


28.07.2022

Due to summer vacations, the case is adjourned to 29.09.2022 for the same as before.


Reader

29.09.2022

Appellant in person present. Mr. Muhammad Adeel Butt, Additional Advocate General for the respondents present and sought time for submission of reply/comments. Adjourned. To come up for submission of reply/comments on 28.10.2022 before the S.B at Camp Court D.I.Khan.



(Salah-Ud-Din)
Member (J)
Camp Court D.I.Khan

28.10.2022

Appellant alongwith his counsel present.

Kabir Ullah Khattak, learned Additional Advocate General for respondents present.

Reply not submitted. Learned AAG requested for time to submit reply/comments. Last chance is given. To come up for reply/comments on 24.11.2022 before S.B at Camp Court, D.I.Khan.


(Rozina Rehman)
Member (J)
Camp Court, D.I.Khan

28.06.2022

Mr. Asad Aziz Mehsud, Advocate for the appellant present.

Preliminary arguments heard.

Learned counsel for the appellant contended that; being co-accused in the departmental proceedings, the appellant was dismissed from service vide impugned order dated 07.05.2020. The appellant challenged the impugned order vide departmental appeal dated 05.06.2020 which was rejected vide appellate order dated 12.01.2021. The appellant thereafter, submitted revision petition to Inspector General of Police Khyber Pakhtunkhwa Peshawar under Rule 11-A of the Khyber Pakhtunkhwa Police Rules, 1975. However, the revision petition was also dismissed on 22.02.2022 whereafter the instant service appeal was filed in the Service Tribunal on 21.03.2022. It was further argued that the case was under trial before the competent court of jurisdiction and the appellant was required to have been placed under suspension rather than to be penalized and awarded the penalty of dismissal from service. He was acquitted by the court of Additional District & Sessions Judge-I South Waziristan at Tank vide judgement 17.02.2022.

Points raised need consideration. The appeal is admitted to regular hearing subject to all just and 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. To come up for written reply/comments before the S.B on 28.07.2022 at Camp Court, D.I.Khan.



(Mian Muhammad)
Member (E)
Camp Court, D.I.Khan

Rs 500
Appellant Deposited
Security & Process Fee



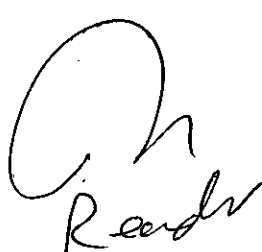
1/8/22

Form- A

FORM OF ORDER SHEET

Court of _____

Case No.- _____ 450/2022


S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	29/03/2022	<p>The appeal of Mr. Asif Khan resubmitted today by Mr. Asad Zia Mehsud Advocate, may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	13-4-2022 28/4/22	<p>This case is entrusted to touring Single Bench at D.I. Khan for preliminary hearing to be put up there on <u>28-04-2022</u></p> <p style="text-align: center;"> CHAIRMAN</p> <p>Tour to camp court D-Ikha was been cancelled. To come up for the same as before on 28/6/2022</p> <p style="text-align: right;"> Registrar</p>

The appeal of Mr. Asif Khan S/O Mameet Khan, Ex-SI Belt No. 384 Distt: Police South Waziristan R/O P.O & Tehsil Wana District South Waziristan received today i.e. on 21.03.2022 is incomplete on the following score which is returned to the counsel for the appellant for completion and resubmission within 15 days.

1. Checklist is not attached with the appeal.
2. Appeal has not been flagged/marked with annexure marks.
3. Annexures of the appeal may be attested.
4. Affidavit attached with the appeal may be attested by the Oath Commissioner.
5. Copy of charge sheet, statement of allegation, enquiry report and replies annexed as Annexure C and D are not attached with the appeal.
6. Copies of Page no. 13, 14, 16 and 18 attached with the appeal are illegible which may be replaced by legible/better one.
7. Appeal should be marked page wise according to index of the appeal.
8. Five more copies/sets of the appeal along with annexures i.e. complete in all respect may also be submitted with the appeal.

No. 688 /S.T,

Dt. 21/03 /2022


REGISTRAR
SERVICE TRIBUNAL
KHYBER PAKHTUNKHWA
PESHAWAR.

Mr. Asad Aziz Mehsud Adv. ~~Reed~~

D. I. Khan

**BEFORE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR
CHECKLIST**

Case Title: Asif Khan vs Police Deptt.

S.#	Contents	Yes	No
1.	This appeal has been presented by: <u>Asad AZIZ Mehsud.</u>		
2.	Whether Counsel / Appellant / Respondent / Deponent have signed the requisite documents?	✓	
3.	Whether Appeal is within time?	✓	
4.	Whether the enactment under which the appeal is filed mentioned?	✓	
5.	Whether the enactment under which the appeal is filed is correct?	✓	
6.	Whether affidavit is appended?	✓	
7.	Whether affidavit is duly attested by competent oath commissioner?	✓	
8.	Whether appeal/annexures are properly pagged?	✓	
9.	Whether certificate regarding filing any earlier appeal on the subject, furnished?	✓	
10.	Whether annexures are legible?	✓	
11.	Whether annexures are attested?	✓	
12.	Whether copies of annexures are readable/clear?	✓	
13.	Whether copy of appeal is delivered to A.G/D.A.G?	✓	
14.	Whether Power of Attorney of the Counsel engaged is attested and signed by petitioner/appellant/respondents?	✓	
15.	Whether numbers of referred cases given are correct?	✓	
16.	Whether appeal contains cuttings/overwriting?	✓	
17.	Whether list of books has been provided at the end of the appeal?	✓	
18.	Whether case relate to this Court?	✓	
19.	Whether requisite number of spare copies attached?	✓	
20.	Whether complete spare copy is filed in separate file cover?	✓	
21.	Whether addresses of parties given are complete?	✓	
22.	Whether index filed?	✓	
23.	Whether index is correct?	✓	
24.	Whether Security and Process Fee deposited? on		
25.	Whether in view of Khyber Pakhtunkhwa Service Tribunal Rules 1974 Rule 11, notice along with copy of appeal and annexures has been sent to respondents? on		
26.	Whether copies of comments/reply/rejoinder submitted? on		
27.	Whether copies of comments/reply/rejoinder provided to opposite party? on		

It is certified that formalities/documentation as required in the above table have been fulfilled.

Name:

Asad Aziz

Signature:

AA

Dated:

2/3/22

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In service Appeal No. 451 /2022

Asif Khan
(Appellant)

VERSUS

PPO KPK etc
(Respondents)

I N D E X

S.No.	Description of documents	Annexure	Pages
1.	Memorandum of Appeal and affidavit	--	1-8
2.	Copy of CNIC of petitioner		9
3.	Copy of FIR No. 48	A	10-12
4.	Copy of the impugned order#853-58 dated 07/05/2020	B	13
5.	Copies of departmental appeal and impugned order dated 12/01/2021	C & C/1	14-16
6.	Copy of the mercy petition and order dated 22/02/2022	D & D/1	17-18
7.	Copies of the judgment dated 17/02/2022 of the learned ASJ-I SWTD	E	19-56
8.	Copies of statement of allegations, charge sheet, inquiry report, application of appellant	F to F/3	57-60
9.	Vakalatnama	--	61

Dated: 21/03/2022

Asif Khan

Your humble appellant

Asif Khan
 Through counsel

Asad Aziz Mabsud
 Advocate High Court

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Service Appeal No. 451 /2022

Khyber Pakhtunkhwa
Police Tribunal

Case No. 441

Dated 21-3-2022

Asif Khan son of Mameet Khan r/o P.O & Tehsil Wana
District South Waziristan. Ex-Sub Inspector Belt No. 384
District Police South Waziristan. Cell#0303-851 3230

(Appellant)

VERSUS

1. Provincial Police Officer, (IGP), Khyber Pakhtunkhwa Central Police Office Peshawar.
2. Deputy Inspector General of Police/Regional Police Officer, Region Dera Ismail Khan.
3. District Police Officer South Waziristan Tribal District.

..... (RESPONDENTS)

APPEAL UNDER SECTION 4 OF THE KPK SERVICES TRIBUNAL ACT, 1974, AGAINST, FIRSTLY THE IMPUGNED ORDER NO. 853-58 DATED 07/05/2020 ISSUED BY THE RESPONDENT#3, WHEREBY THE APPELLANT WAS AWARDED Major PUNISHMENT OF "Dismissal from Service" AND FINALLY, AGAINST THE IMPUGNED ORDER No. 213-14/ES DATED 12/01/2021 OF APPELLATE AUTHORITY VIDE WHICH THE DEPARTMENTAL APPEAL OF THE APPELLANT WAS REJECTED AND ALSO AGAINST THE ORDER#241-50 DATED 22/02/2022 THE LEARNED REVISIONAL AUTHORITY/ RESPONDENT#1 WHEREBY THE REVISION PETITION OF THE APPELLANT WAS REJECTED.

Filed to-day

Registrar

21/3/2022

Re-submitted to-day
and filed.

Registrar

21/3/2022

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Note: Addresses given above shall suffice the object of service. All necessary and proper parties have been arrayed in the panel of respondents.

Respectfully Sheweth;

Appellant humbly submits as under;

1. That the appellant had serviced the Police Department South Wazirsitan Tribal District as Sub Inspector and since induction the appellant performed his duties with honesty and with great zeal. Copy of the CNIC is annexed.
2. That the appellant served the police department at different police station and has ~~has~~ completed different departmental courses successfully and during this period left no stone un-turned towards his high-ups.
3. That the appellant was performing his duties in Traffic Police but was falsely charged in frivolous FIR No.48 dated 08/05/2020 u/s 9 (D) CNSA, 406 PPC registered at Police Station Wana SWTD in which baseless allegations were made against the petitioner. Copy of FIR is annexed here with as **Annexure-A**.
4. That thereafter the appellant was charge sheeted and show-cause notice was served upon the appellant which was duly replied by the appellant and inquiry was conducted by the inquiry officer, without properly probe into the matter and without taking any pain submitted the inquiry report to the District Police Officer South Waziristan.
5. That the respondent#3 issued the impugned order#853-58 dated 07/05/2020, wherein the appellant was awarded major punishment of "Dismissal from Service" without any lawful justification. Copy of the impugned order#853-58 dated 07/05/2020 is annexed as **Annexure-B**.

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6. That appellant preferred a departmental appeal to the respondent#2 being appellate authority and narrated all the true facts. The appellate authority vide impugned office order No 213-14/ES dated 12/01/2021 rejected the appeal of the appellant. Copies of departmental appeal and impugned order dated 12/01/2021 are annexed as **Annexure-C & C/1**.
 7. That feeling aggrieved by the order of the appellant authority, the appellant moved a revision petition/mercy petition to respondent#1/PPO which was also rejected vide order#241-50 dated 22/02/2022. Copy of the mercy petition and order dated 22/02/2022 are annexed as **Annexure-D & D/1**.
 8. That it is pertinent to mention here that the criminal trial of case FIR No.48 dated 08/05/2020 u/s 9 (D) CNSA, 406 PPC registered at Police Station Wana SWTD was adjudicated before the court of learned Additional District Judge-I SWTD at Tank in which the appellant is acquitted from the charges leveled against him vide judgment dated 17/02/2022. Copies of the judgment dated 17/02/2022 of the learned ASJ-I SWTD are annexed as **Annexure-E**.
 9. That order#853-58 dated 07/05/2020 and subsequently impugned order of the appellate authority as well as the impugned order of the revisional authority are based on mala fide and against the law and procedure, against the efficiency and discipline Rules and police rules, thus, the appellant left with no other remedy, the appellant approaches this honourable tribunal for setting aside impugned orders on gracious acceptance of the instant appeal on grounds hereinafter preferred.

GROUND S:

- a. That the orders passed by the DPO South Waziristan, departmental authorities, impugned hereby are arbitrary,

discriminatory, legally and factually incorrect, ultra virus, void ab initio and militate against principle of natural justice, thus, are liable to be set aside and malafide.

- b. That the appellant is acquitted from the charges levelled against him in the case FIR No. 48, hence, the service of petitioner is also entitled to be reinstated with all back benefits.
- c. That the order of revisional authority/respondent#1 was issued on 22/02/2022 while the appellant was acquitted from the charges vide order dated 17/02/2022 but the respondent#1 ignored the acquittal order of appellant while rejecting the revision petition of the appellant.
- d. That the appellant is innocent and has been subjected to the major penalty for no fault on his part. The Inquiry Officer failed to follow the prescribed procedure and conducted hasty proceedings and also failed to regulate the departmental inquiry in accordance with law and procedures described for the purpose and as such erred at the very outset of the proceedings, thus, causing grave miscarriage of justice as well as prejudice to the appellant in making his defence.
- e. That it is a matter of record that appellant has been vexed in clear defiance of law and principle laid by the superior courts as well as the tribunals as could be gathered from the facts and circumstances of the case.
- f. That the appellant is innocent, the allegations and charges levelled against him were baseless as the unblemished service record of the appellant has been overlooked and appellant was awarded major punishment on the basis of frivolous allegations.
- g. That the appellant had sufficient length of service rendered for the department while adjudicating the matter of

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departmental authority utterly ignored not only the provisions of law on the point but the rights, too, of the appellant including fringe benefits and by imposing the harshest of the penalties in defines of law as aforesaid, deprived the family of appellant of its only means of earning livelihood.

