhwa Peshawar & other", decided on10.05.2022 by Division Bench comprising Kalim Arshad Khan, Chairman and Fareeha Paul, Member Executive-Khyber Pakhtiinkhwa Service Tribunal, Peshawar.

actions but then can run simultaneously and the fate of criminal case would have no effect on the departmental proceedings.

4. We have heard the learned counsel for the appellant while no one appeared on behalf of the respondents despite repeated calls and remained unrepresented.

5. It was argued by the learned counsel for the appellant that the appellant was enlisted as Constable in the year, 2001 and served with entire satisfaction of his superiors; that mere FIR was not sufficient until that was it is proved by the competent court of law; that the respondents must have waited for the outcome of criminal proceedings; that the appellant was tried by the competent court of law and vide judgment dated 13.04.2021 of Additional District & Sessions Judge/Judge Special Court Charsadda at Tangi, he was acquitted from the criminal charge; that the judgment was sent to the Scrutiny Committee for getting opinion for filing appeal before the Hon'ble High Court, which was returned with the remarks that that was not fit for filing an appeal before the Hon'ble High Court. Hence, the judgment of learned Judge Special Court, Tangi District Charsada attained finality.

6. Today no one attended the Tribunal on behalf of the respondents to rebut the arguments of learned counsel for the appellant, even the Law Officer was absent when the case was being argued.

7. It appears that the appellant was dismissed from service only on the ground that he was involved in a criminal case, whereas the appellant was acquitted by the competent court of law vide judgment dated 13.04.2020. The judgment was sent to the Scrutiny Committee and vide letter No. 12985/AO, dated 16.10.2021, the case was found not fit for filing criminal

Service Appeal No. 7426/2021 titled^{***} Arif Akhar ...vs. Inspector General of Police Khyber Pakhtunkhwa Peşhawar & other ^{**}, decided on10.05:2022 by Division Bench^{**} comprising Kalim Arshad Khan, Chairman and Farecha Paul, Member Executive Khyber Pakhtunkhwa Service Tribunal, Peshawar.

appeal before the Hon'ble Peshawar High Court. It is true that departmental and criminal proceedings can run simultaneously but it is equally true that except involvement of the appellant in a criminal case, there is no other allegation or charge against him so that we could infer that the appellant was rightly awarded punishment by the department. Mere involvement in a criminal case was no ground to pass any order of punishment against the appellant especially when none of the charges were proved in the criminal proceedings, especially when otherwise no misconduct of the appellant was shown or proved. Therefore, in absence of convincing proof of allegations made against the appellant, order of dismissal from service, is not sustainable.

8. In the circumstances, the penalty imposed upon the appellant is unwarranted and on acceptance of this appeal, the impugned orders dated 28.12.2020 and 09.09.2021 are set aside. The appellant is reinstated in the service, however, the period of his absence shall be treated as leave of the kind due. Consign.

9. Pronounced in open court at Peshawar and given under our hands and seal of the Tribunal this 11th day of May, 2022.



A

KALIM ARSHAD KHAN Chairman

FAREEHA PA

Member Executive

SA 7426/2021

11th May, 2022

Mr. Ali Azim Afridi, Advocate for appellant present. Respondents not represented.

2. Vide our detailed judgment of today, containing 04 pages, on acceptance of this appeal, the impugned orders dated 28.12.2020 and 09.09.2021 are set aside. The appellant is reinstated in the service, however, the period of his absence shall be treated as leave of the kind due. Consign.

3. Pronounced in open Court at Peshawar and given under our hands and the seal of the Tribunal on this 11th of May, 2022.



(FAREEHA PÁUL) Member (E) 19th April, 2022

2 Counsel for the appellant present. Mr. Nasirud Din Shah, Asstt. AG alongwith Attaur Rehman, Inspector (Legal) for the respondents present. Written reply submitted. Placed on file. To come up for arguments on 10.05.2022 before the D.B.

(Mian Muhammad) Member(E)

Chairman

10.05.2022

Mr. Ali Azim Afridi Advocate for the appellant present. None present on behalf of respondents.

Arguments heard. To come up for order before the D.B on 11.05.2022.

(Fareeha Paul) Member (E)

Chairman

27.10.2021

Counsel for the appellant present. Preliminary arguments have been heard. Memorandum of appeal and the copies of record annexed there with has been perused.

This appeal is admitted for regular hearing subject to all just legal objections. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents for submission of written reply/comments in office within 10 days after receipt of notices, positively. If the written reply/comments are not submitted within the stipulated time, or extension of time is not sought through written application with sufficient cause, the office shall submit the file with a report of non-compliance. File to come up for arguments on 05.01.2022 before the D.B.

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05.01.2022

Counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General alongwith Mr. Noor Daraz Khan, SI (Legal) for respondents present.

Reply/comments on behalf of respondents are still awaited. Representative of respondents sought time for submission of reply/comments. Last opportunity is granted to respondents to furnish reply/comments on or before next date, failing which their right to submit reply/comments shall be deemed as struck off by virtue of this order. To come up for arguments before the D.B on 19.04.2022.

lairman

(Atiq-Ur-Rehman Wazir) Member (E)

Appellant Deposited rocess Fiee

Form- A

FORM OF ORDER SHEET

Court of_ Case No.-/2021 S.No. Date of order Order or other proceedings with signature of judge proceedings 2 1 3 The appeal of Mr. Arif Akbar presented today by Mr. Ali Azim Afridi 20/09/2021 1-Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please. REGISTRAR This case is entrusted to S. Bench for preliminary hearing to be put 2up there on $\underline{97}$ |0/2|CHAIRMAN

| Case Title: Albal CHECK LIST I. Q. ILPL and other 5# CONTENTS YES NO 1 This Appeal has been presented by: Di Asie Hord YES NO 2 Whether Counsel/Appellant/Respondent/Deponent have signed YES NO 3 Whether appeal is within time? YES NO 4 Whether affidavit is appended? Yes Yes 5 Whether affidavit is appended? Yes Yes 6 Whether affidavit is outly attested by competent Oath Yes Yes 7 Whether affidavit is appended? Yes Yes Yes 8 Whether affidavit is duly attested by competent Oath Yes Yes Yes 9 Whether appeal/annexures are properly paged? Yes Yes Yes 10 Whether annexures are legible? Yes Yes Yes Yes 11 Whether copy of appeal is delivered to AC/DAC? Yes Yes Yes 12 Whether numbers of referred cases given are correct? Yes Yes Yes 13 Whether numbers of refered cases given ar | Кŀ | IYBER PAKHTUNKHWA SERVICE TRIBUNAL, | PESHA | \WAR |
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It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

sid;

Signature: Dated:

BEFORE THE SERVICE TRIBUNAL KP, PESHAWAR Service Appeal No. /2021

Arif Akbar

.....Appellant

Versus

IG Khyber Pakhtunkhwa & Others

.....Respondent(s)

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Through

~ A. 2001

Ali Azim Afridi

Contact # 0333-9555000

BEFORE THE SERVICE TRIBUNAL KP, PESHAWAR

Service Appeal No. 74292021

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Diary No. 7608 20/0

Arif Akbar Ex-Constable No. 1579, District Mardan

.....Appellant

Versus

- **1.** Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
- 2. Regional Police Officer, Mardan
- 3. District Police Officer, District Mardan
- 4. Superintendent of Police, Investigation, District Mardan

.....Respondent(s)

APPEAL UNDER SECTION 4 OF THE KP SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 09.09.2021; WHEREFORE APPEAL AGAINST ORDER DATED 28.12.2020 WAS DISMISSED; BEING CONTRARY TO LAW AND JURISPRUDENCE

Respectfully Sheweth,

- That the Constitution of Islamic Republic of Pakistan aims at protecting civil servants in order to ensure smooth running of affairs of the Government and Institutions so as to benefit the public citizenry.
- The Constitution of Islamic Republic of Pakistan equally beshields civil servants from being treated otherwise than in accordance with law.

In Sheikh Riaz-ul-Haq's Case¹, it was held that, "Admittedly, civil servants being citizens of Pakistan have fundamental rights including the right to access to justice as envisaged under Article 9 of the Constitution".

 That the Constitution of Islamic Republic of Pakistan evenly emphasizes on equality for the citizens, by the citizens; aimed at underpinning rule of law.

ON FACTS

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- 4. That the appellant was serving as constable; placed under suspension; charge-sheeted coupled with statement of allegations; served with final-show-cause notice; given the FIR No. 270 dated 08.05.2020 U/S 9D KP CNSA/15 AA Police Station Tangi, District Charsadda; as such was dismissed from service vide order dated 28.12.2020. (Copy of the charge-sheet; statement of allegations; FIR No. 270 dated 08.05.2020 and Final Show-Cause notice; order dated 28.12.2020 is annexed as Annexure "A")
- 5. That given the stated position; the appellant preferred departmental appeal against the order dated 28.12.2020; during the course of proceedings the appellant stood acquitted vide Judgment dated 13.04.2021; as such passed on the said information vide appeal put forth before respondent No. 2; insofar acquittal; since the issue raised at the relevant time coupled with acquittal dovetailed. (Copy of the departmental appeal(s) along-with Judgments are annexed as Annexure "B")
- 6. That it is important to note that; the appellant has been performing as constable to the best of his abilities, determination and perseverance; to the entire satisfaction of

¹ PLD 2013 SC 501

the competent authority from the date of inception with impeccable service record.

In Suo Moto Case No. 19 of 2016², it was held that, "Good governance was not a favour to be bestowed on the people; it was their right".

7. That having left with no other option but to impugned the order dated 09.09.2021; premised upon the departmental appeal(s) preferred against the order dated 28.12.2020; inter-alia of the following grounds: -

GROUNDS

- **A.** That the impugned order dated 09.09.2021; premised upon the departmental appeal(s) preferred against the order dated 28.12.2020 is contrary to law and jurisprudence.
- **B.** That despite acquittal in FIR No. 270 dated 08.05.2020; the appellate authority took erroneous view insofar dismissa⊨of appellant; which sans judicious application of mind.
- **C.** That the competent authority has also failed to take into consideration the relevant law on the subject matter guided by the dicta laid down by Hon'ble the Supreme Court of Pakistan.
- **D.**That carte-blanche exercise of power; abdicates the wellentrenched principle of "structured discretion".
- E. That the purported omission on the part of respondent No. 2; attributing err to the learned judge; acquitting the appellant; itself speaks volumes engraving 'danger to the notion of good governance, hence requires interference of the Hon'ble Court.

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² 2017 SCMR 683

In Qaiser Iqbal's Case³, it was held that, "Rule of Law meant supremacy of law as opposed to arbitrary authority of the Government; said supremacy guaranteed three concepts; first, the absence of arbitrary power; second, equality before law and third the rights of a citizen".

- **F.** That it is cardinal principle of law and justice that what cannot be done directly cannot be done indirectly.⁴
- **G.**That public functionary has to reinforce good governance, observe rules strictly and adhere to rule of law in public service⁵.
- **H.**That "Expressio Unis Est Exclusio Alterius", commanding that when law requires a thing to be done in particular manner then, it should be done in that manner as anything done in conflict of the command of law shall be unlawful being prohibited.
- **I.** That "*Ignorantia juris non excusat"*, commanding that ignorance of the law excuses not.
- **J.** That further necessary grounds will be raised during the course of arguments.

PRAYER

It is therefore humbly prayed that on acceptance of this Service Appeal: -

1. The impugned the order dated 09.09.2021; premised upon the departmental appeal(s) preferred against the order dated 28.12.2020 may please be set-at-naught and

⁵ 2015 SCMR 456; PLD 2013 SC 195

³ 2018 PLD Lahore 34

⁴ PLD 1993 SC 473 at Page 687

the appellant may please be restored with all back-cumconsequential benefits.

2. Any such order be passed which this Hon'ble Tribunal deems fit and appropriate as the circumstances may require for determination of the subject at hand.