- h. That the respondents while adjudicating in the matter of departmental proceedings and the appeal/representation as well as revision petition of the appellant were disposed of the entire matter in a slip shot manner through the orders impugned hereby, thus, the award of impugned punishment is patently unwarranted, illegal, ultra virus, nullity in law and apparently motivated for extraneous reasons and is not maintainable in law.
- i. That the petition of appeal is duly supported by law and rules formulated there under, besides the affirmation/affidavit annexed hereto.
- j. That the Khyber Pakhtunkhwa Service Tribunal was dysfunctional since 02/02/2022 and started on 16/03/2022, hence, the instant service appeal is being filed without any delay.
- k. That this honourable Tribunal is competent and has ample powers to adjudge the matter under reference/appeal.
- l. That counsel for the appellant may graciously be allowed to raise additional grounds at the time of arguments.

In wake of submission made above applicant humbly requested that the impugned order#853-58 dated 07/05/2020 issued by the respondent#3 and subsequently impugned orders of the appellate as well as revisional authorities may please be set aside and the applicant may graciously be reinstated in service with all back benefits.


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Any other relief deemed appropriate in circumstances of the case may also be allowed in favour of appellant in the large interest of justice.

Dated: 21/03/2022

Your humble appellant


Asif Khan
Through counsel


Asad Aziz, Mehsud
Advocate High Court

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In service Appeal No. _____/2022

Asif Khan
(Appellant)

VERSUS

PPO KPK etc
(Respondents)

CERTIFICATE

Certified that appellant have not filed an appeal regarding the subject controversy, earlier in this august Tribunal.

Dated ___/03/2022


Appellant

NOTE

Appeal with annexure along-with required sets thereof are being presented in separate file covers.

Dated 21/03/2022


Appellant's counsel

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

In service Appeal No. _____/2022

Asif Khan
(Appellant)

VERSUS

PPO KPK etc
(Respondents)

AFFIDAVIT

I, **Asif Khan**, appellant herein, do hereby solemnly affirm on oath:-

1. That the accompanying appeal has been drafted by counsel following our instructions;
2. That all para-wise contents of the appeal are true and correct to the best of my knowledge, belief and information;
3. That nothing has been deliberately concealed from this Honourable Court, nor anything contained therein, based on exaggeration or distortion of facts.

Dated 21/03/2022

Identified By:-

Asad Aziz
Advocate High Court

ATTESTED



DEPONENT

03038513230

21708-6014758-9

22

CE No. 510
Application No. 18/3/022
Date of Birth 4
Date of Issue 4
No. of Pages 422
Copyright 422
Total Charges 422
Name of Applicant M. Q. Osman
Cause of Application 422
Signature [Signature]

خوالہ میں گزشتہ 28 جولائی 2005ء سے 05 مئی 2005ء تک 9 (D) CNSA (تعداد 6)

406
CNSA-24-1185

1 امتیاز	2 مذہب مذہب	3 مذہب مذہب	4 مذہب	5 مذہب	6 مذہب
<p>ASAD MAHSUD Advocate High Court District Bar, Rawalpindi, Pk.</p> <p>11</p>	<p>ASAD MAHSUD Advocate High Court District Bar, Rawalpindi, Pk.</p>	<p>ASAD MAHSUD Advocate High Court District Bar, Rawalpindi, Pk.</p>	<p>ASAD MAHSUD Advocate High Court District Bar, Rawalpindi, Pk.</p>	<p>ASAD MAHSUD Advocate High Court District Bar, Rawalpindi, Pk.</p>	<p>ASAD MAHSUD Advocate High Court District Bar, Rawalpindi, Pk.</p>

Forwarded
Please

Handwritten signature

15/3/21



OFFICE OF THE
DISTRICT POLICE OFFICER,
SOUTH WAZIRISTAN TRIBAL DISTRICT

Page No. 13
Annex B

No. 853-587 / PA/SWTD

Dated 7/5/2020

ORDER

This order is passed today on 07-05-2020 to dispose of departmental proceedings initiated against Constable (Sub Inspector) Asif Khan, Belt No. 384 (under suspension) while posted as Traffic Staff Wana Bazar South Waziristan Tribal District.

Sub Inspector Asif Khan presently under suspension and closed to Police Line SWTD was charge sheeted under the Khyber Pakhtunkhwa Police Rules 1975 (amended 2014) on the score of the following allegations:-

That you are posted in Traffic Police at Wana Bazar, confiscated Hasheesh from the position and sold instead of giving it in Police Custody/Deposited to relevant Department which shows your inefficiency, lack of interest in discharge of your responsibilities.

For conducting probe into the allegations leveled against Sub Inspector Asif Khan an enquiry of Mr. Said Marjan DSP Wana was constituted. The enquiry officer found the officer guilty as Sub Inspector Asif Khan has confiscated Hasheesh in large amount and sold it instead of giving it in police custody, which creates bad image of Police Force the enquiry officer recommended him for major punishment alongwith criminal Proceeding.

In the light of findings/recommendations of the Enquiry Officer and available record against Sub Inspector Asif Khan, I, Shaukat Ali, District Police Officer, South Waziristan Tribal District being competent authority, hereby imposes the major punishment "Dismissal from service" and a proper case FIR u/s 9(D) CNSA shall be registered by local police with immediate effect.

Order announced.

Attested
Echan
Office Superintendent
DPO OFFICE
South Waziristan Tribal District

(SHAUKAT ALI)
District Police Officer,
South Waziristan Tribal District

Endst: No. & date even.

Copy of the above is forwarded to the:-

1. Worthy Regional Police Officer, DI Khan Region for favour of information.
2. Deputy Superintendent of Police, Wana.
3. Accountant, EC, OASI for information and necessary action.
4. SHO PS Wana for further necessary action.
5. Officer concerned.

Attested
AAZIZ MAHSEED
Advocate
District: 22/3/22

(SHAUKAT ALI)
District Police Officer,
South Waziristan Tribal District

Betab copy

Ant, 13/13/1

OFFICE OF THE
DISTRICT POLICE OFFICER
SOUTH WAZIRISTAN TRIBAL DISTRICT.

No. 853-58 /PA/SWTD

Dated 7/5/2020

ORDER

This order is passed today on 07.05.2020 to dispose of departmental proceedings initiated against constable(sub Inspector) Asif Khan Belt No.384(Under suspension) while posted as Traffic Staff Wana Bazar South Waziristan Tribal District.

Sub Inspector Asif Khan presently under suspension and closed to police Line SWTD was charge sheeted under the Khyber Pakhtunkhwa Police Rules 1975(amended 2014)on the score of the following allegations:-

That you are posted in Traffic Police at Wana Bazar confiscated Hasheesh from the position and sold instead of giving it in police Custody/Deposited to relevant Department which shows your inefficiency,lack of interest in discharge of your responsibilities.

For conducting probe into the allegations leveled against Sub Inspector Asif Khan and enquiry of Mr.Said Marjan DSP Wana was constituted.The enquiry officer found the officer guilty asSubInspector Asif Khanhas confiscated Hasheeshin large amount and sold it instead of giving it in police custody,which creates bad image of Police Force the enquiry officer recommended him for major punishment alongwith criminal proceeding.

In the light of findings/recommendations of the Enquiry Officer and available record against Sub Inspector Asif Khan. I,Shaukat Ali, District Police Officer, South Waziristan Tribal Districtbeing competent authority. Hereby imposes the major punishment"Dismissal from service" and a proper case FIR u/s 9(D) CNSA shall be registered by local police with immediate effect.

Order announced.

(SHAUKAT ALI)

District Police Officer

South Waziristan Tribal District

Endst:No.& date even.

Copy of the above is forwarded to the:-

1. Worthy Regional Police Officer, D.I.KHAN Region for favour of information.
2. Deputy Superintendent of Police,Wana.
3. Accountant,EC,OASI for information and necessary action.
4. SHO PS Wana for further necessary action.
5. Officer concerned.

(SHAUKAT ALI)

District Police Officer

South Waziristan Tribal District

خدمت جناب ڈپٹی انسپکٹر جنرل آف پولیس رینج ضلع ڈیرہ اسماعیل خان

An: C 14

جدید محکمہ ایبل برخلاف حکم برخاگی بحریہ جناب محترم ڈسٹرکٹ پولیس آفیسر ضلع ساڈتھ وزیر تان مورخہ 07/05/2020 جس کی رو سے من ایبلانٹ کو ملازمت سے برخاست کیا گیا

استدعا ایبل:

بمظوری ایبل ہذا حکم برخاگی جناب محترم ڈسٹرکٹ پولیس آفیسر ضلع ساڈتھ وزیر تان مورخہ 07/05/2020 کو منسوخ و کالعدم قرار دیا جا کر من ایبلانٹ کو اپنی ملازمت پر بحال کرنے کا حکم صادر فرمایا جاوے تاکہ قانون اور انصاف کے تقاضے پورے ہو سکیں۔

جناب عالی:

ایبلانٹ عاجزانہ طور پر ذیل ایبل پیش کرتا ہے۔

1) یہ کہ من ایبلانٹ بطور سب انسپکٹر بلیک نمبر 1384 اپنی ڈیوٹی محکمہ پولیس میں سرانجام دے رہا ہوں اور اپنی ڈیوٹی انتہائی محنت اور ایمانداری سے سرانجام دے رہا تھا۔ کبھی اپنے انسران بالا کو معمولی شکایت کا موقع نہیں دیا ہے۔

2) یہ کہ ڈسٹرکٹ پولیس آفیسر ضلع ساڈتھ وزیر تان نے من مسائل کو الزام بابت امانت میں خیانت کی نسبت مقدمہ نمبر 48 مورخہ 11/03/2020 جرم زیر دفعہ PPC 405, And 9(D) CNSA برخلاف ایبلانٹ چاک کی۔ جس نسبت من ایبلانٹ نے باقاعدہ جواب دی جن ثبوت موجود ہے۔

3) یہ کہ بعد اب من ایبلانٹ عدالت سے ضمانت پر بری ہو چکا ہوں اور من ایبلانٹ کے خلاف کسی قسم جرم ثابت نہیں ہوا ہے۔ ثبوت میں عدالت عالیہ پشاور ہائی کورٹ کا حکم لف ہے۔

4) یہ کہ از روئے قانون من ایبلانٹ اپنی ملازمت پر بحال ہونے کا اہل ہے جو کہ آنجناب سے ہمہ زمانہ طور پر مستعدی ہوں کہ من ایبلانٹ امانت کو اپنی ملازمت پر تمام مراعات کیساتھ بحال کیا جانے کا حکم صادر فرمایا جاوے اور من ایبلانٹ کے خلاف تمام الزامات کو وائش دفتر فرمایا جاوے۔

5) یہ کہ من ایبلانٹ کی کفالت کا انحصار ماہانہ تنخواہ پر ہے جس پر من ایبلانٹ کے چھوٹے چھوٹے بچے زیر تکلیف ہیں۔ اس لئے من ایبلانٹ انسانی ہمدردی کے تحت اپنی ملازمت پر بحال ہونے کا حقدار ہوں۔


6) یہ کہ میں ہذا استدعا اور قانون پذیرائی ہے۔

Attested
ASAD UZZ MAHSUD
District Police Officer
District Police Association D.I. Khan
22/3/20

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یہ کہ آخر میں من ایپیلانٹ یہ استدعا کرتا ہوں کہ آنجناب میری فریاد/اپیل سننے کے لئے ملاقات کا شرف بخشیں تاکہ من ایپیلانٹ زبانی طور پر بھی اپنی بے گناہی کی وضاحت / تفصیل پیش کر سکوں۔ لہذا استدعا ہے کہ منظور کی اپیل ہذا حکم برخواستگی ایپیلانٹ از ملازمت جاری ہے۔ جناب محترم ڈسٹرکٹ پولیس آفیسر صاحب ضلع ساڑتھوہ وزیرستان مورخہ 07/05/2020 نمبر 853-58/PA/SWTD کو کالعدم و منسوخ قرار دیا جائے اور من ایپیلانٹ کو اپنی ملازمت پر دوبارہ بحال کرنے کا حکم صادر فرمایا جائے۔ دعا گو رہوں گا۔

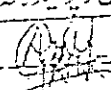
مورخہ 10/6/2020

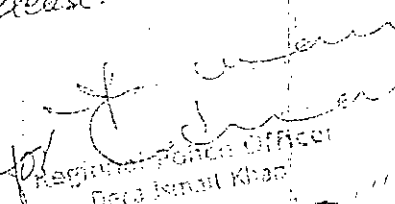
آصف خان سب انسپکٹر پولیس نمبر 384 حال متعینہ ٹریک پولیس وانا
 (ایپیلانٹ) 
 موبائل نمبر: 0303-8513230

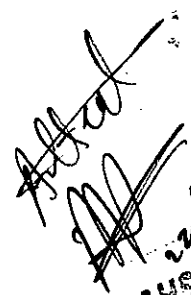
NO 2465 /ES
 dt 10-06-2020
 DPO/SWTD

بیان حلفی

طفا بیان کرتا ہوں کہ جملہ مراتب اپیل ہذا

تاحد علم و یقین درست و صحیح ہیں اور تمام امور صحیح پڑتی ہیں۔ کوئی امر آنجناب سے مخفی و پوشیدہ نہ رکھتا ہے۔
 For comments and return to this office alongwith his complete service documents and copy of attested punishment order within 05 days please.
 (ایپیلانٹ)  آصف خان


 Registrar, Police Officer
 Dera Ismail Khan 09/06


 ASAD ATIQ MAHSUD
 Court
 District Dera Ismail Khan

بخدمت جناب ڈپٹی انسپکٹر جنرل آف پولیس ریجن ضلع ڈیرہ اسماعیل خان

جدید محکمانہ اپیل برخلاف حکم برخاستگی مجریہ جناب محترم ڈسٹرکٹ پولیس آفیسر ضلع ساوتھ وزیرستان
مورخہ 07/05/2020 جس کی رو سے من اپیلانٹ کو ملازمت سے برخاست کیا گیا۔

استدعا اپیل:-

بمظوری اپیل ہذا حکم برخاستگی جناب محترم ڈسٹرکٹ پولیس آفیسر ضلع ساوتھ وزیرستان مورخہ
07/05/2020 کو منسوخ و کالعدم قرار دیا جا کر من اپیلانٹ کو اپنی ملازمت پر بحال کرنے کا
حکم صادر فرمایا جاوے تاکہ قانون اور انصاف کے تقاضے پورے ہو سکیں۔

جناب عالی:-

- (1) اپیلانٹ عاجزانہ طور پر ذیل اپیل پیش کرتا ہے۔
یہ کہ من اپیلانٹ بطور سب انسپکٹر بیلٹ نمبر 384 اپنی ڈیوٹی محکمہ پولیس میں سرانجام دے رہا ہوں اور
اپنی ڈیوٹی انتہائی محنت اور ایمانداری سے سرانجام دے رہا تھا۔ کبھی اپنے آفسران بالا کو معمولی شکایت
کا موقع نہیں دیا ہے۔
- (2) یہ کہ ڈسٹرکٹ پولیس آفیسر ضلع ساوتھ وزیرستان نے من سائل کو الزام بابت "امانت میں خیانت" کی
نسبت مقدمہ نمبر 48 مورخہ 11/03/2020 جرم زیر دفعہ PPC 406, And 9(D) CNSA
برخلاف اپیلانٹ چاک کی۔ جس نسبت من اپیلانٹ نے باقاعدہ جواب دیہی کی۔ ثبوت موجود ہے۔
- (3) یہ کہ بعد ازاں من اپیلانٹ عدالت سے ضمانت پر بری ہو چکا ہوں اور من اپیلانٹ کے خلاف کسی قسم جرم
ثابت نہیں ہوا ہے۔ ثبوت میں عدالت عالیہ پشاور ہائی کورٹ کا حکم لف ہے۔
- (4) یہ کہ از روئے قانون، من اپیلانٹ اپنی ملازمت پر بحال ہونے کا اہل ہے۔ جو کہ آنجناب سے ہمدردانہ
طور پر متدعی ہوں کہ من اپیلانٹ امانت کو اپنی ملازمت پر تمام مراعات کیساتھ بحال کیا جانے کا حکم
صادر فرمایا جاوے اور من اپیلانٹ کے خلاف تمام الزامات کو داخل دفتر فرمایا جاوے۔
- (5) یہ کہ من اپیلانٹ کی کفالت کا انحصار ماہانہ تنخواہ پر ہے جس پر من اپیلانٹ کے چھوٹے چھوٹے بچے زیر
تعلیم ہیں۔ اس لیے من اپیلانٹ انسانی ہمدردی کے تحت اپنی ملازمت پر بحال ہونے کا حقدار ہوں۔
- (6) یہ کہ اپیل ہذا اندر معیار اور قابل پذیرائی ہے۔

Am 15/1

(7) یہ کہ آخر میں من اپیلانٹ یہ استدعا کرتا ہوں کہ آنجناب میرے فریاد اپیل سننے کے لیے ملاقات کا شرف بخشیں تاکہ من اپیلانٹ زبانی طور پر بھی اپنی بے گناہی کی وضاحت / تفصیل کر سکوں۔
لہذا استدعا ہے کہ منظور کی اپیل ہذا حکم برخواستگی اپیلانٹ از ملازمت مجازیہ جناب محترم ڈسٹرکٹ پولیس آفیسر صاحب ضلع ساوتھ وزیرستان مورخہ 07/05/2020 نمبر 853-58/PA/SWTD کو کالعدم و منسوخ قرار دیا جا کر من اپیلانٹ کو اپنی ملازمت پر دوبارہ بحال کرنے کا حکم صادر فرمایا جائے۔ دعا گور ہونگا۔

مورخہ 106/2020

آصف خان سب انسپکٹر بیلٹ نمبر 384 حال متعینہ ٹریک پولیس وانا

(اپیلانٹ)-----

موبائل نمبر:- 0303-8513230

No:2465 /ES

ctt>10-06-2020

DPO/SWTD

For comments and return

to this office alongwith his complete
require documents and copy of attested
punishment order within 05 days, please
copy of punishment order
to this office within 05-days.

بیان حلفی

حلفاً بیان کرتا ہوں کہ جملہ مراتب اپیل ہذا

تا حد علم و یقین درست و صحیح ہیں اور تمام امور سچ پڑتی ہیں۔

کوئی امر آنجناب سے مخفی و پوشیدہ نہ رکھا ہے۔

آصف خان (اپیلانٹ)-----





244
25-1-2021

OFFICE OF THE
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN
REGION

Annex I 16

No. 213 /ES, Dated DI Khan the 13/01/2021

ORDER

This order is aimed to dispose of the departmental appeal of Ex-Constable Asif Khan No.384 of District Police SWTD against the Major Punishment order i.e. Dismissal from Service by DPO SWTD vide No.853-53/PA SWTD dated 07.05.2020, on the score of following allegations:

Facts of the case are that he while posted in Traffic Police at Wana Bazar recovered Hasheesh from the possession of accused and sold the same instead of giving it in Police Custody/Deposited to relevant department which shows his inefficiency, lack of interest in discharge of his responsibilities.

He was issued charge sheet and proper departmental proceedings was initiated against him. Enquiry into the matter was conducted by Mr. Said Marjan DSP Wana. The enquiry officer found the defaulter Constable guilty as he has recovered Hasheesh in large amount and sold it instead of giving it in Police custody, which creates bad image of Police Force. The enquiry officer recommended him for major punishment alongwith criminal proceeding. Hence, DPO SWTD has passed the order dated 07.05.2020.

He preferred an appeal to the undersigned on 03.06.2020 against the order of DPO SWTD. His appeal was sent to DPO SWTD for comments and to provide his service record vide this office Endst: No. 2465/ES dated 10.05.2020. DPO SWTD vide his office memo: No. 1686/EC/SWTD dated 24.09.2020 has furnished the comments on the subject appeal.

The undersigned perused the file of the appellant thoroughly as well as heard him in person in Orderly Room dated 03.11.2020. As per findings report of Inquiry Officer, the appellant recovered Hashish in large amount and sold it instead of giving it in Police custody which creates of bad image of Police force and the enquiry officer recommended him for major punishment alongwith criminal proceedings. A criminal case vide FIR No.48 dated 08.05.2020 u/s 9(D) CNSA read with 406 PPC PS Wana also registered against him and pending trial before the Court of law.

Therefore, I, YASEEN FAROOQ, Regional Police Officer, Dera Ismail Khan, in exercise of the powers conferred upon me under Rule-112A(a) of Police Rules 1975 amended 2014, uphold the Major punishment of Dismissal from Service awarded by DPO SWTD and his appeal is hereby rejected being meritless.

(Signature)
(YASEEN FAROOQ) PSP
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN

Copy of above is sent to the DPO SWTD alongwith service record with his office memo: No. 1686/EC/SWTD dated 24.09.2020

(Signature)
(YASEEN FAROOQ) PSP
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN

07-3-8513-30
OB-NO=146
25-1-2021

Attested
(Signature)
Office Superintendent
DPO OFFICE
South Waziristan Tribal District

S26
For further info

(Signature)
DPO/SWTD

(Signature)
ASAD ALI
District Police Officer
District Police Wana

Best copy

Ans, CI 16/

OFFICE OF THE
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN
REGION

No. 2/3 /ES, Dated DIKhan the 12/01/2021

ORDER

This order is aimed to dispose of the departmental appeal of **EX-Constable Asif Khan No.384** of District Police SWTD against the Major Punishment order i.e Dismissal from service by DPO SWTD vide No.853-58/PA/SWTD dated 07.05.2020 on the score of following allegation:

Facts of the case are that he while posted in Traffic Police at Wana Bazar Recovered Hasheesh from the possession of accused and so the same instead of giving it in Police Custody/Deposited to relevant department which shows his inefficiency, lack of interest in discharge of his responsibilities.

He was issued charge sheet and proper departmental proceedings was initiated against him. Enquiry into the matter was conducted by **Mr.Said Marjan DSP Wana**. The enquiry officer found the defaulter constable guilty as he has recovered Hasheesh in large amount and sold it instead of giving it in Police custody, which creates bad image of Police Force. The enquiry officer recommended him for major punishment alongwith criminal proceeding. Hence, DPO SWTD has passed the order dated 07.05.2020.

He preferred an appeal to the undersigned on 05.06.2020 against the order of DPO SWTD. His appeal was sent to DPO SWTD for comments and to provide his service record vide this office Endst:No 2465/ES dated 10.06.2020. DPO SWTD vide his office memo:No.1686/EC/SWTD dated 24.09.2020 has furnished the comments on the subject appeal.

The undersigned perused the file of the appellant thoroughly as well as heard him in person in Orderly Room dated 03.11.2020. As per findings report of Inquiry officer The appellant recovered Hashish in large amount and sold it instead of giving it in police Custody which creates of bad image of Police force and the enquiry officer recommended him for major punishment alongwith criminal proceedings. A criminal case vide FIR No.48 dated 08.05.2020 u/s 9(D) CNSA read with 406 PPC PS Wana also registered against him and pending trial before the court of law.

Therefore I, YASEEN FAROOQ, Regional Police Officer, Dera Ismail Khan, in exercise of the powers conferred upon me under Rule-11(4)(a) of Police Rules 1975 amended 2014, uphold the Major punishment of Dismissal from service awarded by DPO SWTD and his appeal is hereby rejected being meritless.

(YASEEN FAROOQ)PSP
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN

No. 2/4 /ES

Copy of above is sent to the DPO SWTD alongwith service records w.r.t his office memo:No.1686/EC/SWTD dated 24.09.2020

(YASEEN FAROOQ)PSP
REGIONAL POLICE OFFICER
DERA ISMAIL KHAN

BEFORE THE WORHTY PROVINCIAL POLICE OFFICER, KHYBER
PAKHTUNKHWA PESHAWAR

THROUGH: "PROPER CHANNEL"

SUBJECT: DEPARTMENTAL APPEAL IN CONNECTION TO THE DISMISSAL ORDER OF
EX- SUB INSPECTOR ASIF KHAN BELT NO. 384.

Ans. D17

Respected Sir,

It is submitted that I want to draw your kind attention towards the following points for your kind and sympathetic consideration

1. The applicant was posted in traffic police of District Wana and on the date 08.03.2020, the applicant was busy in routine duty as usual
2. Upon information about 12 kg hashish kept by one Umar, the applicant along with other colleague contingent recovered the same from the possession of the said Umar
3. Meanwhile, the said Umar revealed that huge quantity of drugs including a drum full of Crystal methamphetamine (ice) and 100 kg of Hashish was about to be smuggled in few days and recovery of which would be a great progress which would create a good image for police.
4. The said Umar told that this recovery would be possible only if the recovered 12 kg Hashish was kept secret and did not expose
5. The applicant, with good will, kept it secret with the high-ups and handed over the confiscated Hashish to Usman SHO PS Wanna on 10.03.2020
6. A complaint was submitted to DPO South Waziristan regarding the matter with false allegations of selling the recovered Hashish, upon which the applicant was preceded departmentally and later on dismissed from service. An FIR No. 48 dated 08.05.2020 u/s 9(D) CNSA/ 406 PS SWTD was also lodged against the applicant which is pending trial before the court of Law.
7. The applicant submitted an appeal before Regional Police Officer Dera Ismail Khan who also enacted the dismissal orders of the applicant

Sir, the applicant has submitted this Appeal before your majesty with a request that conduct of the applicant was purely based on good will for the department and not for personal interest. The applicant may please be heard and orders be issued for the cancellation of FIR against the applicant and reinstatement of the said In police department. The applicant can also produce his witness in this regard before your good honor.