Appŧ Through Ali Azim Afridi

Advocate High Court

Contact # 0333-9555000

BEFORE THE SERVICE TRIBUNAL KP, PESHAWAR Service Appeal No. /2021

Arif Akbar

.....Appellant

Versus

IG Khyber Pakhtunkhwa & Others

.....Respondent(s)

AFFIDAVIT

I, **Arif Akbar Ex-Constable No. 1579, District Mardan**, appellant do hereby on oath affirm and declare that the contents of the Service Appeal are true and correct to the best of my knowledge, belief and nothing has been concealed therefrom the Hon'ble Tribunal.

Depone 20 SEP 2021 ATTESTED Muhammad Sadiq D issioner igh Court Peshav

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BEFORE THE SERVICE TRIBUNAL KP, PESHAWAR Service Appeal No. /2021

Arif Akbar

.....Appellant

Versus

IG Khyber Pakhtunkhwa & Others

.....Respondent(s)

MEMO OF ADDRESS OF PARTIES

Appellant

Arif Akbar Ex-Constable No. 1579, District Mardan

<u>Respondent(s)</u>

- Inspector General of Police, Khyber Pakhtunkhwa, Peshawar
- 2. Regional Police Officer, Mardan
- 3. District Police Officer, District Mardan
- 4. Superintendent of Police, Investigation, District Mardan

Through

Ali Azim Afridi Advocate High Court **Contact #** 0333-9555000

Ar Mexore

CHARGE SHEET UNDER KPK POLICE RULES 1975.

1. <u>Muhammad Ayaz SP- Investigation Mardan</u>, as competent authority, hereby charge you <u>Driver Constable Arif Akbar No. 1579</u> while posted in this wing, as per attached statement of allegations.

- By reasons of above you appen to be guilty of misconduct under Police Rules, 1975 and have rendered yourself fiable to all or any of the penaltics specified in Police Rules, 1975.
- 2. You are, therefore, required to submit your written defense within <u>07 days</u> of the receipt of this Charge Sheer to the Enquiry Officer.
- cour written defense, if any, should reach the Enquiry Officer within the specified period, failing which it shall be presumed that you have no defense to put-in and in that case, ex-parts action shall follow against you.
- 4. You can come and appear before the undersigned to be heard in person.

SuperinTundentfol Folice. Investigation Mardan.



OFFICE OF THE SUPERINTENDENT OF POLICE INVESTIGATION MARDAN Phone No. 0937-9230121 Fax No. 0937-9230321

No. L&O_/PA/Inv/CS:

Dated <u>0</u>⁹/May/2020.

DISCIPLINARY ACTION UNDER KPR POLICE RULE-1975.

I. <u>Muhammad Avaz SP Investigation Mardan</u>, as competent authority, am of the opinion that you Driver Constable Arif Althor No. 7579 rendered yourself to be proceeded against departmentally, as you committed the following misconduct/omissions within the meaning of Police Rules, 1975.

STATEMENT OF ALLEGATIONS:

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Whereas, <u>Driver Constable Arif Akbar No. 1579</u> of this wing involved himself in case FIR No. 270 dated 08.05.2020 u/s 9DKPCNSA / 15AA PS Tangi Distr: Charsacida. He is placed under suspension vide this office O.B No. 05 dated 09.05.2026

For the purpose of scrutinizing the conduct of the easily official with orbital to the above allegations, <u>niv. Bashir Ahmad Vousafical SOPO-Takhr</u>

The Enquiry Officer shall conduct proceedings in accordance with povisions of Police Rules 1975 and shall provide reasonable opportunity of cafense and hearing to the accused official and submit his biogings within (07) days of the receipt of this order along with mommendations as to pureise the perioditer official or otherwise.

(Muhammad Iyaz) Superintendent of Police, Investigation Mardan.

copy of above is forwarded is the

1 aquity Other for millating protocolds against in the second later.
2. Outstable Arit Akbar No. 1579 under Police Rule 1975.
2. Outstable Arit Akbar No. 1579 with the direction to appear before the anguity office on force, time and pace fixed by the enquiry officer for the character. Constable Arit proceedings.

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| | عرادات الآرج والنالية | |
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ASI PS Tangi

08.05.2020



SUPERINTENDENT OF POLICE SUPERINTENDENT OF POLICE INVESTIGATION MARDAN Phone No. 0937-9230121 Fax No. 0937-9230321

No. 467 /PA / Inv:

Dated_<u>09</u>_/Dec/ 2020.

FINAL SHOW CAUSE NOTICE

Whereas, you Constable Arit Akbar No. 1579, of this wing involved yourself in case FIR No. 270 dated 08.05.2020 u/s 9DKP CN8A / 15-AA PS Tangi Dist: Charsadda.

In this connection, during the course of departmental enquiry conducted by SDPO/Takht Bhai vide his office letter No.1220/St dated 07:10.2020, in pursuance of this office Disciplinary Action No.180/PA/by/CE dated 09:05:2020, recommended you for Major Punishment. The undersigned agreed with the Enquiry Officer.

Therefore, it is proposed to happene Major/Minor penalty including dismissal as envisaged under Rules 4 (b) of the Klappen Eachtunkhwa Police Rules 1975.

Hence, I Muhammad Agent SP investigation, Mardan, in exercise of the powers vested in me under Rules 5 (3) (a) & (b) of the Khyber Pakhtunkhwa Police Rules 1975, call upon you'to Show Cause Finally is to why the proposed punishment should not be awarded to you.

Your reply shall reach to this office within 07 days of receipt of this notice. failing which it will be presumed that you have no explanation to offer.

You are liberty to appear for personal hearing before the undersigned.

Superintendent of Police, Investigation Mardan.



OFFICE OF THE SUPERINTENDENT OF POLICE INVESTIGATION MARDAN Phone No. 0937-9230121 Fax No. 0937-9230321

No. <u>497</u>/PA / Inv:

Dated <u>28</u>/Dec/ 2020.

ORDER ON ENQUIRY OF CONSTABLE ARIF AKBAR NO. 1579.

This order will dispose off a Departmental Enquiry under Police Rules 1975, initiated against the subject official, for involving himself in a criminal case vide FIR No. 270 dated 08.05 2020 u/s 9D KPCNSA/ 15-AA PS Tangi Distt: Charsadda, he was placed under suspension vide OB No.05 dated 09.05.2020, proceeded against departmentally through Mr. Bashir' Ahmad Yousafazi SDPO Takht Bhai vide this office Statement of Disciplinary Action/Charge Sheet No. 180/PA/Inv/CS dated 09.05.2020, who (E.O) after fulfilling necessary proceedings, submitted his finding report vide his office No.1220/St dated 07.10.2020, recommending alleged official for major punishment. The undersigned issued Final Show Cause Notice to the official who appeared in orderly room, and heard in person.

In light of personal hearing, the alleged official failed to satisfy the undersigned, therefore, awarded him "Major Punishment of dismissal from service" with immediate effect, in exercise of the power vested to mc under Police Rules-1975

OB No. <u>15</u> Dated: - <u>28 / 12</u> /2020.

Superintendent of Police. Investigation, Mardan.

Copy forwarded for information & necessary action to :-

- 1) The Regional Police Officer. Mardan, please.
- 2) The District Police Officer, Mardan.
- 3) DSP/HQrs Mardan.
- 4) SDPO Takhti Bhai w/r quoted above.
- 5) Pay Officer, Investigation Bureau.
- 6) E.C, District Police Officer, Mardan.
- 7) OSI, District Police Officer, Mardan with () Sheets.

Annerwie B The Dic Monda Region . I . Mender Appeal against - The order of splim vestigation Imanda Subject: delel 28.12.2020 isemiel wide his thee OBNO 15 ribere by the apportant - was awarded majer Punishment of dismes from Service Respect Sir, At is submittee Q-Ileal The Splim verhigehim madan heich resund Change scheel + stalightimeril- of allegations we ag (may 12020 to the appendent write the following allegations hinas you driver const Arig Akber No 1579 of investigation wing involved himself in cose Fig no 920 dated 03 5-2020 MB 9DEPENER] 15HA B Tamp: Charsadola "(copyerelsed) C An The liquel of the above charge sheel a departmental endaring was instrated again - the appealal - and Mr Bashir Ammael yousafin SDD0/TBa non nonincleef as endury officer. The appealant Preduced a delail and comprehensive repling to the charge sheet before the Eo, mentioning there in med - the appechant Inno constant has been Afalsdy implicated in The - moninal Cose marking in The Charge Sheet-The vingin of the appealant work Clousidered tyrin Ed and recommended the appendal - for the endand of major Punishment vide in office endorement no 1220 jst. deller 17.8-20 In the light of ending finding. The Splinnest Mailow reserved Final Ushno Carpe Notice UND 467 (PA) Inv dutiel 09.12. 2020 to The appendal - The appendant a pain Sylemitted a detailed replay in response to The charge sheet " The appendant also appeared before The Softwas INDA in orderly room and explained this postion, separating this invite card Ini Commal Core The Sphinker I MDN anonlaf myper PuniShmall to The appelat and domissed have fibr Service ride ogs no 15 daled 25.12, 2020 and ATTESTED

(10) Hence the Provid appeal. (COPY of OB NO 15 datel 28.12.2020 is enclosed. Brig facts. one Screed what op for moti mondan is my friend > on 08.5.20 wo the Exid Sand Unan Came to my village He informed the appalant that his friend's Warthel to 05 tangi charsadela in some criminal Cas have obtained BRAV from the could of Heg Imahlan The Said Served 1 chan recompred m. appeded Und: The Said order of BB B & 5 rainreal to be Ameliceal -before the Docat Police of P& Tanpi. He further reduested that the appendant shinled a companied Dan him an Be Tange. on his reserved- The appelat aboy wint Second tehan wand to Tangi and visited "Bs. The BR It winder was handed over to The the Ishtiad mohaman of the PS - After This the appendant almprover Scool Tchan deft the PS in motor Cax and Proceeded toaling Narlan. to the we'would out from the Bs and arrived at tamps pressor in the limits of Bachipull - There Proto constabiles from on the road side Stendlich to and we stopped the Car, pointic climitalite arrested the appendet and his Conformion and brought them to The 88. The appealant on Saccel than wind Produced heporie the Sino. The Sino was anno year, The why we brought the BBD only of Accord Sherth etc stated to be hand Criminals . we were kapt in the lock up for the whole might . on the following day we were informed , mal si water rehan hast registent a fabre case ups ackep ensulis by Showing we recovery of clanshow love rifle ection A 12. appealant and one packat from In. Pror-ATTE

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(\প্ত in knowledge, that we were foldy nighterstel in a Chriminal Pose >) The Cose is purplug could and there is probability in al The appedant will be accounted in the Core. The appendant is generatived with 03 seids and the 8 | entine livel houel at the fermily is depend upon me Butice Remice of the appendad -Carging in vein the drove facts and three tarcos, ut is buildly mountail ind - by a coupting the instant append the order of splitnest most may reindry be setand and the appendant be re- instated in Server fim me date of dismissed & line you obelievely, Dated, 12.1.2021 / tin Ex. Constable Arif Aleban NO 1579 DISM-Marilan ATTESTED



To The DIG Mardan

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Region - I, Mardan

SUBJECT: - <u>DEPARTMENTAL APPEAL THROUGH PROPER</u> <u>CHANNEL</u>

Respected Sir,

The successive departmental appeal in hand is being made in pursuance of the impugned order; given the order/judgment dated 13.04.2021 of acquittal rendered by the competent court; which needs to be looked at in toto: -

• That the factual position is floating on the surface of record insofar involved on the undersigned stands nowhere; since the competent court of law; has rendered order/judgment of acquittal.

Given the information placed; the impugned order; allowing dismissal of the appellant may please be set at naught in the interest of justice.