ASAD AZIZ MAHSUD
Advocate High Court
District Bar Associate D.J.Khan

Yours sincerely

Ex- SI Asif Khan B. No 384
Mob: 03038513230

THROUGH PROPER CHANNELS
SUBJECT DEPARTMENTAL APPEAL IN CONNECTION TO THE DISMISSAL ORDER OF
EX-SUB INSPECTOR ASIF KHAN BELT NO 38A

Respected Sir,

It is submitted that I want to draw your kind attention towards the following points in
your kind and sympathetic consideration

1. The applicant was posted in Traffic branch of District Wana and on the date 08 03 2020
the applicant was busy in routine duty as usual

2. Upon information about 15 kg hashish kept by one Umar, the applicant along with other
colleagues contingent recovered the same from the possession of the said Umar

3. Whereas the said Umar revealed that huge quantity of drugs including a drum full of
Crystal methamphetamine (ice) and 100 kg of hashish was about to be smuggled in few
days and recovery of which would be a great progress which would create a good image
for police

4. The said Umar told that the recovery would be possible only if the recovered 15 kg
hashish was kept secret and not exposed

5. The applicant with good will kept it secret with the high ups and handed over the
contacted hashish to Usman SHO PS Wana on 10 03 2020

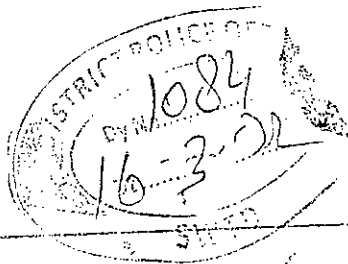
6. A complaint was submitted to DPO South Waziristan regarding the matter with false
allegations of selling the recovered hashish upon which the applicant was dismissed
departmentally and later on dismissed from service. An FIR No 48 dated 08 02 2020 was
SI (CNS) 408 PS SWTD was also lodged against the applicant which is pending trial
before the court of law

7. The applicant submitted an appeal before Regional Police Officer Dera Ismail Khan who
also granted the dismissal order of the applicant

8. The applicant has submitted this Appeal before your majesty with a request that
conduct of the applicant was purely based on good will for the department and not for
personal interest. The applicant may please be heard and orders be issued for the
reinstatement of FIR against the applicant and reinstatement of the said in police
department. The applicant can also produce his witness in this regard before your good
majesty.

Yours sincerely

Ex-SUB INSPECTOR ASIF KHAN BELT NO 38A
MOB 03078813730



OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.

Asst. DI
18

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975 (amended 2014) submitted by Ex-FC Asif Khan No. 384. The petitioner was dismissed from service by District Police Officer, South Waziristan vide order No. 853-58/PA/SWTD, dated 07.05.2020 on the allegations that he while posted in Traffic Police at Wana Bazar recovered Hashish from the possession of accused and sold the same instead of giving it in Police custody/deposited to relevant department which shows his inefficiency, lack of interest in discharge of his responsibilities. A case vide FIR No. 48 dated 08.05.2020 u/s 9 (D) CNSA/406/PPC Police Station Wana was registered against him. His appeal was rejected by Regional Police Officer, D.I.Khan vide order No. 213-14/ES, dated 12.01.2021.

Meeting of Appellate Board was held on 26.01.2022 where petitioner was heard in person. Petitioner denied the allegations leveled against him.

Perusal of enquiry papers revealed that the allegations against the petitioner were proved during enquiry. Moreover, his case is also under trial in the court. The Board see no ground and reasons for acceptance of his petition, therefore, the Board decided that his petition is hereby rejected.

Sd/-

SABIR AHMED, PSE
Additional Inspector General of Police,
HQrs. Khyber Pakhtunkhwa, Peshawar.

Attested
was
Chair
Office Superintendent
DPO OFFICE
South Waziristan Tribal District
No. 241-50/22, dated Peshawar, the 22/03/2022.

Copy of the above is forwarded to the:

1. Regional Police Officer, D.I.Khan. One Service Roll alongwith copy of complete enquiry file of the above named Ex-FC received vide your office Memo: No. 2973/ES, dated 12.07.2021 is returned herewith for your office record.
2. District Police Officer, South Waziristan.
3. PSO to IGP/Khyber Pakhtunkhwa, CPO Peshawar.
4. A.G/Legal, Khyber Pakhtunkhwa, Peshawar.
5. PA to Addl: IGP/HQrs: Khyber Pakhtunkhwa, Peshawar.
6. PA to DIG/HQrs: Khyber Pakhtunkhwa, Peshawar.

EC
16/03/22
Attested
ASAD AZIZ MAHSUD
Advocate High Court
District Bar Associate D.I.Khan
22/3/22

Office Supdt: E-IV CPO Peshawar
No. 1538/ES/2022 dt: 11/3/22

D. P. O/SWTD

Please inform
your superior
to receive one Service Roll
alongwith copy of complete
enquiry file use above returned
reference for your office

17/02/22
(IRFANTARIQ) PSE
AIG/Establishment,
For Inspector General of Police,
Khyber Pakhtunkhwa, Peshawar.

25
19/3

Best copy

Asif, DI 18/1

**OFFICE OF THE
INSPECTOR GENERAL OF POLICE
KHYBER PAKHTUNKHWA
PESHAWAR.**

ORDER

This order is hereby passed to dispose of Revision Petition under Rule 11-A of Khyber Pakhtunkhwa Police Rule-1975(amended 2014)submitted by **Ex-FC Asif Khan No.384**.The petitioner was dismissed from service by District Police officer,south Waziristan vide order No.853-58/PA/SWTD,dated 07.05.2020 on the allegations that he while posted in Traffic police at Wana Bazar recovered Hashish from the possession of accused and sold the same instead of giving it in police custody/deposited to relevant department which shows his inefficiency,lack of interest in discharge of his responsibilities.A case vide FIR No.48 Dated 08.05.2020 u/s 9(D) CNSA/406 PPC Police Station Wana was registered against him.His appeal was rejected by Regional Police Officer, D.I.Khan vide order No.213-14/ES,dated 12.01.2021.

Meeting of Appellate Board was held on 26.01.2022 wherein petitioner was heard in person Petitioner denied the allegations leveled against him.

Perusal of enquiry papers revealed that the allegations against the petitioner were proved during enquiry.Moreover,his case is also under trial in the court.The Board see no ground and reasons for acceptance of his petition, therefore, the Board decided that his petition is hereby rejected.

Sd/-

SABIR AHMED,PSP

Additional inspector General of Police
HQrs:Khyber Pakhtunkhwa,Peshawar

No.S/ 241-50/22, dated Peshawar,the 22/02/2022.

Copy of the above is forwarded to the:

1. Regional Police Officer,D.I.Khan one Service Roll alongwith copy of complete enquiry file of the above names Ex-FC recived vide your office memo:No 2973/ES,dated 12.07.2021 is returned here with for your record.
2. District Police Officer,South Waziristan.
3. PSO to IGP/Khyber Pakhtunkhwa,CPO Peshawar.
4. AIG/Legal Khyber Pakhtunkhwa, Peshawar.
5. PA to Addl: IGP/HQrs:Khyber Pakhtunkhwa,Peshawar.
6. PA to DIG/HQrs:Khyber Pakhtunkhwa,Peshawar.
7. Office Supdt: E-IV CPO Peshawar.

(IRFAN TARIQ) PSP

AIG/Establishment,
For Inspector General of Police,
Khybar Pakhtunkhwa,Peshawar.

Aug, E 19

IN THE COURT OF
FIDA MUHAMMAD, ADDITIONAL DISTRICT & SESSIONS JUDGE-I,
SOUTH WAZIRISTAN AT TANK

Sessions Trail Case No. # 16/7 of 2021

Original Date of Institution: -----27.03.2021

Date of Decision: -----17.02.2022

The State

Versus

1. Asif Khan S.I Belt No.384 S/O Mamid Khan caste Khojak
Khel R/O Dubkot
2. Wazir Zada S.I Belt No.87 S/O Ghulam Nabi caste Tuji
Khel R/O Kari Kot
3. Shaikh Qanoon constable Belt No.1031 S/O Muhammad
Ramzan caste Tuji Khel R/O Kri Kot District South
Waziristan -----(Accused facing trial)

Case FIR # 48 Dated: 08.05.2020

Charge under Section: 221 P.P.C/118 KP Police Act

Police Station: Wana,

JUDGMENT:

Accused facing trial named above, involved in case
FIR No.48, dated 08.05.2020, under Section 221
P.P.C/118 KP Police Act registered at PS Wana, District
South Waziristan faced the trial in the above captioned
case.

The brief facts as per contents of FIR are that the
accused facing trail, being police officials, after proper
inquiry were found to have recovered 10500 grams of
chars from an unknown person and instead of proceeding

ATTACHED IS THE TRUE COPY
DISTRICT & SESSIONS JUDGE,
DISTRICT SOUTH WAZIRISTAN AT TANK

the accused free and the recovered chars were converted to their own use. The matter was inquired and during the course of inquiry all the three accused produced the recovered chars to the SHO Police Station Wana which were taken into possession vide recovery memo dated 08.05.2020, and the instant case was registered against them.

After completion of investigation, complete challan was put in court and accused were summoned.

Accused on bail appeared before the court on 13.04.2021 and provisions of 265-C Cr.P.C were complied with.

Formal charge was framed against the accused facing trial on 03.06.2021, to which they pleaded not guilty and claimed trial.

The prosecution witnesses were summoned. Prosecution in order to prove its case against the accused examined six PWs.

Brief account of prosecution evidence is as follows:

PW-1 is Hayat Ullah, Muharir of Police Station.

He stated that after the completion of investigation the I.O handed over to me the case property that is chars weighing total of 10500 grams, after

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DISTRICT SOUTH WAZIRISTAN AT TALKH

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completion of record the said case property was placed in the mall khana of Police Station for safe custody which was later on sent to the FSL for chemical analysis. The said case property was sent to the FSL through Arshad Abbas 109, vide receipt Rahdari No.62/21, which is placed on file and is EX-PW 1/1.

PW-02 is Osman Khan who was the SHO of the Police Station at that time. He stated that on 11/03/2020 I was present in the Police Station. I recovered and took into possession the chars weighing 10500 grams from the accused which was left by one unknown person and the said quantity of chars was illegally retained with them (accused facing trail) and also committed embezzlement and facilitation to the actual culprits. The departmental inquiry was carried out whereby after they were dismissed from the service and the charge was imposed against them. I also chalked out the FIR. Today I have seen the copy of FIR which is correct and correctly bears my signature and is EX-PA/1. I also prepared the recovery memo in presence of PWs. The above quantity of chars was taken into possession which was weighed and was came out to be 10500 grams.

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DISTRICT SOUTH WESTERN DISTRICT

The recovery memo is EX-PC. The sight plan was prepared at my instance by the I.O. I also prepared the card of arrest which is EX-PW 2/1. After the arrival of I.O, I handed over the case property, accused and all the documents to the I.O for further investigation. My statement was recorded by the I.O. after the completion of investigation, I submitted complete challan on 03/06/2020 while I submitted incomplete challan on 20/05/2020.

PW-03 is Hayat Ullah constable No.1175. He is the marginal witness of the recovery memo EX-PC. In his presence the SHO Osman Khan recovered and took into possession the chars weighing 10500 gram. The total 11 packets of chars was recovered in which 05 packets were packed together in each five packet consists of 02 further packets and one packet was weighing about 500 gram. In this respect the SHO prepared recovery memo which is already EX-PC. One the day of his evidence, he seen the recovery memo which was claimed to be correct and correctly bears his signature as marginal witness. His statement was recorded by the I.O.

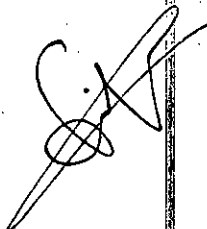
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DISTRICT SOUTH WAZIRISTAN AT TANK

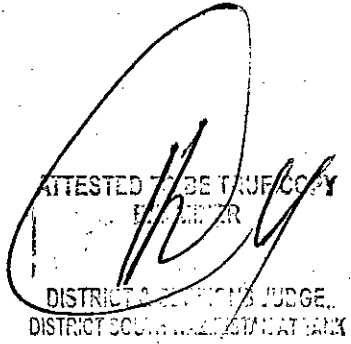
PW-04 is Taoos Khan who was the I.O of the case. He stated that on 08/05/2020, I was present in the Police Station and the copy of FIR was handed over to me for investigation. The SHO handed over to me the accused, recovery memo, card of arrest and the case property. Firstly I prepared the site plan at the instance of eye-witnesses which is EX-PB. I prepared the recovery memo, weighted the contraband chars which each packet was 1000/1000 and one packet was of 500 grams of chars. I separate 05 grams from packet No.01 and sealed the same in parcel No.01 while the remaining 995 grams of chars in parcel No.02 EX-P1. From packet No.02 separate 05 grams and sealed the same in parcel No.02 while 995 grams of chars were sealed in parcel No.03 EX-P2. From packet No.03 separate 05 grams chars and sealed the same in parcel No.05 while 995 grams of chars were sealed in parcel No.06 EX-P3. From packet No.04 from separate 05 grams from and sealed the same in parcel No.07 while 995 grams of chars were sealed in parcel No.08 EX-P4. From packet No.05 from separate 05 grams from and sealed the same in parcel No.09 while 995 grams of chars were sealed in parcel No.10 EX-P5. From packet

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DISTRICT SOUTH WILSONS AT TANK

No.06 from separate 05 grams from and sealed the same in parcel No.11 while 995 grams of chars were sealed in parcel No.12 EX-P6. From packet No.07 from separate 05 grams from and sealed the same in parcel No.13 while 995 grams of chars were sealed in parcel No.14 EX-P7. From packet No.08 from separate 05 grams from and sealed the same in parcel No.15 while 995 grams of chars were sealed in parcel No.16 EX-P8. From packet No.09 from separate 05 grams from and sealed the same in parcel No.17 while 995 grams of chars were sealed in parcel No.18 EX-P9. From packet No.10 from separate 05 grams from and sealed the same in parcel No.19 while 995 grams of chars were sealed in parcel No.20 EX-P10. From packet No.11 from separate 05 gram from and sealed the same in parcel No.21 while 495 grams of chars were sealed in parcel No.22 EX-P11, and affixing all the parcel in seal in the name of TK. The recovery memo is EX-PW 4/1 in the presence of marginal witness. Today I have seen the recovery memo which is correctly signed by me and marginal witnesses. I also placed on file an application for chemical analysis which is EX-PW 4/2. I also placed on file the receipt Rahdari



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DISTRICT & SESSIONS JUDGE,
DISTRICT SOUTH WAZIRKOT AT TANK



No.62/21 EX-PW 4/3, the copy of said Rahdari is also placed on file and already exhibited as EX-PW 1/1. I also placed on file the result of FSL laboratory report which is positive and is EX-PW 4/4. The copy of one addition of offence U/S 17-CNSA-221 P.P.C/118- KP is also placed on file, which was drafted by Safdar Khan (I.O of Police Station Wana) thereafter the said sections were added in the challan. The said accused were produced before the learned Judicial Magistrate on 09/05/2020 for physical remand which was not accepted and sent to the judicial lockup while my application is EX-PW 4/5. The office order No-853-58/PA/SWTD dated 07/05/2020 of the District Police Officer, South Waziristan, to dispose of departmental proceedings initiated against the accused facing trail namely Asif Khan, Wazir Zada and Sheikh Qanoon, which is EX-PW 4/6 (pages 1-3). After completion of investigation the case file was handed over to the SHO Osman who submitted complete challan on 03/06/2020. I also recorded the statements of PWs etc.

PW-05 is Constable Kashif Khan No.307. Who stated that the SHO handed over to me the

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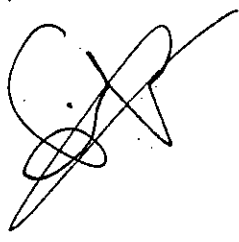

DISTRICT JUDGE
 DISTRICT COURT, WAZIRISTAN

accused, recovery memo, card of arrest and the case property. I.O prepared the site plan at the instance of eye-witnesses. I.O prepared the recovery memo, weighted the contraband chars which each packet 1000/1000 and one packet of 500 grams of chars. I.O separate 05 gram from packet No.01 and sealed the same in parcel No.01 while the remaining 995 grams of chars in parcel No.02 already exhibited EX-P1. From packet No.02 separate 05 gram and sealed the same in parcel No.02 while 995 grams of chars were sealed in parcel No.03 already exhibited EX-P2. From packet No.03 separate 05 gram chars and sealed the same in parcel No.05 while 995 grams of chars were sealed in parcel No.06 already exhibited EX-P3. From packet No.04 from separate 05 grams from and sealed the same in parcel No.07 while 995 grams of chars were sealed in parcel No.08 already exhibited EX-P4. From packet No.05 from separate 05 grams from and sealed the same in parcel No.09 while 995 grams of chars were sealed in parcel No.10 already exhibited EX-P5. From packet No.06 from separate 05 grams from and sealed the same in parcel No.11 while 995 grams of chars were sealed in parcel No.12 already

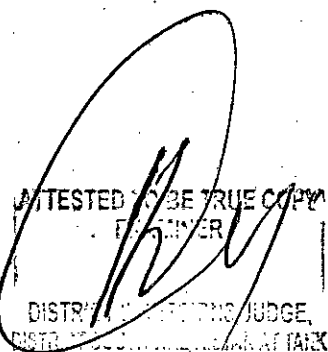
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 DISTRICT & SESSIONS JUDGE,
 DISTRICT OF PUNJAB, AMRITSAR

exhibited EX-P6. From packet No.07 from separate 05 grams from and sealed the same in parcel No.13 while 995 grams of chars were sealed in parcel No.14 already exhibited EX-P7. From packet No.08 from separate 05 gram from and sealed the same in parcel No.15 while 995 grams of chars were sealed in parcel No.16 already exhibited EX-P8. From packet No.09 from separate 05 grams from and sealed the same in parcel No.17 while 995 grams of chars were sealed in parcel No.18 already exhibited EX-P9. From packet No.10 from separate 05 grams from and sealed the same in parcel No.19 while 995 grams of chars were sealed in parcel No.20 already exhibited EX-P10. From packet No.11 from separate 05 gram from and sealed the same in parcel No.21 while 495 grams of chars were sealed in parcel No.22 already exhibited EX-P11, and affixing all the parcel in seal in the name of TK in my presence. The recovery memo is already exhibited EX-PW 4/1. Today I have seen the recovery memo which is correctly signed by me as marginal witness. My statement was recorded by the I.O.



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DISTRICT COURT, TANK



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PW-06 is Arshad Abbas HC No.109. He stated that the Rehdari receipt No.62 was handed over to me by the Muharir of the Police Station for FSL Peshawar on 27/07/2020, and thereafter, submitting the parcels to the FSL, I returned back the said Ra hdari receipt No 62/21 and submitted to the Muharir of the Police Station, which was already exhibited as PW 04/03. My statement was recorded by the I.O.

After closure of prosecution evidence, statements of accused U/S 342 Cr.P.C. were recorded wherein they claimed their innocence and stated that they were falsely charged in the present case. Accused also denied the recovery from them. However, none of the accused wished to be examined on Oath U/S 340(2) Cr.P.C.

Arguments of the learned Senior Public Prosecutor for state and counsel for the accused heard and record available on file perused.

ARGUMENTS ON BEHALF OF THE COMPLAINANT/PROSECUTION SIDE:

The learned Senior Public Prosecutor for the state argued that huge quantity of contrabands (chars) has been recovered from the accused. He

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DISTRICT COURT, PESHAWAR

contended that all the prosecution witnesses had given consistent statement and there is no material contradictions in their statements. Positive report of FSL corroborates the ocular account of the occurrence furnished by the prosecution witness. Though there are some minor contradiction in the statements of prosecution witnesses, but all the witnesses are unanimous on the point of recovery of huge contraband from the possession of the accused therefore, they deserves severe punishment in accordance with law. He relied upon case law 2017 SCMR 1874.

ARGUMENTS ON BEHALF OF THE DEFENCE/ACCUSED SIDE:

The learned counsel for accused argued that there is unexplained delay as the occurrence took place on 09.03.2020 while the FIR was lodged on 08.05.2020. There is major contradiction between the prosecution witnesses. The complainant had not associated any private person to witness the proceedings of recovery. The I.O could not complied the rules of 2021 (Government Analysts Rule, 2001) i.e. the safe custody and transmission of sample from police to chemical examiner was missing. All the proceedings were made in the

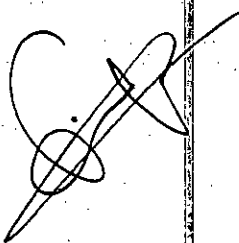
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Police Station. Therefore, the benefit of doubt may be given to the accused, and they may be acquitted from the charges.

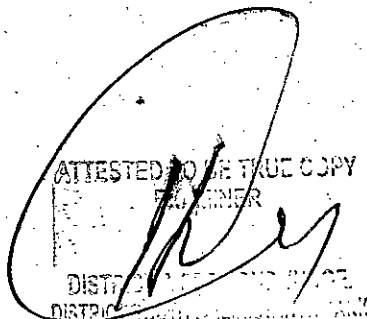
Arguments heard and record perused.

Findings of the court.

Perusal of record in the light of arguments advanced by the learned Senior Public Prosecutor for the state and counsel for accused reveals that no doubt the alleged recovery of Charas has been shown to be made from the possession of the accused facing trial but in the statement of PW-02 Osman Khan SHO, in which he stated that at the time of occurrence he was informed through spy information on 09.03.2020 regarding the occurrence and that he did not went to the spot of occurrence but telephonically directed the accused facing trial to bring the said contraband to the Police Station which was recovered from an unknown accused, shows that the SHO did not recovered the contrabands from direct possession of the accused facing trial but they produced the same which was recovered from an unknown accused who is still not known to any one, however, prosecution is duty bound to validly



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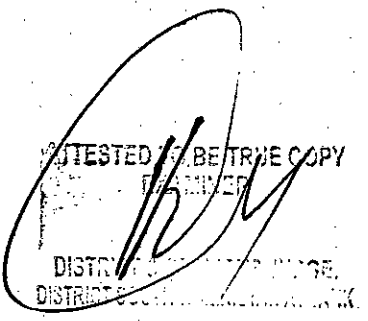
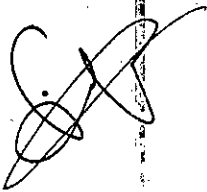


prove the recovery and presence of PWs at the time of occurrence/recovery therefore, possibility of implicating the accused facing trial, cannot be ruled out. Similarly, fair investigation is the duty of Investigation Officer and if private witnesses are available on the spot, they must be associated with the recovery proceedings in order to show the fairness of the proceedings but in the instant case no private witness was associated with the process of recovery, even though the SHO was already informed about the recovery. In the statement of PW-1 who is Muharir of the Police Station, stated in cross examination that the contraband was handed over to him on 08.05.2020 and further stated that I do not know that where the said case property was lying but the I.O Taoos Khan handed over to me the said case property in sealed condition while in the statement of PW-02 Osman Khan in cross examination said that the said chars was handed over to him in the Police Station in presence of Hayat Ullah constable, Hayat Ullah Muharir, Osman constable and Taoos etc. Therefore, PW-02 contradicts the statement of PW-01. Furthermore, there is a contradiction regarding numbers of packets of chars in statement

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DISTRICT JUDGE
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of PW-02 and PW-03. PW-02 in cross, claims 5 packets while PW-03 claims 06 packets of chars on a whole.

PW-04 in cross examination stated that the sample was not sent to FSL on the same date that is 08.05.2020 but PW-06 Arshad Abbas Stated in his statement that the muharir of the Police Station handed over to him the samples on 27.07.2020 while the application to FSL EX-P4/2 also shows the date 27.07.2020, thus, case property has been sent to FSL after a delay of more than two month which has not been explained. Safe transmission of the alleged recovered narcotics from Police Station to the FSL was not established which is shown from the statements of PWs and if the safe custody of narcotics and its transmission through safe hand was not established on the record, the same could not be used against the accused. In this regard reliance is laid down in the case laws 2021 SC monthly review 363 and 2016 P.Cr.LJ 1668 (Lahore) which is as follows:-



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Control of Narcotic Substances Act (XXV of 1997)

“---S. 9(c)--- Control of Narcotic Substances (Government Analysts) Rules, 2001, Rr. 4, 5 & 6--- Possession of narcotics---Report of government analyst--- Safe custody and transmission of samples of the narcotic from the police to the chemical examiner---Scope---If safe custody of narcotics and its transmission through safe hands was not established on the record, same could not be used against the accused--In the present case, evidence regarding safe transmission of alleged recovered narcotics to the Police Station and then onto the laboratory of chemical analysis was missing --- Accused acquitted of the charge in such circumstances.”