Ex-Constable Arif Akban No. 1579

District Mardan



ESTER

IN THE COURT OF SYED ALI RAZA ADDITIONAL SESSIONS JUDGE TANGL

Case No.7/AO/ of 2020 Date of institution: 15.08.2020 Date of decision: 13.04.2020

The State through Nasir Khan SI (Complainant).

VERSUS

1. Saeed S/o Amir Khan R/o Pari Hoti District Mardan, & 2. Arif S/o Taj Akbar R/o Jamal Garhi (Accused facing trial)

> CHARGED UNDER SECTION 15 AA IN CASE FIR NO.270 DATED 08.05.2020 OF PS TANGI, DISTRICT CHARSADDA.

JUDGMENT:

Brief facts as narrated in the FIR were that at 1800 hours on 08.05.2020, complainant Nasir Khan SI during patrolling received information that some people would smuggle narcotics in motorcar bearing registration No.LE471. ON this information, the complainant alongwith constables Ashfaq No.1402, Sareer No.1185 and other police officials made barricade on the spot. In the Agency Biffeanwhile, a motorcar bearing registration No.LE471 coming from of C Prang Ghomese Copying Agency Branch S/o Amir Khan R/o Parhoti Mardan while the other person having a Kalashinkov and seated on front seat disclosed his name as Arif S/o Taj Akbar and also told that he was serving in police Department. The Kalashinkov was taken into possession and both the persons

ATTESTED

were deboarded from motorcar. On personal search of accused Saeed, one packet of heroin weighing 1000 grams and a 30 bore pistol bearing No.C220709 alongwith spare magazine containing 06 live rounds was recovered. On personal search of accused Arif except Kalashinkov nothing was recovered. On search of the vehicle, chars weighing 5000 grams was also recovered from the gates. Samples were separated from recovered stuff of contraband for chemical analysis. Murasila was drafted and sent to PS which culminated into FIR No.270 ibid.

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2 After registration of the case, investigation was conducted. Accused were arrested and their cards of arrest EXPW-5/1 were issued accordingly. Both the accused applied for post arrest bail but bail petition of accused Saced was dismissed upto the Hon'ble Peshawar High Court, Peshawar whereas, accused Arif was released on bail by this court vide order dated 14.05.2020. Prosecution forwarded separate challan u/s 15 AA against accused facing trial. Accordingly, the case was put in this court on 15.08.2020. Provision of section 265-C Cr.P.C was complied with. Charge was framed against accused facing trial on 10.09.2020, to was allowed to produce its evidence. Thus, prosecution examined 06 PWs and abandoned rest of the PWs. The gist of prosecution

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evidence was as under:-

PW-1 Rasheed Khan ASI stated to have on receipt of Murasila, incorporated its contents in the shape of FIR EXPA.

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PW-2 Zahir Shah stated to have been handed over parcels No.1, 3 to 7 alongwith docket and route certificate which were taken to the FSL by him and he handed over the same to the concerned official and obtained the receipt from him alongwith stamp and signature.

PW-3 Ishtiaq MASI stated that on 08.05.2020 Nasir Khan SI handed over one Kalashinkov alongwith fixed charger containing 20 live rounds, one 30 bore pistol, parcel No.1 containing one gram heroin, parcel No.2 containing 999 grams heroin, parcel No.3 to 7 containing 10 grams chars each. Parcel NO.8 containing 4950 grams and Honda Civic Motorcar LE471 for safe custody to him and he made entry to the extent of case into register NO.19. He produced the extract of register No.19 as EXPW-3/1. On 21.05.2020 he sent parcel No.1 and 3 to 7 to the FSL through route certificate EXPW-3/1 through constable Zahir Shah No.117 alongwith FSL docket. He kept the remaining case property in the Maal Khana in safe custody while he had parked the motorcar in miner/ Muharrithe PS.

PW-4 Ashfaq No.1402 stated to have been a marginal

ATTESTEP

witness to the recovery memo EXPW-4/1 vide which the

ing Agency Branch

complainant Nasir Khan SI took into possession one packet of heroin weighing 1000 grams fastened to abdomen of accused facing trial with cotton tape, one pistol 30 bore alongwith spare magazine having 06 live rounds from the Badda Shalwar of accused facing trial Saeed, one Kalshinkov fixed charger containing 20 live rounds from the accused Arif sitting on front seat of the motorcar, one packet of chars weighing 950 grams from beneath the driving seaton which accused facing trial Saeed was seated, two packets of chars from inside the right front door of the motorcar weighing 980 & 960 grams respectively, two packets of chars weighing 990 grams and 1120 grams from the left front gate of the motorcar and one packet phone made icon from the switch board of the motorcar in his presence. The complainant took all the above mentioned contraband and other articles alongwith motorcar. The complainant drafted and handed over the Murasila to him which he took to the PS for registration of the case.

PW-5 Nasir Khan SI was complainant of the case and reiterated what he had stated in the Mursila as well as in the FIR EXPA.

Agency Branch Muharrir Agency Branch AD Instant case and stated that he proceeded to the spot and prepared 311577 site plan EXPB at the instance and pointaiton of complainant and other PWs. The witness stated to have produced both the accused

CO



before the court for obtaining physical custody vide application EXPW-6/1 and two days police custody was granted. The witness stated to have interrogated both the accused and during investigation both the accused led him to the place of occurrence where both accused pointed out various points to him and in this respect pointation memo EXPW-6/2 was drafted in the presence of marginal witnesses. The witness also recorded the statements of the PWs and that of accused u/s 161 Cr.P.C. After expiry of police custody, he produced both the accused before the court vide his application EXPW-6/3 for recording their confessional statements which they denied and were sent to judicial lockup. The witness also stated to have recorded the statements of both the accused u/s 161 Cr.P.C. He sent the motorcar bearing registration LE471 to FSL vide his application EXPW-6/4. He received and placed on file, the FSL report EXPZ. He also placed on file different documents related to excise and taxation record in respect of motorcar mentioned above. After completion of investigation he handed over the case file to the then SHO Masood Khan for submission of challan EXPK against the accused facing trial which he did as per law.

3 At the end of trial, the statements of both the accused were recorded u/s 342 Cr.P.C wherein accused negated the entire version

ATTESTED

xaminer/ Muharrir ng Agency Branch

of the prosecution and also did not opt to produce any evidence in their defense.

4 APP for the state argued that accused were apprehended with considerable arms and ammunition, that complainant and other prosecution witnesses had supported the prosecution case and the prosecution evidence was fully consistent. That the prosecution had proved the charges against both the accused beyond reasonable doubt, hence both the accused be convicted and sentenced to the maximum in order to deter like-minded persons. The learned APP placed his reliance upon the following case law:-

> 2021 SCMR 128 [Supreme Court of Pakistan], 2020 SCMR 1222 [Supreme Court of Pakistan], 2020 SCMR 1000 [Supreme Court of Pakistan] 2018 PCr.LJ 257 [Sindh]

5. On the other hand, the learned defense counsel emphasized on the acquittal of both the accused on the grounds that the accused were innocent and that there was no independent evidence with the prosecution. The learned defense counsel further went on to say that the prosecution story was full of dents and doubts, hence conviction could not be based on it. He further argued that the alleged recovery was not effected from the direct possession of the accused facing trial and it was a story of the usual high handedness of police just to appease the bosses. He further went on to say that all witnesses contradicted each other and no coherence whatsoever existed. He further prayed for the acquittal of accused facing trial.

Examiner/ Muharrir Copying Agency Branch Court of CJ / ADJ Tangi



Learned counsel for the accused placed his reliance upon the

following case law:-

PLD 2020 Supreme Court 57, 2010 SCMR 927 [Supreme Court of Pakistan], 2020 MLD 49 [Peshawar] 2010 PCr.LJ 458 [Peshawar], 2020 MLD 690 [Lahore], 2017 PCr.LJ 323 [Lahore], 2002 PCr.LJ 1086 [Karachi]

Arguments heard and record perused. 6.

Thread bare perusal of the record with the able assistance of 7. the learned counsel for the accused facing trial and APP for the State has led me to draw the following conclusion.

PW-2 Zahir Shah in his cross examination admitted that he could not say that one Sher Ali and Nasar Ali had dispute with the local police over distribution of daily use item during Covid-19. The witness further admitted that the parcels were handed over to him on 21.05.2020 and he deposited the same on the very same day. The witness further admitted that his statement u/s 161 Cr.P.C was not recorded by the IO.

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PW-3 Ishtiaq MASI in his cross examination admitted that his statement u/s 161 Cr.P.C dated 22.05.2020 was recorded by the IO. The witness further admitted that in his statement recorded as aforesaid the No. of parcels was given 1, 3 to 6.



He had not stated in his statement that on 08.05.2020 Nasir Khan SI handed over case property to him as mentioned in his examination in chief. The witness further admitted that date was not mentioned on the receipt EXPW-3/2. The name of the sender was also not mentioned. The name and signature was also not mentioned in EXPW-3/2. The witness further admitted that there was no special apparatus/arrangements in the Maal Khana for keeping the case property as preserved.

26,

PW-4 Ashfaq No.1402 was marginal witness to the recovery and in his cross examination he admitted that main road was leading on both sides of Bochay Pull. He further admitted that leading from Bochay Pull towards south there was junction where from one road was leading to Ziam while the other to Abazai while the road towards the North of Bochay pull was leading to many local villages on either side. The witness further admitted that it was a thickly populated area comprising of shops and markets. The witness further admitted that there were many local Raksha and vehicle stands on that very road. The witness further admitted that during day time many people used to be present over there. The witness further admitted that the place of occurrence would be at a distance of 500 meters from PS and the raiding

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party proceeded to the spot in official vehicle. The witness further admitted that he alongwith Sarir, Nasir Khan and 05 other police officials was in the vehicle.

PW-5 Nasir Khan SI in his cross examination admitted that that the Kalashinkov, pistol and pocket phone were not in sealed condition and under the law he was obliged to seal each and every case property so recovered. The witness further admitted that the writing on the parcels NO.2 & 8 were in his hand writing. The witness further admitted that he had not written the FIR number on the parcels which might had been written by the IO. The witness further admitted that raiding party reached at the spot at about 0545 PM. The witness further admitted that on the same day they left PP Gandheri for gasht at about 0700/0730 AM. The witness further admitted that he handed over the case property, FSL application, recovery memo and Murasila to Ashfaq for transmission to the PS while retained the accused with him on the spot. The witness further admitted that he dispatched the case property to the police station and thereafter he was not aware about any proceedings. While proceedings to the place of occurrence in addition to the above named two constables, two other constables were also

All FESTER accompanying him. Examiner/ Muharrir Copying Agency Branch Copying Agency Branch Court of CI / ADJ Tangi Court of CI / ADJ Tangi

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PW-6 Kabir Khan SI/CIO was complainant of the case and admitted in his cross examination that he had gone thorugh the contents of Muraisla. The witness further admitted that he had not investigated into the fact of the ownership or the license of the pistol and the Kalashinkov mentioned in the Murasila from the concerned quarter. The witness further admitted that the weapons mentioned above were stated in the Murasila to be the unlicensed and the accused had admitted the same to have been recovered from them in their statements u/s 161 Cr.P.C. The witness further admitted that he had not seen the case property therefore, he could not say about its weight. He also admitted to have not investigated about the ownership of pocket phone. He admitted that on both the sides of the spot there were markets and shops of one Arif Paracha.