2016 P.Cr.L.J 1668 (Lahore)

(a)Control of Narcotic Substances Act (XXV of 1997)---

“---S. 9(c)--- Possessing and trafficking narcotics---Appreciation of evidence---

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DISTRICT JUDGE
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Prosecution had failed to establish safe custody of recovered substance from the date of its seizure till production in the court---

The prosecution case is highly doubtful and based on unnatural and unbelievable story. Therefore, deposition of the prosecution witnesses are not up to mark. It is admitted that all the documents and proceedings were made in the Police Station which also creates doubt in the prosecution case. That process of search, arrest and mode of recovery is not according to the manner shown in the FIR, which weakens the case of prosecution. Reliance in this regard laid in case law 2021 MLD 2018:-

“(b)Control of Narcotic Substance Act (XXV 1997)---

---S.25---Criminal Procedure Code (V of 1898), S. 103---Mode of search and arrest---

-Search to be made in presence of witnesses-

--Object---Where recovery was made after prior information and that too in presence of private person, then, failure to secure independent Mashirs cannot be brushed

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aside lightly by the Court---Main object of S.103, Cr.P.C is to ensure transparency and fairness on the part of police during the course of recovery prevent false implication and diminish the scope of foisting fake recoveries upon the accused."

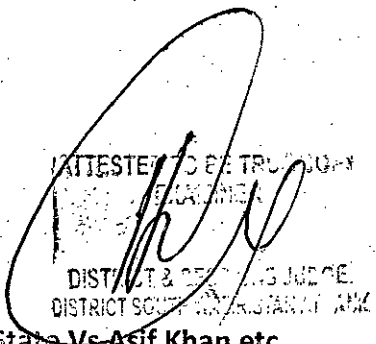
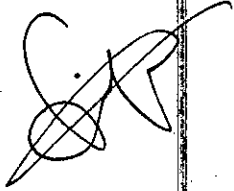
ACQUITTAL OF ACCUSED:

In view of what is discussed above it is admitted fact that it was primary duty of the prosecution to have established the guilt of the accused without any shadow of doubt, however, a careful scrutiny of the evidence available on record gives birth to various reasonable doubts i.e. delay in transmission of sample to the FSL for chemical analysis. Unexplained custody of the contrabands for about 02 months. Not associating witness from the public with the process of recovery. Change of case property as in the inquiry report/letter of District Police Officer (annexed with the judicial file) it is mentioned as Hashish, while in FIR report, it is mentioned as chars which weakens the prosecution case and creates doubts on the prosecution case, and advantage of doubt must go in favor of the accused facing trial, and

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transmission of case property was not established safely, is sufficient for the acquittal of the accused as many doubts do not require in a criminal case, rather any reasonable doubt arising out of the prosecution evidence, pricking the judicial mind, is sufficient for acquittal of the accused. **Reliance is placed on 2016 P.Cr.L.J 114.** In present case the PWs, in whose presence the recovery was allegedly affected, were not truthful and credible and prosecution evidence were not free from doubts, benefit of which must be given to the accused as a matter of right and not as a matter of grace. **Reliance is 2009 SCMR 230.**

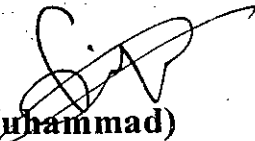
The nut shell of my above discussion is that the prosecution has failed to prove its case against the accused facing trial beyond the reasonable doubts, therefore, by extending the benefit of doubt, accused facing trial namely 1. **Asif Khan S.I** Belt No.384 S/O Mamid Khan caste Khojak Khel R/O Dubkot, 2. **Wazir Zada S.I** Belt No.87 S/O Ghulam Nabi caste Tuji Khel R/O Kari Kot 3. **Shaikh Qanoon** constable Belt No.1031 S/O Muhammad Ramzan caste Tuji Khel R/O Kri Kot District South Waziristan, are hereby acquitted in



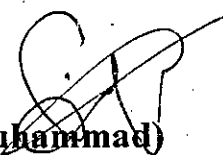
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State Vs Asif Khan etc

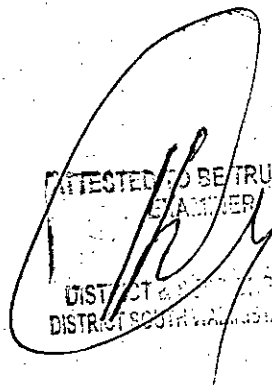
present case. They are on bail, their bail bonds stand cancelled and their sureties are relieved from the liabilities of bail bonds. Case property be destroyed after expiry of limitation period of appeal/revision or as per law. File be consigned to the record room after its completion and compilation.

ANNOUNCED
17th February, 2022


(Fida Muhammad)
Addl. District & Sessions Judge-I
District South Waziristan

Certified that my this judgment consists of 19 pages. Each page has been read over, signed and corrected by me after making necessary correction therein.


(Fida Muhammad)
Addl. District & Sessions Judge-I
District South Waziristan


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DISTRICT & SESSIONS JUDGE
DISTRICT SOUTH WAZIRISTAN

IN THE COURT OF
FIDA MUHAMMAD, ADDITIONAL DISTRICT & SESSIONS JUDGE-I,
 SOUTH WAZIRISTAN AT TANK
 Special Case # 2/3 of 2021

Original Date of Institution: -----27.03.2021

Date of Decision: -----17.02.2022

The State

Versus

1. Asif Khan S.I Belt No.384 S/O Mamid Khan caste Khojak
 Khel R/O Dubkot
2. Wazir Zada S.I Belt No.87 S/O Ghulam Nabi caste Tuji
 Khel R/O Kari Kot
3. Shaikh Qanoon constable Belt No.1031 S/O Muhammad
 Ramzan caste Tuji Khel R/O Kri Kot District South
 Waziristan ----- (Accused facing trial)

Case FIR # 48 Dated: 08.05.2020

Charge under Section: 9(D) CNSA/17 CNSA

Police Station: Wana.

JUDGMENT:

Accused facing trial named above, involved in case
 FIR No.48, dated 08.05.2020, under Section 9(D)
 CNSA/17 CNSA registered at PS Wana, District South
 Waziristan faced the trial in the above captioned case.

The brief facts as per contents of FIR are that the
 accused facing trail, being police officials, after proper
 inquiry were found to have recovered 10500 grams of
 chars from an unknown person and instead of proceeding
 him under the relevant provisions of law, they have set

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 DISTRICT JUDGE
 SOUTH WAZIRISTAN AT TANK

the accused free and the recovered chars were converted to their own use. The matter was inquired and during the course of inquiry all the three accused produced the recovered chars to the SHO Police Station Wana which were taken into possession vide recovery memo dated 08.05.2020, and the instant case was registered against them.

After completion of investigation, complete challan was put in court and accused were summoned.

Accused on bail appeared before the court on 13.04.2021 and provisions of 265-C Cr.P.C were complied with.

Formal charge was framed against the accused facing trial on 03.06.2021, to which they pleaded not guilty and claimed trial.

The prosecution witnesses were summoned. Prosecution in order to prove its case against the accused examined six PWs.

Brief account of prosecution evidence is as follows:

PW-1 is Hayat Ullah, Muharir of Police Station.

He stated that after the completion of investigation the I.O handed over to me the case property that is chars weighing total of 10500 grams, after

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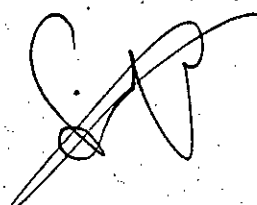
DISTRICT SESSIONS JUDGE
DISTRICT SOUTH WAZIRABAD TANK

completion of record the said case property was placed in the mall khana of Police Station for safe custody which was later on sent to the FSL for chemical analysis. The said case property was sent to the FSL through Arshad Abbas 109, vide receipt Rahdari No.62/21, which is placed on file and is EX-PW 1/1.

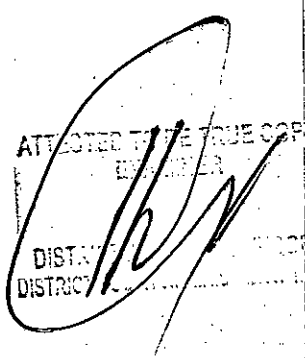
PW-02 is Osman Khan who was the SHO of the Police Station at that time. He stated that on 11/03/2020 I was present in the Police Station. I recovered and took into possession the chars weighing 10500 grams from the accused which was left by one unknown person and the said quantity of chars was illegally retained with them (accused facing trail) and also committed embezzlement and facilitation to the actual culprits. The departmental inquiry was carried out whereby after they were dismissed from the service and the charge was imposed against them. I also chalked out the FIR. Today I have seen the copy of FIR which is correct and correctly bears my signature and is EX-PA/1. I also prepared the recovery memo in presence of PWs. The above quantity of chars was taken into possession which was weighed and was came out to be 10500 grams.

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DISTRICT JUDGE

The recovery memo is EX-PC. The sight plan was prepared at my instance by the I.O. I also prepared the card of arrest which is EX-PW 2/1. After the arrival of I.O, I handed over the case property, accused and all the documents to the I.O for further investigation. My statement was recorded by the I.O. after the completion of investigation, I submitted complete challan on 03/06/2020 while I submitted incomplete challan on 20/05/2020.

 PW-03 is Hayat Ullah constable No.1175. He is the marginal witness of the recovery memo EX-PC. In his presence the SHO Osman Khan recovered and took into possession the chars weighing 10500 gram. The total 11 packets of chars was recovered in which 05 packets were packed together in each five packet consists of 02 further packets and one packet was weighing about 500 gram. In this respect the SHO prepared recovery memo which is already EX-PC. One the day of his evidence, he seen the recovery memo which was claimed to be correct and correctly bears his signature as marginal witness. His statement was recorded by the I.O.

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PW-04 is Taoos Khan who was the I.O of the case. He stated that on 08/05/2020, I was present in the Police Station and the copy of FIR was handed over to me for investigation. The SHO handed over to me the accused, recovery memo, card of arrest and the case property. Firstly I prepared the site plan at the instance of eye-witnesses which is EX-PB. I prepared the recovery memo, weighted the contraband chars which each packet was 1000/1000 and one packet was of 500 grams of chars. I separate 05 grams from packet No.01 and sealed the same in parcel No.01 while the remaining 995 grams of chars in parcel No.02 EX-P1. From packet No.02 separate 05 grams and sealed the same in parcel No.02 while 995 grams of chars were sealed in parcel No.03 EX-P2. From packet No.03 separate 05 grams chars and sealed the same in parcel No.05 while 995 grams of chars were sealed in parcel No.06 EX-P3. From packet No.04 from separate 05 grams from and sealed the same in parcel No.07 while 995 grams of chars were sealed in parcel No.08 EX-P4. From packet No.05 from separate 05 grams from and sealed the same in parcel No.09 while 995 grams of chars were sealed in parcel No.10 EX-P5. From packet

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DISTRICT COURT
DISTRICT COURT

No.62/21 EX-PW 4/3, the copy of said Rahdari is also placed on file and already exhibited as EX-PW 1/1. I also placed on file the result of FSL laboratory report which is positive and is EX-PW 4/4. The copy of one addition of offence U/S 17-CNSA-221 P.P.C/118- KP is also placed on file, which was drafted by Safdar Khan (I.O of Police Station Wana) thereafter the said sections were added in the challan. The said accused were produced before the learned Judicial Magistrate on 09/05/2020 for physical remand which was not accepted and sent to the judicial lockup while my application is EX-PW 4/5. The office order No-853-58/PA/SWTD dated 07/05/2020 of the District Police Officer, South Waziristan, to dispose of departmental proceedings initiated against the accused facing trail namely Asif Khan, Wazir Zada and Sheikh Qanoon, which is EX-PW 4/6 (pages 1-3). After completion of investigation the case file was handed over to the SHO Osman who submitted complete challan on 03/06/2020. I also recorded the statements of PWs etc.

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DISTRICT SOUTH WAZIRISTAN AT CHINK

PW-05 is Constable Kashif Khan No.307. Who stated that the SHO handed over to me the

accused, recovery memo, card of arrest and the case property. I.O prepared the site plan at the instance of eye-witnesses. I.O prepared the recovery memo, weighted the contraband chars which each packet 1000/1000 and one packet of 500 grams of chars. I.O separate 05 gram from packet No.01 and sealed the same in parcel No.01 while the remaining 995 grams of chars in parcel No.02 already exhibited EX-P1. From packet No.02 separate 05 gram and sealed the same in parcel No.02 while 995 grams of chars were sealed in parcel No.03 already exhibited EX-P2. From packet No.03 separate 05 gram chars and sealed the same in parcel No.05 while 995 grams of chars were sealed in parcel No.06 already exhibited EX-P3. From packet No.04 from separate 05 grams from and sealed the same in parcel No.07 while 995 grams of chars were sealed in parcel No.08 already exhibited EX-P4. From packet No.05 from separate 05 grams from and sealed the same in parcel No.09 while 995 grams of chars were sealed in parcel No.10 already exhibited EX-P5. From packet No.06 from separate 05 grams from and sealed the same in parcel No.11 while 995 grams of chars were sealed in parcel No.12 already

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EXAMINER

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exhibited EX-P6. From packet No.07 from separate 05 grams from and sealed the same in parcel No.13 while 995 grams of chars were sealed in parcel No.14 already exhibited EX-P7. From packet No.08 from separate 05 gram from and sealed the same in parcel No.15 while 995 grams of chars were sealed in parcel No.16 already exhibited EX-P8. From packet No.09 from separate 05 grams from and sealed the same in parcel No.17 while 995 grams of chars were sealed in parcel No.18 already exhibited EX-P9. From packet No.10 from separate 05 grams from and sealed the same in parcel No.19 while 995 grams of chars were sealed in parcel No.20 already exhibited EX-P10. From packet No.11 from separate 05 gram from and sealed the same in parcel No.21 while 495 grams of chars were sealed in parcel No.22 already exhibited EX-P11, and affixing all the parcel in seal in the name of TK in my presence. The recovery memo is already exhibited EX-PW 4/1. Today I have seen the recovery memo which is correctly signed by me as marginal witness. My statement was recorded by the I.O.