15 In the light of what has been narrated above and in particular the way proceeding had been conducted and most importantly what so to say of anything else or discuss in detail the very FSL report was not available in respect of the subject arms and ammunitions thereby leading to establish only one fact that the recovered arms and ammunitions were neither sent for the examination of armourer expert and nor any opinion was obtained in this respect. In

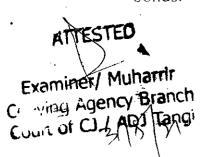
Examiner/ Muharrir Codying Agency Branch Court of CI / ADJ Tangi Court of CI / ADJ Tangi

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as there was nothing on record to establish that whether the Kalashinkov and pistol, if so recovered were whether in working condition or not. In circumstances, this court was of the view that all these facts and most importantly the contradictions which came to surface during the cross examination of the important witnesses, completely failed to convince the court regarding the plea of the prosecution. It was by now, a settled law laid down not only by the Hon'ble Higher Courts of the Land as well as prevailing in any criminal justice system, that to convict an accused for an offence, the same was required to be proved through cogent, reasonable, and coherent evidence and that too without any shadow of the slightest doubt. This principle was also a guideline for all those dealing with criminal justice system in any domain that it would be convenient and in the interest of justice as well as society if 99 accused were acquitted instead of convicting one innocent. The case in hand also fell within the same category and no minor discrepancies but many considerable loopholes came to surface, which could in no case be overlooked.

16 Therefore, while extending benefit of doubt to the accused, they were acquitted. Accused Saeed was in custody, he be released forthwith if not required in any other case while accused Arif was on bail, he and his sureties were absolved from the liabilities of bail bonds.

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17 As regarded the case property i.e. 30 bore pistol bearing NO.C220709 alongwith magazine containing 06 live rounds and Kalashinkov bearing No.56-17218078/10104324 having fixed charger containing 20 live rounds be returned to its lawful owner if any holding a permit or license in this respect or be confiscated to the state after the time of appeal/revision lapsed.

File be consigned to record room after necessary completion

and compilation.

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Announced 13.04.2021

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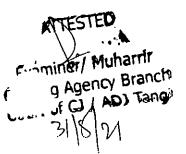
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- udge

Syed Ali Raza, Additional District & Sessions Judge/

Judge Special Court Charsadda at Tangi.

<u>CERTIFICATE</u> Certified that this judgment consists of (12) pages and each page has been signed by me after necessary correction.



Additional District & Sessions Judge/ Judge Special Court Charsadda at Tangi.

No Date of Application 31 Appliance Name. 4822 Words_ **Delivery Date**



THE COURT OF SYED ALI RAZA

CNSA No.158/ of 2020

Date of institution: 15.08.2020 Date of decision: 13.04.2020

The State through Nasir Khan SI (Complainant).

VERSUS

CHARGED UNDER SECTION 9 D CNSA IN CASE FIR NO.270 DATED 08.05.2020 OF PS TANGI, DISTRICT CHARSADDA.

JUDGMENT:

Brief facts as narrated in the FIR were that at 1800 hours on 08.05.2020, complainant Nasir Khan SI during patrolling received information that some people would smuggle narcotics in motorcar bearing registration No.LE471. ON this information, the omplainant alongwith constables Ashfaq No.1402, Sareer No.1185 and other police officials made barricade on the spot. In the meanwhile, a motorcar bearing registration No.LE471 coming from Prang Ghar was stopped. The driver disclosed his name as Saeed TTESTED S/o Amir Khan R/o Parhoti Mardan while the other person having a Examiner Agency Brahishinkov and seated on front seat disclosed his name as Arif S/o Copying Agency Intanci Examiner/ Muharrir Court of CI / ADJ Tangi Taj Akbar and also told that he was serving in police Department. The Kalashinkov was taken into possession and both the persons



e deboarded from motorcar. On personal search of accused ed, one packet of heroin weighing 1000 grams and a 30 bore tol bearing No.C220709 alongwith spare magazine containing live rounds was recovered. On personal search of accused Arif except Kalashinkov nothing was recovered. On search of the vehicle, chars weighing 5000 grams was also recovered from the gates. Samples were separated from recovered stuff of contraband for chemical analysis. Murasila was drafted and sent to PS which culminated into FIR No.270 ibid.

After registration of the case, investigation was conducted. 2 Accused were arrested and their cards of arrest EXPW-5/1 were issued accordingly. Both the accused applied for post arrest bail but bail petition of accused Saeed was dismissed upto the Hon'ble Peshawar High Court, Peshawar whereas, accused Arif was released on bail by this court vide order dated 14.05.2020. Prosecution forwarded challans u/s 9 C CNSA against accused lading trial. Accordingly, the case was put in this court on 5.08.2020. Provision of section 265-C Cr.P.C was complied with. Charge was framed against accused facing trial on 10.09.2020, to which the accused pleaded not guilty and claimed trial. Prosecution was allowed to produce its evidence. Thus, prosecution examined Example / Manual PWs and abandoned rest of the PWs. The gist of prosecution Copying Agency Tangi ADJ Tangi evidence was as under:-

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PW-1 Rasheed Khan ASI stated to have on receipt of Murasila, incorporated its contents in the shape of FIR EXPA.

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PW-2 Zahir Shah stated to have been handed over parcels No.1, 3 to 7 alongwith docket and route certificate which were taken to the FSL by him and he handed over the same to the concerned official and obtained the receipt from him alongwith stamp and signature.

PW-3 Ishtiaq MASI stated that on 08.05.2020 Nasir Khan SI handed over one Kalashinkov alongwith fixed charger containing 20 live rounds, one 30 bore pistol, parcel No.1 containing one gram heroin, parcel No.2 containing 999 grams heroin, parcel No.3 to 7 containing 10 grams chars each. Parcel NO.8 containing 4950 grams and Honda Civic Motorcar LE471 for safe custody to him and he made entry to the extent of case into register NO.19. He produced the extract of register No.19 as EXPW-3/1. On 21:05.2020 he sent parcel No.1 and 3 to 7 to the FSL through route certificate EXPW-3/1 through constable Zahir Shah No.117 Alongwith FSL docket. He kept the remaining case property in the Maal Khana in safe custody while he had parked the motorcar in

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the PS.

PW-4 Ashfaq No.1402 stated to have been a marginal witness to the recovery memo EXPW-4/1 vide which the

complainant Nasir Khan SI took into possession one packet of heroin weighing 1000 grams fastened to abdomen of accused facing trial with cotton tape, one pistol 30 bore alongwith spare magazine having 06 live rounds from the Badda Shalwar of accused facing trial Saeed, one Kalshinkov fixed charger containing 20 live rounds from the accused Arif sitting on front seat of the motorcar, one packet of chars weighing 950 grams from beneath the driving seat on which accused facing trial Saeed was seated, two packets of chars from inside the right front door of the motorcar weighing 980 & 960 grams respectively, two packets of chars weighing 990 grams and 1120 grams from the left front gate of the motorcar and one packet phone made icon from the switch board of the motorcar in his presence. The complainant took all the above mentioned contraband and other articles alongwith motorcar. The complainant drafted and handed over the Murasila to him which he took to the PS for registration of the case.

PW-5 Nasir Khan SI was complainant of the case and reiterated what he had stated in the Mursila as well as in the FIR EXPA.

W -6 Kabir Khan SI/CIO was investigation officer of the poch I attinistant case and stated that he proceeded to the spot and prepared site plan EXPB at the instance and pointaiton of complainant and other PWs. The witness stated to have produced both the accused

before the court for obtaining physical custody vide application EXPW-6/1 and two days police custody was granted. The witness stated to have interrogated both the accused and during investigation both the accused led him to the place of occurrence where both accused pointed out various points to him and in this respect pointation memo EXPW-6/2 was drafted in the presence of marginal witnesses. The witness also recorded the statements of the PWs and that of accused u/s 161 Cr.P.C. After expiry of police custody, he produced both the accused before the court vide his application EXPW-6/3 for recording their confessional statements which they denied and were sent to judicial lockup. The witness also stated to have recorded the statements of both the accused u/s 161 Cr.P.C. He sent the motorcar bearing registration LE471 to FSL vide his application EXPW-6/4. He received and placed on file the FSL report EXPZ. He also placed on file different documents related to excise and taxation record in respect of motorcar mentioned above. After completion of investigation he handed over the case file to the then SHO Masood Khan for submission of challan EXPK against the accused facing trial which he did as per

At the end of trial, the statements of both the accused were ecorded u/s 342 Cr.P.C wherein accused negated the entire version

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of the prosecution and also did not opt to produce any evidence in their defense.

APP for the state argued that accused were apprehended with considerable quantity of chars, that complainant and other prosecution witnesses had supported the prosecution case and the prosecution evidence was fully consistent and was corroborated by the positive FSL report. That the prosecution had proved the charges against both the accused beyond reasonable doubt, hence both the accused be convicted and sentenced to the maximum in order to deter like-minded persons. The learned APP placed his reliance upon the following case law:-

> 2021 SCMR 128 [Supreme Court of Pakistan], 2020 SCMR 1222 [Supreme Court of Pakistan], 2020 SCMR 1000 [Supreme Court of Pakistan] 2018 PCr.LJ 257 [Sindh]

On the other hand, the learned defense counsel emphasized 5. on the acquittal of both the accused on the grounds that the accused were innocent and that there was no independent evidence with the prosecution. The learned defense counsel further went on to say that the prosecution story was full of dents and doubts, hence conviction could not be based on it. He further argued that the alleged recovery was not effected from the direct possession of the accused facing trial and it was a story of the usual high handedness Examiner/ Muharni of police just to appease the bosses. He further went on to say that Copying Agency Branch ADJ Tangi witnesses contradicted each other and no coherence whatsoever

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existed. He further prayed for the acquittal of accused facing trial. Learned counsel for the accused placed his reliance upon the following case law:-

PLD 2020 Supreme Court 57,
2010 SCMR 927 [Supreme Court of Pakistan],
2020 MLD 49 [Peshawar]
2010 PCr.LJ 458 [Peshawar],
2020 MLD 690 [Lahore],
2017 PCr.LJ 323 [Lahore],
2002 PCr.LJ 1086 [Karachi]

6. Arguments heard and record perused.

7. Thread bare perusal of the record with the able assistance of the learned counsel for the accused facing trial and APP for the State has led me to draw the following conclusion.

a. PW-2 Zahir Shah in his cross examination admitted that he could not say that one Sher Ali and Nasar Ali had dispute with the local police over distribution of daily use item during Covid-19. The witness further admitted that the parcels were handed over to him on 21.05.2020 and he deposited the same on the very same day. The witness further admitted that his statement u/s 161 Cr.P.C was not recorded by the IO.

b. ATTESTED Examinet/Muharrir Examinet/Muharrir Copying Agency Branch Court of CI / ADJ Tanyi Court of CI / ADJ Tanyi Court of CI / ADJ Tanyi Court of CI / ADJ Tanyi

PW-3 Ishtiaq MASI in his cross examination admitted that his statement u/s 161 Cr.P.C dated 22.05.2020 was recorded by the IO. The witness further admitted that in his statement

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PW-4 Ashfaq No.1402 was marginal witness to the recovery and in his cross examination he admitted that main road was leading on both sides of Bochay Pull. He further admitted that leading from Bochay Pull towards south there was junction where from one road was leading to Ziam while the other to Abazai while the road towards the North of Bochay pull was leading to many local villages on either side. The witness further admitted that it was a thickly populated area comprising of shops and markets. The witness further admitted that there were many local Raksha and vehicle stands on that very road. The witness further admitted that Copying Agency Branch Gency Jangduring day time many people used to be present over there. The witness further admitted that the place of occurrence

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PW-5 Nasir Khan SI in his cross examination admitted that that the Kalashinkov, pistol and pocket phone were not in sealed condition and under the law he was obliged to seal each and every case property so recovered. The witness further admitted that the writing on the parcels NO.2 & 8 were in his hand writing. The witness further admitted that he had not written the FIR number on the parcels which might had been written by the IO. The witness further admitted that raiding party reached at the spot at about 0545 PM. The witness further admitted that on the same day they left PP Gandheri for gasht at about 0700/0730 AM. The wighess further admitted that he handed over the case property, FSL application, recovery memo and Murasila to Ashfaq for transmission to the PS while retained the accused with him on the spot. The witness further admitted that he dispatched the case property to the police station and thereafter he was not aware about any proceedings. While proceedings to the place of occurrence in addition to the

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above named two constables, two other constables were also accompanying him.