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 DISTRICT JUDGE
 DISTRICT COURT, KARACHI CENTRAL

PW-06 is Arshad Abbas HC No.109. He stated that the Rehdari receipt No.62 was handed over to me by the Muharir of the Police Station for FSL Peshawar on 27/07/2020, and thereafter, submitting the parcels to the FSL, I returned back the said Rahdari receipt No 62/21 and submitted to the Muharir of the Police Station, which was already exhibited as PW 04/03. My statement was recorded by the I.O.

After closure of prosecution evidence, statements of accused U/S 342 Cr.P.C. were recorded wherein they claimed their innocence and stated that they were falsely charged in the present case. Accused also denied the recovery from them. However, none of the accused wished to be examined on Oath U/S 340(2) Cr.P.C.

Arguments of the learned Senior Public Prosecutor for state and counsel for the accused heard and record available on file perused.

ARGUMENTS ON BEHALF OF THE COMPLAINANT/PROSECUTION SIDE:

The learned Senior Public Prosecutor for the state argued that huge quantity of contrabands (chars) has been recovered from the accused. He

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DISTRICT SHERKOT, PESHAWAR

contended that all the prosecution witnesses had given consistent statement and there is no material contradictions in their statements. Positive report of FSL corroborates the ocular account of the occurrence furnished by the prosecution witness. Though there are some minor contradiction in the statements of prosecution witnesses, but all the witnesses are unanimous on the point of recovery of huge contraband from the possession of the accused therefore, they deserves severe punishment in accordance with law. He relied upon case law 2017 SCMR 1874.

ARGUMENTS ON BEHALF OF THE DEFENCE/ACCUSED SIDE:

The learned counsel for accused argued that there is unexplained delay as the occurrence took place on 09.03.2020 while the FIR was lodged on 08.05.2020. There is major contradiction between the prosecution witnesses. The complainant had not associated any private person to witness the proceedings of recovery. The I.O could not complied the rules of 2021 (Government Analysts Rule, 2001) i.e. the safe custody and transmission of sample from police to chemical examiner was missing. All the proceedings were made in the

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DISTRICT JUDGE
DISTRICT SOUTH WAZIRISTAN AT TANK

Police Station. Therefore, the benefit of doubt may be given to the accused, and they may be acquitted from the charges.

Arguments heard and record perused.

Findings of the court.

Perusal of record in the light of arguments advanced by the learned Senior Public Prosecutor for the state and counsel for accused reveals that no doubt the alleged recovery of Charas has been shown to be made from the possession of the accused facing trial but in the statement of PW-02 Osman Khan SHO, in which he stated that at the time of occurrence he was informed through spy information on 09.03.2020 regarding the occurrence and that he did not went to the spot of occurrence but telephonically directed the accused facing trail to bring the said contraband to the Police Station which was recovered from an unknown accused, shows that the SHO did not recovered the contrabands from direct possession of the accused facing trail but they produced the same which was recovered from an unknown accused who is still not known to any one, however, prosecution is duty bound to validly

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DISTRICT JUDGE
DISTRICT COURT, PESHAWAR

prove the recovery and presence of PWs at the time of occurrence/recovery therefore, possibility of implicating the accused facing trial, cannot be ruled out. Similarly, fair investigation is the duty of Investigation Officer and if private witnesses are available on the spot, they must be associated with the recovery proceedings in order to show the fairness of the proceedings but in the instant case no private witness was associated with the process of recovery, even though the SHO was already informed about the recovery. In the statement of PW-1 who is Muharir of the Police Station, stated in cross examination that the contraband was handed over to him on 08.05.2020 and further stated that I do not know that where the said case property was lying but the I.O Taoos Khan handed over to me the said case property in sealed condition while in the statement of PW-02 Osman Khan in cross examination said that the said charrs was handed over to him in the Police Station in presence of Hayat Ullah constable, Hayat Ullah Muharir, Osman constable and Taoos etc. Therefore, PW-02 contradicts the statement of PW-01. Furthermore, there is a contradiction regarding numbers of packets of charrs in statement

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of PW-02 and PW-03. PW-02 in cross, claims 5 packets while PW-03 claims 06 packets of chars on a whole.

PW-04 in cross examination stated that the sample was not sent to FSL on the same date that is 08.05.2020 but PW-06 Arshad Abbas Stated in his statement that the muharir of the Police Station handed over to him the samples on 27.07.2020 while the application to FSL EX-P4/2 also shows the date 27.07.2020, thus, case property has been sent to FSL after a delay of more than two month which has not been explained. Safe transmission of the alleged recovered narcotics from Police Station to the FSL was not established which is shown from the statements of PWs and if the safe custody of narcotics and its transmission through safe hand was not established on the record, the same could not be used against the accused. In this regard reliance is laid down in the case laws 2021 SC monthly review 363 and 2016 P.Cr.L.J 1668 (Lahore) which is as follows:-

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Control of Narcotic Substances Act (XXV of 1997)

“---S. 9(c)--- Control of Narcotic Substances (Government Analysts) Rules, 2001, Rr. 4, 5 & 6--- Possession of narcotics---Report of government analyst--- Safe custody and transmission of samples of the narcotic from the police to the chemical examiner---Scope---If safe custody of narcotics and its transmission through safe hands was not established on the record, same could not be used against the accused--In the present case, evidence regarding safe transmission of alleged recovered narcotics to the Police Station and then onto the laboratory of chemical analysis was missing --- Accused acquitted of the charge in such circumstances.”

2016 P.Cr.L.J 1668 (Lahore)

(a) Control of Narcotic Substances Act (XXV of 1997)---

“---S. 9(c)--- Possessing and trafficking narcotics---Appreciation of evidence---

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DISTRICT COURT
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Prosecution had failed to establish safe custody of recovered substance from the date of its seizure till production in the court---

The prosecution case is highly doubtful and based on unnatural and unbelievable story. Therefore, deposition of the prosecution witnesses are not up to mark. It is admitted that all the documents and proceedings were made in the Police Station which also creates doubt in the prosecution case. That process of search, arrest and mode of recovery is not according to the manner shown in the FIR, which weakens the case of prosecution. Reliance in this regard laid in case law 2021 MLD 2018:-

“(b)Control of Narcotic Substance Act (XXV 1997)---

---S.25---Criminal Procedure Code (V of 1898), S. 103---Mode of search and arrest---

-Search to be made in presence of witnesses-

--Object---Where recovery was made after prior information and that too in presence of

private person, then, failure to secure

independent Mashirs cannot be brushed

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DISTRICT ENGINEER
DISTRICT COURT, BANGALORE

aside lightly by the Court---Main object of S.103, Cr.P.C is to ensure transparency and fairness on the part of police during the course of recovery prevent false implication and diminish the scope of foisting fake recoveries upon the accused."

ACQUITTAL OF ACCUSED:

In view of what is discussed above it is admitted fact that it was primary duty of the prosecution to have established the guilt of the accused without any shadow of doubt, however, a careful scrutiny of the evidence available on record gives birth to various reasonable doubts i.e. delay in transmission of sample to the FSL for chemical analysis. Unexplained custody of the contrabands for about 02 months. Not associating witness from the public with the process of recovery. Change of case property as in the inquiry report/letter of District Police Officer (annexed with the judicial file) it is mentioned as Hashish, while in FIR report, it is mentioned as chars which weakens the prosecution case and creates doubts on the prosecution case, and advantage of doubt must go in favor of the accused facing trial, and

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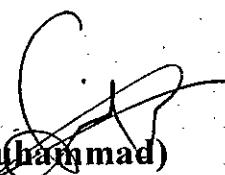
transmission of case property was not established safely, is sufficient for the acquittal of the accused as many doubts do not require in a criminal case, rather any reasonable doubt arising out of the prosecution evidence, pricking the judicial mind, is sufficient for acquittal of the accused. **Reliance is placed on 2016 P.Cr.L.J 114.** In present case the PWs, in whose presence the recovery was allegedly affected, were not truthful and credible and prosecution evidence were not free from doubts, benefit of which must be given to the accused as a matter of right and not as a matter of grace. **Reliance is 2009 SCMR 230.**

The nut shell of my above discussion is that the prosecution has failed to prove its case against the accused facing trial beyond the reasonable doubts, therefore, by extending the benefit of doubt, accused facing trial namely 1. **Asif Khan S.I Belt No.384 S/O Mamid Khan caste Khojak Khel R/O Dubkot, 2. Wazir Zada S.I Belt No.87 S/O Ghulam Nabi caste Tuji Khel R/O Kari Kot 3. Shaikh Qanoon constable Belt No.1031 S/O Muhammad Ramzan caste Tuji Khel R/O Kri Kot District South Waziristan, are hereby acquitted in**

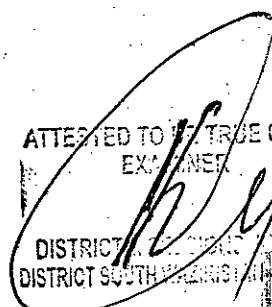
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DISTRICT JUDGE
DISTRICT SOUTH WAZIRISTAN AT TANK

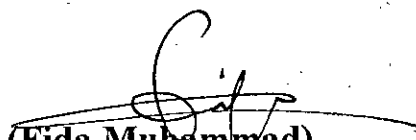
present case. They are on bail, their bail bonds stand cancelled and their sureties are relieved from the liabilities of bail bonds. Case property be destroyed after expiry of limitation period of appeal/revision or as per law. File be consigned to the record room after its completion and compilation.

ANNOUNCED
17th February, 2022


(Fida Muhammad)
Addl. District & Sessions Judge-I
District South Waziristan

Certified that my this judgment consists of 19 pages. Each page has been read over, signed and corrected by me after making necessary correction therein.


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EXAMINED
DISTRICT & SESSIONS JUDGE
DISTRICT SOUTH WAZIRISTAN


(Fida Muhammad)
Addl. District & Sessions Judge-I
District South Waziristan

C.D.No. 577
Application Received on 19/03/22
Date of Copying "
Date of Delivery "
No. of words 4000
Copying Charges "
Total Charges "
Name of copyist M. Qasim
Cause of delay "
Signature of Examiner [Signature]

STATEMENT OF ALLEGATION.

According to report you SI Asif while posted as Traffic Police at Mana Bazar confiscated Hashesh from the position and sold instead of giving it in Police Custody/Deposited to relevant Department for which you were placed under Suspension and closed to Police Line for Departmental Proceeding this shows your inefficiency, lack of interest in discharge of your responsibilities thus liable to be taken under consideration under Khyber Pakhtunkhwa Police Rule 1975 Amendments 2014.

Hence the statement of Allegation.

(SHAUKAT ALI)
District Police Officer
South Waziristan Tribal District

Aug, 1 57
ASA
22/3/22

No. 206 IPA, Date: SWTD the 02/06/2022

Copy to the:-

1. Mr. Saif Marjan Head Quarter, DSP is nominated an Enquiry Officer for initiating proper departmental proceeding against the defaulter under Provision of KPK Police Rules 1975 and submit findings report within stipulated period as per prescribed rules.
2. SI Asif with the direction to appear before the Inquiry Officer on the date, time and venue fixed by the Inquiry Officer for the purpose of enquiry proceedings.

(SHAUKAT ALI)
District Police Officer
South Waziristan Tribal District

22/3/22

(Signature)
(District Police Officer)

SWTD (SDPO)

Anti-FI-58

CHARGE SHEET

WHEREAS, I am satisfied that a formal enquiry contemplated under Key: - Part 1 of the Police Rules 1973 with amendment 2014 is necessary and expedient.

AND WHEREAS, I am of the view that the allegation(s) if established would call for a major Penalty including Dismissal From Service as defined in Rules (4) (3) (b) of the aforesaid Rules.

AND THEREFORE, as required by Police Rules 6 (a) of the aforesaid Rules, Mr. SHAUKAT ALLI District Police Officer South Waziristan Tribal District being a competent authority hereby charge you SI A with the misconduct on the basis of statement of allegation attached to the Charge Sheet.

AND hereby direct you further under rule 6(b) of the said rules to put in written defence within Seven (7) days of receipt of this Charge Sheet as to why the proposed action should not be taken against you and also state that the same time whether you wish to attend in person or otherwise.