PW-6 Kabir Khan SI/CIO was complainant of the case and admitted in his cross examination that he had gone thorugh the contents of Muraisla. The witness further admitted that he had not investigated into the fact of the ownership or the license of the pistol and the Kalashinkov mentioned in the Murasila from the concerned quarter. The witness further admitted that the weapons mentioned above were stated in the Murasila to be the unlicensed and the accused had admitted the same to have been recovered from them in their statements u/s 161 Cr.P.C. The witness further admitted that he had not seen the case property therefore, he could not say about its weight. He also admitted to have not investigated about the ownership of pocket phone. He admitted that on both the sides of the spot there were markets and shops of one Arif Paracha.

15 In the light of above stated and in particular the evidence of the prosecution it has been revealed that

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Although there was prior information but yet neither any attempt was made for ensuring the presence of the

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independent person/s nor any reason was available on record for failure in this respect.

ii. Most importantly no seals were mentioned to have been

affixed to the recovered contraband.

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vi.

Examiner Muharrir Copying Agency Branch It was also not established that who brought the murasila from the spot to the police station and the said witness whether only brought the murasila or something else as well.

Admittedly there was 13 days delay between the recovery and sending the recovered contraband to the FSL for chemical analysis.

Another vital and most important discrepancy which came to surface was that the statement of PW-2 namely Zahir Shah was not recorded u/s 161 Cr.P.C and in circumstances the statement of the said witness in the court appeared to be a result of afterthought.

It also came to surface during the course of proceedings that the original register No.19 was neither produced in the court nor any justification was put forth in this respect and indeed this cast serious doubts over whole the proceedings.

Another vital factor which came to surface was that in FIR there was no specification as regarded the nature of chars:

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There were also major discrepancies as regarded the timings of different proceedings right from the recovery to the scribing of the Murasila to the registration of the very FIR and keeping in view the guidelines as laid down by the Hon'ble Higher Courts of the Land this court could not overlook the same.

Another main point which was alleged by the learned counsel for the accused was that section 2 E of the Act of 2019 very clearly provided that the authorized officer for the purpose of such like proceedings would be sub inspector of police or Excise Department and duly designated for the purpose but in the instant case a blatant violation came on surface.

The learned counsel further contended that the trial court was not the special tribunal constituted as mandated by the law on the subject and for the reason all the proceedings conducted in this court were void ab-initio.

xi. It further came to surface that the prosecution failed to establish the safe custody as well transmission of the

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recovered contraband from Maal Khana to the FSL for chemical analysis.

xii. The most notable and gross illegality which came to surface during the course of proceedings was that the recovery of a pistol and a Kalashinkov alongwith live rounds was also alleged to have been effected during the same proceedings but what to say of any investigation in that respect, the said arms and ammunition were not even subjected to the armourer examination and for the reason the sanctity of whole the proceedings came under the shadow of serious doubts.

16 In the light of what has been narrated above and in particular the way proceedings had been conducted, this court was of the view that all these facts and most importantly the contradictions which came to surface during the cross examination of the important witnesses, completely failed to convince the court regarding the plea of the prosecution. It was by now, a settled law laid down not only by the Hon'ble Higher Courts of the Land as well as the prevailing in any criminal justice system, that to convict an accused through cogent, accused through the same was required to be proved through cogent, accused through the same was required to be proved through cogent, and the same was required to without any shadow of the slightest doubt. This principle was also a guideline for all those dealing with criminal justice system in any domain that it

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would be convenient and in the interest of justice as well as society if 99 accused were acquitted instead of convicting one innocent. The case in hand also fell within the same category and no minor discrepancies but many considerable loopholes came to surface, which could in no case be overlooked.

17 Therefore, while extending benefit of doubt to the accused, they were acquitted. Accused Saeed was in custody, he be released forthwith if not required in any other case while accused Arif was on bail, he and his sureties were absolved from the liabilities of bail bonds.

As regarded the vehicle No.RL-LE-471 which had been taken into possession and was returned on superdari to one Zubair the lawful owner of the vehicle vide order dated 22.07.2020. In this respect, initially a notice u/s 33 KP CNSA was served upon the owner of the vehicle namely Zubair and his detailed reply to the notice was received on 27.02.2021 which revealed that the said Zubair was the lawful owner of the subject vehicle and most importantly neither he was charged for the commission of offence nor apprehended on spot and no nexus was established between him and the offence. Even otherwise, keeping in view the findings Brack-this court in respect the main accused which led to their acquittal, this issue automatically lost its significance. So, the Superdari order dated 22.07.2019 of this court was confirmed.

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18 As regarded the case property i.e: to say the contraband in the shape of chars & heroin be kept intact till the expiry period of appeal/revision and thereafter be dealt with/destroyed according to law.

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

Announced 13.04.2021 Additional District & Sessions Judge/ Judge Special Court Charsadda at Tangi.

CERTIFICATE

Certified that this judgment consists of (15) pages and each page has been signed by me after necessary correction.

ATTES Examiner Muharrir Copying Agency Branch E. Inc Li CI I ADJ Tangi 3115/27

Additional District & Sessions Judge/-Judge Special Court Charsadda at Tangi.

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<u>ORDER.</u>

This order will dispose-off the departmental appeal preferred by Ex-Constable Arif Akbar No. 1579 of Investigation Wing, Mardan against the order of Superintendent of Police Investigation, Mardan, whereby he was awarded major punishment of dismissal from service vide OB: No. 15 dated 28.12.2020 by the Superintendent of Police Investigation, Mardan. The appellant was proceeded against departmentally on the allegations that he while posted at Investigation Wing, Mardan was involved in a criminal case vide FIR No. 270 dated 08.05.2020 u/s 9D KPCNSA/15-AA Police Station Tangi, District Charsadda.

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Proper departmental enquiry proceedings were initiated against him. He was issued Charge Sheet alongwith Statement of Allegations and Sub Divisional Police Officer, (SDPO) Takht Bhai, Mardan was nominated as Enquiry Officer. The Enquiry Officer after fulfilling codal formalities submitted his findings to Superintendent of Police Investigation, Mardan, wherein he held responsible the delinquent Officer and recommended him for major punishment.

He was issued Final Show Cause Notice to which his reply was received/perused and found unsatisfactory.

The delinquent Officer was heard in Orderly Room by the Superintendent of Police Investigation, Mardan, wherein he failed to produce any cogent reason in his defense. Therefore, he was awarded major punishment of dismissal from service vide OB: No. 15 dated 28.12.2020.

Feeling aggrieved from the order of Superintendent of Police Investigation, Mardan, the appellant preferred the instant appeal. He was summoned and heard in person in Orderly Room held in this office on 26.05.2021. In this regard report was sought from District Police Officer, Charsadda, who reported that the accused has been acquitted by the trial court from the charges. The appellant was again summoned and heard in person in Orderly Room held in this office on 24.08.2021.

From the perusal of the enquiry file and service record of the appellant, it has been found that the allegations of misconduct against the appellant have been proved. The appellant has though been acquitted from the charges but the fate of narcotics has not been decided. Moreover, the appellant was arrested alongwith Kalashnikov but the learned Judge has erred in acquitting him in presence of Kalashnikov which was duly recovered from him. Besides, appeal against his

acquittal has also been moved before the Peshawar High Court, Peshawar which is pending adjudication.

Based on the above, **I**, **Yaseen Farooq**, **PSP Regional Police Officer**, **Mardan**, being the appellate authority, hereby dismiss the appeal of the appellant being bereft of any substance.

Order Announced.

Regional Police Officer, Mardan.

STED

No. 5005 /ES, Dated Mardan the 09 09 /2021. Copy forwarded to Superintendent of Police Investigation, Mardan w/r to his office Memo: No. 66/PA/Inv: dated 29.01.2021. His service record is returned

herewith.

BL 168960 Azim Afidi 0335 SSSD80

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I/We, hereby appoint Mr. Ali Azim Afridi, Hafeez Ullah Afridi (Advocate High Court)

- **1.** To appear, act and plead for me/us in the titled case before the Court/Tribunal in which the same maybe tried or heard, and any other proceedings arising therefrom or ancillary therewith and its stages that I personally could do if this instrument had not been executed.
- That fee paid, or agreed to the said Counsel is for this Court alone and no part of the fee is refundable. The Counsel shall be entitled to retain costs payable by the opposite side.
- **3.** I, we, will make arrangement for attending the Court on every hearing to inform my/our Counsel when the case is called. The Counsel shall in no way be responsible for any loss caused to me/us through my/our failure to inform him.

AND hereby agree:-

- **4. That** the Counsel shall be entitled to withdraw from the prosecution of the titled case if the whole or any part of the agreed fee remains unpaid.
- 5. I/We have read the above terms and conditions and the same have been explained to me/us; and I/We have accepted them in WITNESS WHEREOF; I/We have set my/our hand this____day of _____20

ACCEPTED of Counsel Siona úre

Signature of Client

Email: - aleee_1@live.com Contact # 0333-9555000

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 7426/2021

Arif Akbar Ex-Constable No. 1579, District Mardan......Appellant.

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa Peshawar and others Respondents

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| 3. | Copy of Charge Sheet, Enquiry & dismissal order | A, B & C | 5-16 |
| 4. | Copy of bad entries | Ď | 17-19 |
| 5. | Copy of Authority Letter. | | 20 |

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 7426/2021

Arif Akbar Ex-Constable No. 1579, District Mardan......Appellant.

VERSUS

Para-wise comments by respondents:-

Respectfully Sheweth,

PRELIMINARY OBJECTIONS

- 1. That the appellant has not approached this Hon'ble Tribunal with clean hands.
- 2. That the appellant has concealed the actual facts from this Hon'ble Tribunal.
- 3. That the appellant has got no cause of action or locus standi to file the instant appeal.
- 4. That the appellant is estopped by his own conduct to file the instant Service Appeal.
- 5. That the appeal is unjustifiable, baseless, false, flawless and vexatious and the same is liable to be dismissed with special compensatory cost in favour of respondents.
- 6. That the Hon'ble Tribunal has no jurisdiction to adjudicate the matter.
- 7. That the appeal is bad for miss joinder and non joinder of necessary & proper parties.
- 8. That the appeal is barred by law and badly time barred.

REPLY ON FACTS:-

- 1. Correct to the extent that the law protects Civil Servants in the terms mentioned therein but plea of the appellant in this particular case is irrelevant because being a member of discipline force, the appellant indulge himself in criminal activities rather he was under obligation to prevent crime.
- 2. Correct to the extent that the law provides to treat Civil Servants in mode and manner mentioned therein but it does not mean that a person/civil servant indulge himself in criminal activities and wants to use law as a shield, moreover, in the instant Para, the appellant has referred a case reported vide PLD 2013 Supreme Court Page No.501 but the appellant has duly been treated in accordance with law/rules, therefore, his stance is not plausible.
- Para already explained above.
- 4. Para to the extent that appellant while posted at Investigation Wing Mardan was placed under suspension on account of involvement in a

case vide FIR No. 270 dated 08.05.2020 u/s 9DKPCNSA/15AA PS Tangi District Charsadda. That on account of aforementioned allegations, the appellant was issued charge sheet with statement of allegations and enquiry was entrusted to Mr. Bashir Ahmad, the then SDPO Takht Bhai Mardan. The enquiry officer during the course of enquiry fulfilled all legal and codal formalities by extending right of self defense to the appellant to produce evidence/grounds in his defense, but he failed. However, the Enquiry Officer recommended the appellant for awarding major punishment. Therefore, the appellant was issued Final Show Cause Notice to which his reply was received and he was also heard in orderly room but this time too, the appellant failed to justify his innocence, hence, he was awarded major punishment of dismissal from service, which does commensurate with the gravity of misconduct of the appellant (Copies of Charge with Statement of allegations, Final Show Case Notice and dismissal order are attached as annexure "A, B, C").

- 5. Correct to the extent that the appellant preferred departmental appeal which was also decided on merit because the appellant was provided full-fledged opportunity of defending himself by the appellate authority but he bitterly failed to produce any cogent reason in his defense, therefore, the same was dismissed being bereft of any substance. While rest of para is incorrect, because criminal and departmental proceedings are two different entities which can run parallel and the fate of criminal case will have no effect on the departmental proceedings and release on bail does not mean acquittal from the charges rather the same is release from the custody.
- 6. Incorrect. Plea taken by the appellant is not plausible because every Police Officer / Official is under obligation to perform his duty regularly and with devotion. But appellant's performance was not satisfactory. Moreover, the perusal of service record of the appellant revealed that due to his lethargic attitude, his entire service record is tainted with bad entries (Copy of list of bad entries is attached as Annexure "D").
- 7. That appeal of the appellant is liable to be dismissed on the following grounds amongst the others:-

REPLY ON GROUNDS:-

- A. Incorrect. Orders passed by the competent as well as appellate authority are legal, lawful and in accordance with law/rules hence, liable to be maintained.
- B. Incorrect. Stance taken by the appellant is not plausible because criminal and departmental proceedings are two different entities which can run parallel and the fate of criminal case will have no effect on the departmental proceedings and release on bail does not mean acquittal from the charges rather the same is released from the custody.

- C. Incorrect. Stance taken by the appellant is not plausible. Already explained above.
- D. Respondents have exercised their lawful power in accordance with law/rules.
- E. Incorrect. Para already explained earlier.
- F. Pertains to law/justice principles but the stance of the appellant connecting this principle with his case is totally ill based.
- G. Correct and the respondent have duly adhered to law & rule.
- H. Para already explained above.
- I. Correct but the respondents have not ignored the law/rules while dealing the appellant departmentally.
- J. The respondents also seek permission of this honorable tribunal to adduce additional grounds at the time of arguments.

PRAYER:-

Keeping in view the above narrated facts, it is humbly prayed that the appeal of the appellant being badly time barred and baseless/barred by law may kindly be dismissed with costs please.

> Inspector General of Police, Khyber Pakhtunkhwa, Peshawar. (Respondent No. 01)

Regional Police Officer,

Mardan. (Respondent No. 02)

District Police Officer, Mardan.

(Respondent No. 03)

Superintendent of Police, Investigation, Mardan. (Respondent No. 04)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 7426/2021

Arif Akbar Ex-Constable No. 1579, District Mardan......Appellant.

VERSUS

The Inspector General of Police, Khyber Pakhtunkhwa Peshawar and others Respondents

COUNTER AFFIDAVIT.

We, the respondents do hereby declare and solemnly affirm on oath that the contents of the Para-wise comments in the service appeal cited as subject are true and correct to the best of our knowledge and belief and nothing has been concealed from this Honourable Tribunal.

Inspector Géneral of Police, Khyber Řakhtunkhwa, Péshawar. (Respondent No. 01)

Regional Police Officer, Mardan. (Respondent No. 02)

e/Officer, Distr Mardan

(Respondent No. 03)

Superintendent of Police, Investigation, Mardan. (Respondent No. 04)



OFFICE OF THE SUPERINTENDENT OF POLICE INVESTIGATION MARDAN Phone No. 0937-9230121 Fax No. 0937-9230321

D Annex M

No. 180_/PA/Inv/CS:

Dated <u>**09**</u>/May/2020.

DISCIPLINARY ACTION UNDER KPK POLICE RULE-1975.

I, <u>Muhammad Ayaz SP Investigation Mardan</u>, as competent authority, am of the opinion that you Driver Constable Arif Akbar No. 1579 rendered yourself to be proceeded against departmentally, as you committed the following misconduct/omissions within the meaning of Police Rules, 1975.

STATEMENT OF ALLEGATIONS:

Whereas, <u>Driver Constable Arif Akbar No. 1579</u> of this wing involved himself in case FIR No. 270 dated 08.05.2020 u/s 9DKPCNSA / 15AA PS Tangi Distt: Charsadda. He is placed under suspension vide this office O.B No. 05 dated 09.05.2020.

For the purpose of scrutinizing the conduct of the said official with reference to the above allegations, <u>Mr. Bashir Ahmad Yousafzai, SDPO Takht</u> <u>Bhai</u> is deputed as Enquiry Officer.

The Enquiry Officer shall conduct proceedings in accordance with the provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused official and submit his findings within (07) days of the receipt of this order along with recommendations as to punish the defaulter official or otherwise.

(Muhammad Ayaz) Superintenden of Police, Investigation Mardan.

Copy of above is forwarded to the:-

- 1. Enquiry Officer for initiating proceedings against the alleged official Driver Constable Arif Akbar No. 1579 under Police Rule 1975.
- 2. Driver Constable Arif Akbar No. 1579 with the direction to appear before the enquiry office on date, time and place fixed by the enquiry officer for the purpose of enquiry proceedings.

p<u>s</u>lagal Ma:dan

CHARGE SHEET UNDER KPK POLICE RULES 1975.

Anned

I, <u>Muhammad Ayaz SP Investigation Mardan</u>, as competent authority, hereby charge you <u>Driver Constable Arif Akbar No. 1579</u> while posted in this wing, as per attached statement of allegations.

- By reasons of above, you appear to be guilty of misconduct under Police Rules, 1975 and have rendered yourself liable to all or any of the penalties specified in Police Rules, 1975.
- 2. You are, therefore, required to submit your written defense within <u>07 days</u> of the receipt of this Charge Sheet to the Enquiry Officer.
- 3. Your written defense, if any, should reach the Enquiry Officer within the specified period, failing which, it shall be presumed that you have no defense to put-in and in that case, ex-parte action shall follow against you.
- 4. You can come and appear before the undersigned to be heard in person.

(Muhammad Ayaz) Superintendent of Police, Investigation Mardan.

Mardan

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constatic Ang Akban res. 1579

بحواله چارچ شیٹ نمبری 180 A کاانوش کیشن مورنده 09/05/2020 مجازید جنابS صاحب ا^زارش

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صلفاً بیان کرتا ہوں۔ کہ سعید میرے علاوہ دیگر پولیس والوں کا بھی چانہ بہچانہ ہے۔ نہ بچھے اس کے متعلق علم ہے۔ کہ وہ منشیات قروش ہے۔ صرف جان پچپان ، بینجہ سے اسکے ساتھ جا کر تھا نہ تکلی کو BBA لے گیا ہے۔ اگر تھا نہ میں CCTV کیمرے موجود ہوں تو ہوسکا ہے۔ کہ اسمیں سرے اید کی ریکارڈ موجود ہو۔ سرے خلاف لگائے سکتے الزامات غلط ہے۔ پولیس تھا نہ تکلی خاص کر SHO مسعود خان ، ناصرخان SI محرد اشتیاق نے میرے ساتھ ظلم کیا ہے۔ اور بچھ بے گناہ پھندایا گیا ہے۔ اور انشاء اللہ میں اپنی بے گناہی تا ہو خان افسر ان بالا کے ساتھ میں میں بی معید یا کہ صلاف کگا ہے سکتھ الزامات غلط ہے۔ پولیس تھا نہ تکلی خاص کر SHO مسعود خان ، ناصرخان SH افسر ان بالا کے ساتھ طلم کیا ہے۔ اور بچھ بے گناہ پھندایا گیا ہے۔ اور انشاء اللہ میں اپنی بے گناہی تابت کرنے کہ ہر کھن کو ش افسر ان بالا کے ساتھ میں میں جو میڈیا کے ساتھ ہو، عد الت کی سے اور انشاء اللہ میں اپنی بے گناہی تابت کرنے کہ ہرتکن کو نا ہوں ا

بذر لبد درخواست، استدعا به بید میر - عمّلان سادی شده جا دن شیت پرمزید کاردائی داخل دفتر فرمانی جا دینے -

العادض: به عارت اکبر 1579 ڈرا تیورا نوٹی کیشن سٹاف مردان بیورو۔

جتاب عالی:۔

DS: Legal Mardan

ەرم <u>بر</u>۱۱_۵(۱) ابتدایی اطلاعی ریور. (4) . ابتدائي اطلار علسبت جرم قاتل دست اندازي بوليس ربورت شد دز بردفعة ١٥ بجوعد منابطة جداري زرکن N331929366-7 مد في في وور 5:18:00 270 32 C.F J. PHUND 5.18.20 تخ د دقت ریورت JI O Opert وسكونت اطلاح وابند ومستشغيث 1110. ركيفيت جرم (معدد أعد) حال الكر يجد لمام ٤ دتوعد فا مسله تحاندست اورسمت -Unit (Iau () OF Sou GUIN ADKPONGA- ISAAL مد تعکوف مدى ترم من ائ بېتول بد بوراغ 1-1-1-1-1 معدر ومر سكونت لمزم 11- « « م 2 - 2 (سبر اساس ج11) تر ع) Ent and - con of الی بونیتی کے متعلق ک**ی کی ا**کراطلا**ئ درج کرنے میں توقف ہوا ہوتو د**جہ بیان کر <u>__ردانجی کی تاریخودت</u> . مر و بحرب فرس مراحل محاب مام حال الا مر 36-15-1-1 -۔ ائی اطلاع <u>ش</u>حے درج کر دب يت المراجع مراجع مرون ويل من الحروث جما - للاكاما حت ما منكى ورون أجو اطلال ص، مَدرج مي قوف مين جي وقت شرار عار مي مسروري حرف ار فارد فعل الراع ا مركب ا میں منتظ با ستمنی کرتیے بروس سیسے دنیں مد آت رون التا نا بی دادار اسر پر دیدار و تعریمان توم ع مما مر 2 مل ما مرسد ا مرتم المرد مرد مرد مرد مرد ار عسف ا 17 25 مرد مرد حالت شراع مام ما الماميد كر مدرون حلك و شامه وكمر مل المدر سرا من من مر المحمد الم الم معيد مرد احيد الم الم الم الم مردن - لدا الم المراب الم - ف مر منظ مون محمد الحرب مناج كدد معلوف بما محمد ما ما ما رف مرد ما ج السر بيمن جوان تري مدينا موريا مدحي فيد موس عدار مراج مراج مراج مراج حسب من فكر مرد و و و از الر الم و المراب كا المراب المرد ال و المدان الم المدان الم ف وعد ما حار مرمور بالارام في مراج في ورب وعد حرب مو تدرال ٢٠ نور عرب ١٩ دور المد مست متحدين حديد المرام المحدور الركون المبرة وواضي المريك المسح عارف حداد ول عادن علامتها من سرعة مدم كما يما المتكوم مرتدكرو أو مج مدركة مدين را وال حريكر الأك لي ال در میری - ف ی یکی اعاد عبا مدان هیزار ای تدریف و ای است المراب انج ده بعد حدین مرد ع ش در تشد کون ی مرم می است که در بین از در ای است در ای اور از ع مرد در می مد مدن مرد مرام و در مراج در ای حرب ی حرب علی مانی مانی مراج با در ای مراج الله الم الم مرار مراجم مرد الرام من حمد در المرتب المراجم من المراجم الم المراجم الم المراجم المراجم المراجم ا المرتب المان حسر المراجم من الراقم من المراجم المراجم المراجم المراجم المراجم المراجم المراجم المراجم المراجم ال مشن زنب بسنت علاقته مشرع خد و سرد بسرت میلا مرم درم » عمد علی و بست از ب سرته و بسد و در در میلیک وین ورب شرا بسرونی بست ۱۹۶۰ زم و مرد درمرد بسرت " UP CARE AND AT CAR IS TO A CONTRACT OF A CARE AND