In case your reply is not received within the prescribed period without sufficient cause, it would be presumed that you have no defence to offer and ex-parte action proceedings may be initiated against you.

Aut signed
[Signature]
22/3/22

(SHAUKAT ALI)
District Police Officer
South Waziristan Tribal District

[Signature]
22/3/22

(سید ان خان)
S'WTD SDPO

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Attested
22/3/22

Ant. F 2
ازد ف 2

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فائٹنگ رپورٹ انوائٹری برخلاف SI آصف خان متعین ٹریک سٹاف وانا بازار SWTD

جناب مارنہ

بحوالہ چارج شیٹ نمبر سمری نمبر 02.04.2020، مجاریہ جناب ڈسٹرکٹ پولیس آفیسر صاحب
SWTD، انوائٹری برخلاف SI آصف خان متعین ٹریک سٹاف وانا بازار SWTD، جو کہ بغرض انوائٹری مجھے مارک کی گئی انوائٹری
فائل میں لگتے ہوئے معروضی طور پر

انوائٹری کے سلسلے میں مذکورہ SI کو طلب کیا جا کر سنا گیا جس نے بیان کیا کہ مورخہ 08.03.2020 کو اسکی ٹریک
ڈیوٹی وانا بازار میں لگائی تھی۔ جو کہ سے بذریعہ سواروں سے متعلقہ خلاف موصل ہوئی۔ کہ کسی عمر سنہ انکو راڈ بڑی مقدمہ میں چرس
سٹنگ کرنے کی کوشش کر رہے۔ جس پر مذکورہ SI معذمور وزیر بازار، SI کنسٹیبل شیخ قانون (ٹریک ڈیوٹی پر معذور) نے مذکورہ
شخص سے منشیات 2 کلو گرام جمع کر کے۔ مورخہ 10.03.2020 کو SHO عثمان خان قحمانہ وانا کو حوالہ کی ہے۔ مذکورہ نے خود کو بے
گناہ بتایا۔ (بیان تلف قاضی ملاحظہ ہے)

جناب مارنہ

درحقیقت حالت وقوعت کچھ یوں ہیں کہ مذکورہ SI آصف خان ٹریک ڈیوٹی پر وانا بازار میں موجود تھا جہاں پر SI وزیر بازار
جہاں ڈیوٹی، کنسٹیبل شیخ قانون ٹریک ڈیوٹی پر موجود تھے کہ اسی دوران بذریعہ مخبر اطلاع موصل ہوئی کہ کسی عمر نامی شخص بڑی
مقدار میں منشیات سمگل کرنے کی کوشش کر رہا ہے۔ جسکو بعد میں تینوں ایگروں نے مگر حراست میں لیتے ہوئے اس سے تقریباً 25 کلو
گرام چرس برآمد کی جو کہ انڈیشن کے مطابق پڑوسی ملک افغانستان کی پیک شدہ معذور ہوئی ہے۔ جو کہ بمطابق وزن کہیں زیادہ بھی
ہو سکتی تھی۔ اسی طرح کسی عمر سے مذکورہ ہاں دوران نے 25 گرام روپے نقد بھی قبضہ کر کے ہتھیائے۔ متذکرہ بالا ملازمان نے اسی دوران
خادوش اختیار کی اور اس بڑی ڈیوٹی سے متعلق سسران بلا کو آدھیں نہ دیں۔ دراصل مذکورہ ملازمان رقم اور منشیات کو ہڑپ کرنے کی
کوشش میں تھے۔ تاہم اس بہت بعد آفسر نے اس کے نوٹس میں آنے پر متذکرہ بالا ملازمان نے کافی پئس و پیش کے بعد مورخہ
10.03.2020 کو راتھے دس کلو چرس SHO عثمان خان قحمانہ کو حوالہ کی۔ حالانکہ متذکرہ بالا ملازمان اپنے بیان میں 12 کلو چرس کی
حواشی کا ذکر کرتے ہیں۔ جو کہ SHO عثمان خان کے بیان کے مطابق سترہ دس کلو چرس حوالہ کی گئی ہے۔

جناب مارنہ

اقنی بڑی مقدار میں منشیات کی برآمد اور مذکورہ SI آصف خان معذمور دیگر ملازمان کی طرف سے ہڑپ کرنے کی کوشش
بعید از قیاس ہے۔ پولیس فورس جو کہ مذکورہ جرائم کے ایسڈ ایسٹینٹ بنائی گئی ہے اگر وہی پولیس ایگروں ان قسم کی کوتاہی اور منشیات فروشی
کے دھندے میں موٹ ہو جائیں۔ آسٹریٹکٹ پر کتنی بڑی اثر پڑے گا۔ اور اس سے مزید فورس میں موجود ایگروں کیا اثر لیں گے۔
اس سے ہم یہ خوبی واقف ہیں۔ مذکورہ SI آصف خان معذمور دیگر ملازمان پر پروفیشنل نہیں ہیں۔ لیکن ایک فورس میں نوکری پر معذور ایگرو
اپنی ذمہ داری سمجھنے اور منشیات ہڑپ کرنے پر توجہ ہے۔ تاہم قانونی کارروائی و گرفتاری سے متعلق ناواقفیت کا اظہار کرتا ہے۔ جو کہ یہ
بات بعید از قیاس ہے۔ انوائٹری سے مذکورہ SI آصف خان کو گناہگار پتے ہوئے مذکورہ کو Major Punishment دینے جانے کے
ساتھ ساتھ Criminal Proceedings شروع کئے جانے کی سفارش کی جاتی ہے۔ مزید حکم پنجاب انسپشن ہو گا۔ استدر انوائٹری
رپورٹ مرتب ہو کر مورخہ 22/3/22

(سید مرجان خان)

Amr, F 3 60

Alhastad
22/3/20

کھنور جناب - DPO صاحب ساؤتھ وزیرستان ٹریبونل ڈسٹرکٹ
جناب عالی -

مزارشہ ہے۔ کہ بحوالہ شوکار نوٹس جو اباً قصروہن ہیں۔ کہ میں
ایک ٹریڈک سٹاف ران میں تصنیفات تھا۔ اور آپنی ڈیوٹی پر موجود
تھا۔ کہ خاص سروس کی فقیہ اور مصدقہ انفارمیشن پر صرف $\frac{08}{2020}$
کو بھی عمر سکڑا لنگر آڈی سے بارہ کلگرام چرسس برآمدگی۔ اور عمر
مذکورہ کو محفوظ میں بنا۔ تو مذکورہ سروس آگاہ کیا۔ کہ اس برآمدگی کو
خفیہ رکھا جائے۔ اور SH 050 نہ کریں۔ تو $\frac{2}{3}$ دن بعد منشیات کی بڑی تعداد
میں ایک ڈرام آگس اور 150 کلگرام چرسس شامل ہے۔ کی برآمدگی ممکن
ہو سکتی ہے۔ ٹرسن آئی اور ہمراہ لوہائی نے شورہ کیا۔ کہ اگر دوسری
برآمدگی ہوگی۔ تو ڈیڑہ ایکسٹن خان ریجج Range کی بلٹ بڑی کامیابی ہوگی۔
جن سے پولیس کی نیک نامی ہوگی۔ اس وجہ سے 12 کلگرام چرسس کی برآمدگی کے بارے خاصوٹی
رکھی گئی۔ اور صرف $\frac{3}{2020}$ کو آفسر ان چارج کے احکام ملنے پر 12 کلگرام چرسس
SH 050 ٹھکانہ رانہ عثمان خان کے حوالے کر دی۔ جو ریکارڈ ڈیڑہ موجود ہے۔
عالی جاہ۔ درجہ ہالہ امور کے پیش نظر ہر قسم کا اعتبار دینے کو تیار ہوں۔ کہ اس میں
میں آئی نے صرف بڑی کاروائی کے حصول کے لئے وقتی طور پر خاموشی رکھی۔ اس میں
سب سے اور عمر کے حملہ کی کوئی مدد دینا ہی شامل نہ ہے۔ جملہ حالات کے پیش نظر پولیس
کی بڑی کاروائی کے ذریعے نیک نامی کا حصول تھا۔ اس میں میں نے تجربہ کاری اور قانونی
سے نادر اخصیت کا عنصر ہو سکتا ہے۔ لیکن کسی قسم کی بددیانتی شامل نہ ہے۔
آپنی صفائی میں ہر قسم کا اعتبار دینے کو تیار ہوں۔ استدعا ہے کہ شوکار نوٹس
داخل دفتر فرمایا جاوے۔

دستیغ آئی اہنڈے خان

22/3/20

رپورٹ مرتبہ ہو کر منظر ہے۔

(سید مرجان خان)

SWTD/SDPO



N.W.F.P. BAR COUNCIL

ASAD AZIZ
Advocate High Court
N.I.C.: 12102-2146062-1
S.No. 811



وکالت نامہ

16

کورٹ
فیس

بعدالت صوبہ خواتین سرحدیں سرگرمیوں

منجانب

منجانب

PK PK

بنام

اصوف خان

دعوی یا جرم

تفصیل دعوی یا جرم

باعث تحریر آنکہ

D.I. Khan

مقدمہ مندرجہ بالا عنوان میں اصوف خان کی طرف سے دائر کی گئی ہے اور اسے پیش کیا گیا ہے۔

کو حسب ذیل شرائط پر وکیل مقرر کیا ہے کہ میں پیشی پر خود یا بڑا بذریعہ رو برو عدالت حاضر ہوتا رہوں جلسہ ہر وقت پکارے جانے مقدمہ وکیل صاحب موصوف کو اطلاع دے کر حاضر عدالت کروں گا اگر پیشی پر مظہر حاضر نہ ہو اور مقدمہ میری غیر حاضری کی وجہ سے کسی طور میرے خلاف ہو گیا تو صاحب موصوف اس کے کسی طرح ذمہ دار نہ ہوں گے نیز وکیل صاحب موصوف صدر مقام پکھری کے علاوہ یا پکھری کے اوقات سے پہلے یا بیچے یا بروز تعطیل بیرونی کرنے کے ذمہ دار نہ ہوں گے اور مقدمہ صدر مقام پکھری کے علاوہ اور جگہ سماعت ہونے یا بروز تعطیل یا پکھری کے اوقات کے آگے یا بیچے پیش ہونے پر مظہر کوئی نقصان پہنچے تو اس کے ذمہ دار یا اسکے واسطے کسی معاوضہ کے ادا کرنے یا بحث نہ واپس کرنے کے بھی صاحب موصوف ذمہ دار نہ ہوں گے مجھ کو کل ساختہ پر داخستہ صاحب موصوف مثل کردہ ذات خود منظور قبول ہو گا اور صاحب موصوف کو عرض دعوی یا جواب دعوی یا درخواست اجراء ایہائے ذگری نظر ثانی اپیل نگرانی و ہر قسم درخواست ہر قسم کے بیان دینے اور پر ثانی یا راشنی نامہ و فیصلہ برطرف کرنے اقبال دعوی کا بھی اختیار ہو گا اور بصورت مقرر ہونے تاریخ پیشی مقدمہ مذکور بیرون از پکھری صدر بیرونی مقدمہ مذکور نظر ثانی اپیل و نگرانی و برآمدگی مقدمہ یا منسوخی ذگری یک طرفہ یا درخواست حکم امتناعی یا ترقی یا گرفتاری قبل از فیصلہ اجراء ذگری بھی صاحب موصوف کو بشرط ادا ہنگی علیحدہ محتا سپردی کا اختیار ہو گا اور تمام ساختہ پر داخستہ صاحب موصوف مثل کردہ از خود منظور و قبول ہو گا اور بصورت ضرورت صاحب موصوف کو یہ بھی اختیار ہو کہ مقدمہ مذکورہ یا اس کے کسی جزو کی کاروائی یا بصورت درخواست نظر ثانی اپیل نگرانی یا دیگر معاملہ و قدمہ مذکورہ کسی دوسرے وکیل یا بیرسٹر کو اپنے بجائے یا اپنے ہمراہ مقرر کریں اور ایسے مشیر قانون کو بھی ہر امر میں وہی اول دینے اختیارات حاصل ہوں گے جیسے صاحب موصوف کو حاصل ہیں اور دوران مقدمہ میں جو کچھ ہر جات التواہ پڑے گا وہ صاحب موصوف کا حق ہو گا مگر صاحب موصوف کو پوری فیس تاریخ پیشی سے پہلے ادا نہ کروں گا تو صاحب موصوف کو پورا اختیار ہو گا کہ مقدمہ کی پروی نہ کریں اور ایسی صورت میں میرا کوئی مطالبہ کسی قسم کا صاحب موصوف کے برخلاف نہیں ہوگا

لہذا وکالت نامہ لکھ دیا ہے تاکہ سند رہے

مورخہ 21 مارچ 2022

مضمون وکالت نامہ سن لیا ہے اور اچھی طرح سمجھ لیا ہے اور منظور ہے

Handwritten signature

اصوف خان

اصوف خان