بان الان استان في معلى ال المسيدي فردان المراج وارد م درم في بان ما ورد و و المواري ن ٢ جالاذر، ٢ ٢ ج ٢ ج ١٩ ١٩ ١٩ ٢٩ ٢٠ ٢٠ بارل ٢ ٢٠ ١٠ بارل ٢٠ ٢٠ ٢٠ بارل ٢٠ ٢٠ ٢٠ بارل ٢٠ ٢٠ ٢٠ بارل ٢٠ ٢٠ ٢٠ ٢٠ المسل ٤ ٩٩٩ ٢٠ ج درن ١٩ ٢٠ ٢٠ ١٩ ٢٠ ٢٠ ٢٠ ٢٠ ٢٠ ٢٠ بارل ٤ ٤ ٢٥ ٩٤٠٠ المراجين- امكفر- كارسكو ودريره 20 دود كاروس- ويل 30 اور ، م د از ف الا مدر كارتري . بالد فن - اور ور كر حدثه - تو مذي الله عا الح في رواح الح إن وتر رواي - الارب في طالبان ولال في الى حرا Mardan

 (\mathcal{S}) · Mile up to De more si ipplicition しってらいたいからいというらいろしまかっちいけん ون المس حول والذل تشتر برطام المله حلى 1.23 في وتساسى في وسترالله 64. (H- Lie Tolean - Lins (23 olm Li); LE 471 1400 (1000, 10, 10); 10, 10) من حركتارن اشفاق دوما - مراجر الار كالا وحركر أوى في س عيمام في في التربين الما المالي ورابالي الم عاربات الم الم عادي الم عاد الم الم الم الم الم الم الم الم الم وَيَر وَقُوْلُهُ - كَلُوْسُتُكُ مَنْ يُرْسِعُ بَرِحْ تَحْجَرُ الْمَاتَام مِرْدَر الْعَرْجَان سَاتَنَ أَرْبُولَ بالإراج، أسل القرف سيل في من المحمول المحالية المراح المحد المراج الم والى بتلاط جرمك ساقو المشالوف تحل ورا وي في ولين وي دلام ون ع المرسلة وَجَوْلَ دَرَر عَرَقَ وَسَانَ وَوَزَعَارِ ٢ أَنَّارِ ٢ جَارَ سَعِادَ رَوْدِهِ كَاجٍ عَلَى لَنْ رَحَدُهُ عَالَى المذي فيهو الجامية وساقة الله سال ورون المدى ولى في المارى ورون عرف اللغرب دلول وو بر برى 69 رو 20 مع سرورار بى في لاي مدر كاروس برادر في - اسط: علوف درتوره في طع تلري التي بر السوائع حار سالوف ع تو مراد بر ، برد الري در برق الدي ا ومن اور المن في الله عا و يك عن الد مرة ورا الد مرة ورا عالم عدد بالك ون بر حرار Jer (5000) de Eil 15 2110 U-BOMMOS. C. Jos (0000) - 15,890U-BOMMOS. بأدرسم حمرتن حداع أيدكام حمرت مريا الخون جري الم مع مقاد وووكام جم けんでかいろりをすっしんう、ノビヨレートでからしにろしてろして、しているいの - 11 - Lande edword 9 Exocar Viev- Cheb or 6, 200 - 10 E والإراد والحاج - يردو ملوان قولون خاون عوطان موجل في المحتام المريم دى وني الحاق بر شقى ا دائيات من ع مدول ان چ ولغفت بر درى ج 0345-1948376 の加かいうはのないのからい egal

رد، بالمادي هجاف من حاف Fif . در اسل مر خلاف فلزمای سعمر ولد ، در خان مال سار و وز عارف ولد ما جراحر سال حال در و سر ایم نظر نظر مال مال مال فقر جابم حالها وقرق ورفع وإدا - حاج مس ستاف فرح مرام الله المناج , ور مال الشفار 1402 - شرم 1185 - هست دوة المار والمرجب تامل والرجع موقع والا الم وجردهم إكام وتركي ورج 2 و و و و انان و و ال 2 استار مار و ج ور الملح مول حرف و مرالة وجروف مح وال بيخ وم المرت وركر فسرلورك مرد وار ان موجر ومردر هرد وار ان موجر امرا شارو می مران ارا و مراحور مراج اور هر دو ارمان مرعود والان و فر وسافر و حرف المراب بالما زرد وم 161 رو ا حاجر مرجر جرد وفالت سراز فرد = الم الم حوفر من تطنير بان زجر وغ ٢٦٤ مرف شركتر من جر در از مان رو جوء ال و بان در وغ ٢٦٤ مرف شركتر من من از در از م جرعدالت فترف هو في ولمرمان كو وزره حدد شركراس م جرافروان مرداندل سي فقيتن سوه وملزمان شكر مالي فترافق مركو فقت دور ولاخط منه مال وطر مع مال م المران مر الف حالان ماء (مر حرمه الرسما ا 2-110 Sileio IPS/Tacity - Jal Maidan 02-07-020

(8) 501- 23 Line Unight were 1885 RIN- = 1402 Olim 101 J The sty could about 1 LE 471 USANS i From True USA and ور میرند بست و بینی می اندا می سعید ولد او خان سای ار مرق وران می آیاد ور سفی برنا بخص مسیکه بای می ارتباد و از اندا با از اندا مرد ولرتاج الربان القراري جلاع الربط الربط الربط الربط الربط الرب المربع المربع الرب المربع المربع المربع المربع ال حين ما خاطران أي عامل الموف وجودي فال الروليان ووفر عار ما أناب مار معدور قره معام الدى في مراحد م المراح ما مراح ما في ميد الني ميد تساتو المر حكث يرون باعرد رامى تي عاون والى المرى المراد والمرد ل الر المادار من الحافية للمرال وولور بع مشروبالوزي 3 8 6 6 8 من الروم في فين المون ورا والمراج المري المح المح المراجع المراجع المراجع المراجع جری دیک و در داشی تحسین تر تر تر یک بی از با شری ارد با شری ارد ۱۹۶۰ کار در دار برای اور برای اور برای اور با تاک بالک وی ۱۹۹۱ تا و وی ۱۹۹۱ کار با ۲۰ رَعَ عِلَى الْور شَرِمَ وَشَيَّا = عَادِمَانَ أَوْ عَانَ الْمُ وَجَدَّلَ سَلَّلُ وَإِنْ تَرْجَعَ الْمُ شره جدودن مما والم حم عرى ت ولد محرق بركوم شره 2 س م محمد وا تحلى- المرحان والم المرحن عا الد الم الورن في المحل المحل المحلي Nerico Ser 30 25 antino = 9 817 50 60 50 289 model دِعَة مِنْ الْحَدَثِ الْمَرْضَانَ وَالْمَرْضَانَ الْمَرْضَانَ الْمَرْضَانَ الْمَرْضَانَ الْمَرْضَانَ الْمُ عَلِيمُ الْمُرْضَانَ الْمُرْضَانَ الْمُرْضَانَ الْمُرْضَانَ الْمُرْضَانَ الْمُ عَلَيْنَ الْمُرْضَانَ الْمُرْضَانِ الْمُرْضَانِ الْمُرْضَانِ الْمُرْضَانِ الْمُرْضَانِ الْمُرْضَانِ الْمُرْضَانَ الْمُرْسَانِ الْمُرْضَانِ الْمُرْسَانِ الْمُرْسَانِ الْمُرْضَانِ الْمُرْسَانِ الْمُرْسَانِ الْمُرْسَانِ الْمُرْسَانِ الْمُرْسَانِ الْمُرْسَانِ الْمُرْسَانِ الْمُرْسَانِ الْمُرْسَانِ مُرْسَمَانِ الْمُرْسَانِي الْمُرْسَانِ الْمُرْسَانِ الْمُرْسَانِ الْمُرْسَانِ الْمُرْسَانِ الْمُرْسَانِ الْمُرْ بع المحسكين حدركو الا ملي وورقا حل برط وردم ولسي تر وردم ي السرات الجريد عبد نين 33 درست عبد الى المراحد في الم 2 cortan 1186 N81 Mar June N_ASHA2

الموران المراجع بي الم ما المرابق الموري المراجع الم مردي المحال المراجع الم

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SUB-DIVISIONAL POLICE OFFICER, TAKHT BHAI CIRCLE

Tel. & Fax: 0937552211,E-Mail: dsp.tbi@gmail.com

786 /ST, Dated: 08 / 07/2020. No.

To,

THE HEAD OF INVESTIGATION, MARDAN

DISCIPLINARY ACTION AGAINST DRIVER CONSTABLE ARIF AKBAR NO. 1579

Memo:

Subject:

Kindly refer to your office Diary No. 180 /PA/Inv/CS, dated 09.05.2020.

This enquiry report is the outcome of an elaborate enquiry into a statement of allegation against Driver Constable Arif Akbar No. 1579 of this wing involved himself in case FIR No. 270, dated 08.05.2020, u/s 9DKPCNSA/15AA PS Tangi District Charsadda. He is place under suspension vide OB No. 05, dated 09.05.2020. The competent authority designated undersigned as enquiry officer.

FINDING OF THE ENOUIRY:

In this connection enquiry proceedings were initiated and the alleged Driver Constable Arif Akbar No. 1579 was summoned and a copy of charge sheet was handed over to him, reasonable opportunity was provided to him for his defense. He produced his written statement and he was heard in person. He stated that, he visited Police Station Tangi with his friend named Saeed but he was unaware that his friend Saeed is drug peddler. He was cross questioned at length.

To ascertain the veracity of allegation against Driver Constable Arif Akbar No. 1579, complainant of the case SI Nasir Khan, Investigation Officer of the case SI Kabir Khan, Moharrar PS Tangi ASI Ishtiaq and witness of recovery memo constable Ishfaq No. 1402 and constable Sareer No. 1185 were summoned and heard in person. Their statements were recorded (statements attached). Accused Driver Constable Arif Akbar No. 1579 was found guilty in the investigation process.

. While going through the statements and enquiry process it came to surface that Constable Arif Akbar has rightly been charged in the case and the allegation proved against him.

RECOMMENDATION:

Keeping in view the above facts, it is recommended that the enquiry osp Legal against Constable driver Arif Akbar may please be kept pending as the case is already under trial in the court, so further action against Constable Arif Akbar may be taken in the light of court's decision, if agreed.

Essue Final Show Gaule. Essue Final Show Gaule. Afer Zinadivity the inquity by Es. A hir Annad Yusafzai mil JP. Lu-Mardan Takht Bhai 16.09.7010



OFFICE OF TILE SUPERINTENDENT OF POLICE INVESTIGATION MARDAN Phone No. 0937-9230121 Fax No. 0937-9230321

No. <u>467</u>/PA / Inv:

Dated og /Dec/ 2020.

FINAL SHOW CAUSE NOTICE

d:\2020 office data\final show cause notice file\final show cause notice to constable arif akb

Whereas, you **Constable Arif Akbar No. 1579**, of this wing involved yourself in case FIR No. 270 dated 08.05.2020 u/s 9DKP CNSA / 15-AA PS Tangi Distt: Charsadda.

In this connection, during the course of departmental enquiry conducted by SDPO/Takht Bhai vide his office letter No.1220/St dated 07.10.2020, in pursuance of this office Disciplinary Action No.180/PA/Inv/CS dated 09.05.2020, recommended you for Major Punishment. The undersigned agreed with the Enquiry Officer.

Therefore, it is proposed to impose Major/Minor penalty including dismissal as envisaged under Rules 4 (b) of the Khyber Pakhtunkhwa Police Rules 1975.

Hence, I Muhammad Ayaz, SP Investigation, Mardan, in exercise of the powers vested in me under Rules 5 (3) (a) & (b) of the Khyber Pakhtunkhwa Police Rules 1975, call upon you to Show Cause Finally as to why the proposed punishment should not be awarded to you.

Your reply shall reach to this office within 07 days of receipt of this notice, failing which it will be presumed that you have no explanation to offer

You are liberty to appear for personal hearing before the undersigned.

Superintendent of Police, Investigation Mardan.

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Annes (U) INV الرجاكة (احروان موفر فران I sequeriles alorible and preserver الازد مع حق المكر المحوار لا مح حور ما القر ما محد ومرا لحادث 638A a file in the start and a)، المحتاز تعلل بحاعيم، يوضان مان أكما قد مراب هر كارس يحتد وتركارها أكما ووماك خاب الدرائ مد تتار فراسا جنكاما في كارتتك المست في تسراع وس والع العالي من الراسطار والله ساع BBA الحوميكر عام كارند حار تعام مع رضا في رضا فر ما 888-0300 - 588 ما يك فر ما 140 2. نه BBA و11 کا ، اور لدر و ترکارس بختار کا کے نی دون نور کو ماحل کے تو دار جو کے تو دار جو کا کر دو کر ای ت ماری در نظر در نظر از نظر معدور خان HS مثل ایک مرادین معاز بلیست میں . اور مرحد عوا معالی ما کو رز کار از نظر کی مراجع شان ایک تو چھر سان نے بھے سی مار کر کیا کے جرحت BB موجول کا در تو در ک جے والدن دے دو اور ای کی سل حدث میں ما خو ڈال کر مخط وہ اول مے الدن سے كريد حب مال سل دو محد ويدر كمرد مع المراجع على وعلى على مدين رات في المعلم من وت المراجع المراجع المراجع المراجع المراجع الم المراجع المراجع المراجع المراجع المراجع المراجع المراجع المراجع الم بالمريد الاجراكار ولوال في ما الالول خدف الروار بر حرف -م الما الم الله ، 2 - عمر الم عمرور و مرور و مرور و الا كا حراط الم الح الله ، 2 - 2 - 2 - 2 - 2 - 2 - 2 - 2 - 2 عد خلا - خوش م حف جات بحال لوم عاركا ما قد حاركا التركي و BBA التركي الإسرام CT المحر الموال تو لو سال المراك المحيف من الحراك المحاد الموالي المراك الم الم المان علم ولا ما أمر الخاص والا معرومات تام من إلى جررا - ال بالا مرد مرور في المرد في المرافي المرافي المرابي المرا ار الرعان فرسما خان الديان بالدك بالعالم مشاعات معاد مدار المسالك بالعالي الار مرح می تر در الگا- صراحظ بنی تشاد بے انے دیک رسوک شخص کی تقدیمات میں نکی بنا الگی مرک حصار تعالی کوجا حز خاطر جات کر بیان تر تا مول کے میں بے کہ قد مول کے والعد والم المسالم مر حد حارا حر مر والا حر شمل عارف الحمر منه (73 مداخ مح م 28/12/2020

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Ann & OFFICE OF THE (12) SUPERINTENDENT OF POLICE INVESTIGATION MARDAN Phone No. 0937-9230121 Fax No. 0937-9230321

No. <u>477</u>/PA / Inv:

Dated <u>2.8</u> /Dec/ 2020.

ORDER ON ENQUIRY OF CONSTABLE ARIF AKBAR NO. 1579.

This order will dispose-off a Departmental Enquiry under Police Rules 1975, initiated against the subject official, for involving himself in a criminal case vide FIR No. 270 dated 08.05.2020 u/s 9D KPCNSA/ 15-AA PS Tangi Distt: Charsadda, he was placed under suspension vide OB No.05 dated 09.05.2020, proceeded against departmentally through Mr. Bashir Ahmad Yousafazi SDPO Takht Bhai vide this office Statement of Disciplinary Action/Charge Sheet No. 180/PA/Inv/CS dated 09.05.2020, who (E.O) after fulfilling necessary proceedings, submitted his finding report vide his office No.1220/St dated 07.10.2020, recommending alleged official for major punishment. The undersigned issued Final Show Cause Notice to the official who appeared in orderly room, and heard in person.

In light of personal hearing, the alleged official failed to satisfy the undersigned, therefore, awarded him "Major Punishment of dismissal from service" with immediate effect, in exercise of the power vested to me under Police Rules-1975

OB No. 15^{-1} Dated: - 29/12 /2020.

Superintendent of Police, Investigation, Mardan.

Copy forwarded for information & necessary action to:-

- 1) The Regional Police Officer, Mardan, please.
- 2) The District Police Officer, Mardan.
- 3) DSP/HQrs Mardan
- 4) SDPO Takht Bhai w/r quoted above.
- 5) Pay Officer, Investigation Bureau.
- 6) E.C, District Police Officer, Mardan.
- 7) OSI, District Police Officer, Mardan with () Sheets.

80% (3) days eschard mill for his absence ! OBNG 1386 Joins ORDER He is haveby awarded a minor punishment of Consure with Immediate effect. CBNO. 2367 DPo Mardon. Cla 10/10/17 ORDER-Awarded him Major punishment OF dismisgal From serice" With immediate effect vide SP investigation Mardan. 0.5 NO: 15 Dated: 29-12-2020 Discrict rolice Officer

あた 10 -- LEAVE, ABSENCE AND BREAKS IN SERVICE All periods not counting "approved service" to be entered in red ink. 2 9 1 DATE EXTENT escription of leave i. c., privilege, hospi tal, sick leave, or furlough, or of absence, or forfeiture of approved service. No. of District Order All entries to be initialled, by Superinten-dent of Police. Ťο From Months Years Days gab 233 ! E/leave Superinterfaction Police 3 adapt of No 495 Fronder Reserve Hice Postawas nunge Postawas 14-6-04 Ceave corth with pay . de la mitte al 190. y 1 day 03 No -501 15-6-04 ų 🛔 Supdt: of Police FRP Pesh: Range Peshawar 1 alax 0 13. No. 528 24-6-04 Louve with old pull. 10/ay 03-10-567 13-7-06 Pesh: Range Peshawar. eave with out pay. -22 days 0 BNO. 597 21-704 Supot: of Police FRP Pesh: Range Peshewar. ith out party Actury OB 27-7-04 $F_{\rm p}$ Show The Fice ŗ Pesh 1 ; المعتقبة والمرا DS **_**(a) Mardan pot & Parce FRP 013.10.656 elay esh: Range Peshawar. Leuve with out pay. teley 012-10. 383 17-8-04 Supdt: of Police FRP Pesh; Range Peshowar. Gener with out pray. 10/04 0 DN0 - 67-4 Supdt: of Police FRP Pesh: Range Peshawar. with dust pray. Supot: RP Ace FRP Seesawar. Pesh: Rand GS&PD. NWFP-578 FS.-25,000-25-9-85 (115)

BEFORE THE HONOURABLE SERVICE TRIBUNAL KHYBER PAKHTUNKHWA, PESHAWAR.

Service Appeal No. 7426/2021

Arif Akbar Ex-Constable No. 1579, District Mardan......Appellant.

VERSUS

AUTHORITY LETTER.

Mr. Atta-ur-Rehman Inspector Legal Branch, (Police) Mardan is hereby authorized to appear before the Honourable Service Tribunal, Khyber Pakhtunkhwa, Peshawar in the above captioned service appeal on behalf of the respondents. He is also authorized to submit all required documents and replies etc. as representative of the respondents through the Addl: Advocate General/Govt. Pleader, Khyber Pakhtunkhwa Service Tribunal, Peshawar.

Séneral of Police, Inspector Khyber 🖗 akhtunkhwa, Peshawar. (Respondent No. 01)

Regional Police Officer, Mardan. (Respondent No. 02)

ticer, District Mardan;

(Respondent No. 03)

Superintendent of Police, Investigation, Mardan. (Respondent No. 04)

OFFICE OF ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA. PERMAWAR

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Exchange No 9213833 Fax No. 091-9218270

and 16-10 12021

Address: High Court Building, Peehawar. Tel. No.091-9210119

SUBJECT:- APPEAL U/S 417 CF.PC AGAINST THE JUDGMENT/ ORDER DATED 13/04/2021 PASSED BY THE LEARNED ADDITIONAL SESSION JUDGE/ JSC, CHARSADDA AT TANGI, IN CASE TITLED "STATE VS SAEED ETC, HAS BEEN ACQUITTED VIDE FIR NO. 270, DATED 08/05/2020, 15-AA. DISTRICT P.S TANGI, CHARGED U/S CHARASADDA.

Sir.

I have carefully gone through the available record as well as opinion rendered by learned Law Officer, the undersigned agreed with the opinion referred herein above, hence instant case is not fit for filling an appeal before Hon'ble Peshawar High Court

Ld. Advocate-General,

Khyber Pakhtunkhwa,

Peshawar

r Hussain Awan)

(Malik Ak Additional Advocate General Khyber Pakhilunkhwa, Peshawar

Secretary to Govt: of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, Peshawar.



OFFICE OF ADVOCATE-GENERAL, KHYBER PAKHTUNKHWA, PESHAWAR

| No/AG | deted/2021 |
|---|---------------------|
| Address: High Court Building, Peshawar. | Exchange No 9213833 |
| Tel. No.091-9211013 | Fax No. 091-9219270 |

SUBJECT:- APPEAL U/S 417 CLP,C AGAINST THE JUDGMENT/ ORDER DATED 13/04/2021 PASSED BY THE LEARNED ADDITIONAL SESSIONS JUDGE/JSC, CHARSADDA AT TANGI, WHEREBY THE ACCUSED/RESPONDENT IN CASE TITLED "STATE VS SAEED ETC", HAS BEEN ACQUITTED VIDE FIR NO.270, DATED 08/05/2020, CHARGED U/S 15-AA, P.S. TANGI, DISTRICT CHARSADDA

Sir,

I have carefully gone through the whole record and also perused the Judgment/Order dated 13/04/2021, delivered by learned Additional Sessions Judge/JSC, Charsadda at Tangi and after examining the same I am of the opinion that the above titled case is not a fit case for filling an appeal before the Hon'ble High Court, on the following:-

GROUNDS:-

- That a well reasoned legal and lawful Order has been passed by the learned trial Court, the same suffers from no legal flaw or irregularity, hence, required no interference.
- That despite of prior information no independent witness was associated to witness the recovery proceedings which is otherwise violative of the mandatory provision of section 103 Cr.P.C.
- 3. That the prosecution failed to establish that who brought the Murasila from the spot to the Police Station at that the said witness whether only brought the Murasila or something else.
- 4. That the original register No.19 was neither produced in the Court nor any justification was provided in this regard.
- 5. That the perusal of evidence by the prosecution reveals that there were major contradictions in the statements of the prosecution witnesses regarding the timing of different

proceedings right from the recovery to the subscribing of the Murasila and registration of F.I.R.

- 6. That the prosecution has falled to prove his case through reliable, legal and convincing evidence beyond reasonable doubt.
 - That there is no legal or reasonable grounds available on record to file the instant appeal.

Keeping in view the above, in my humble opinion the case in hand is not fit for filing an appeal. It would be a futile exercise and wastage of precious time of Hon'ble High Court.

<u>1</u>|8 Ld. Advocate-General. Khyber Pakhtunkhwa, Peshawar

7.

(Zafar Abbas Mirza) Law Officer

Secretary to Govt: of Khyber Pakhtunkhwa, Home & Tribal Affairs Department, Peshawar.



KHYBER PAKHTUNKWA

SERVICE TRIBUNAL, PESHAWAR

All communications should be addressed to the Registrar KPK Service Tribunal and not any official by name.

No: 1124 /ST

Dated: 24/5//2022

Ph:- 091-9212281 Fax:- 091-9213262

То

District Police Officer, Mardan.

Subject: JUDGMENT IN APPEAL NO.7426 Mr. Arif Akbar

I am directed to forward herewith a certified copy of judgment dated 11.05.2022 passed by this Tribunal on the above subject for compliance please.

Encl:As above

w REGISTRAR **KHYBER PAKHTUNKHWA** SERVICE TRIBUNAL PESHAWAR