

01

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR.

Objection Petition in E.P No. 91/2023, In Service Appeal No. 1407/2020

Title: "Misal Khan VS IGP KPK & Others"

INDEX

S. No	Documents	Page No. (From-To)
1	Index	01
2	Comments	02-04
3	Affidavit	05
4	Authority Letter	06
5	Copy of FIR is annexed as "Annexure-A"	07-08
6	Departmental proceedings are annexed as "Annexure-B"	09-13
7	Confessional Statement of Misal Khan along with تحریرات / یادداشت and Certificate u/s 164/364 CrPC are annexed as "Annexure-C"	14-16
8	Trial Court Judgment dated 24.11.2016 is annexed as "Annexure-D"	17-27
9	High Court Judgment dated 03.12.2019 is annexed as "Annexure-E"	28-39
10	Service Tribunal KP, Judgment dated 19.07.2022 is annexed as "Annexure-F"	40-44
11	CPLA is annexed as "Annexure-G"	45
12	Authority: Circular letter No. SOR.II(S&GAD)5/(29)/86(KC) dated 08.01.1990) of Esta Code KPK regarding Departmental Proceedings vis-à-vis Judicial Proceedings is annexed as "Annexure-H"	46
13	Authorities of Supreme Court of Pakistan SCMR No. 2018 of 2001 & 562 of 2007 are annexed as "Annexure-I"	47-50

AT Peshawar.

next date 25/7
2023

[Signature]
TESTED
LAL GULISAFI
District Courts
OATH
COMMISSIONER
Peshawar KPK Pakistan
ADVOCATE HIGH COURT

[Signature]
DEPONENT

2

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL

PESHAWAR.

Objection Petition in E.P No. 91/2023

In Service Appeal No. 1407/2020.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 6634

Dated 19/07/23

1. Inspector General of Police/ Provincial Police Officer, KP, Peshawar.
2. Deputy Inspector General of Police, Counter Terrorism Department KP Peshawar.
3. Senior Superintendent of Police, CTD, Peshawar.

.....(Objectors)

VERSUS

Misal Khan s/o Toor Khan, Ex-Driver/Constable C.T.D,
Peshawar.....(Respondent)

Objection Petition u/s 47/48, u/order 21 rule 10 of C.P.C 1908 against Judgment dated 19.07.2022 by Objectors in E.P 91/2023 Titled as Misal Khan Vs IGP KPK & others.

Respectfully Sheweth

The Objectors humbly submit as under:-

1. That above titled execution petition is pending before this Hon'ble Court which is fixed for 21/06/2023.
2. That the appellant (now respondent) filed the execution petition for the implementation of order/judgment decided by this Hon'ble Service Tribunal on 19/07/2022.
3. That the respondents (now objectors) file objection petition on the following grounds.

GROUND:-

- A. That, the respondent Misal Khan was caught red handed by the district Police of Police Station Alpuri, District Shangla while smuggling Narcotics/Chars in Carry Van and weighing 11 kgs, 388 gram were recovered from the secret cavity of the said vehicle, in this connection a proper case vide FIR 112 dated 18.04.2015 u/s 9C CNSA was registered at Police Station Alpuri District Shagla (F/A).
- B. That, he was directly charged in case FIR 112 dated 18.04.2015 u/s 9C CNSA by Police Station Alpuri District Shagla.
- C. That, being part of a disciplined Force (Police Department) involvement in Narcotics smuggling in huge amount i.e. 11388 grams, is gross misconduct on his part and also a moral turpitude. Hence, a proper departmental enquiry was initiated against him, charge sheet and summary of allegations was served upon him. Mr. Sameen Jan DSP CTD Peshawar was appointed as enquiry officer. During course of enquiry all allegations leveled against him were proved. The E.O submitted the findings of enquiry to the competent Authority. In this regard a Final Show Cause Notice was issued to the delinquent official. He was provided with ample of opportunities. Furthermore, he was also heard in person. However, he failed to prove his innocence and consequently he was awarded major punishment "Dismissal from Service" (Departmental Proceedings till Dismissal order are annexed as F/B).
- D. That, during his Trial at the Court of Session Judge, Trial Court examined all evidential materials, recorded statements of witness, and recorded confessional statement of accused Misal Khan, wherein he voluntarily admitted himself before

the Judge of Trial Court, without any coercive means, that due to his financial issues he started smuggling of Narcotics (Confessional Statement of Misal Khan is annexed as F/C). Thus he was convicted/sentenced for "Life Imprisonment" along with fine of Rs. 100000/- by the Court of Session Judge, camp court Shangla on 24.11.2016 (F/D).

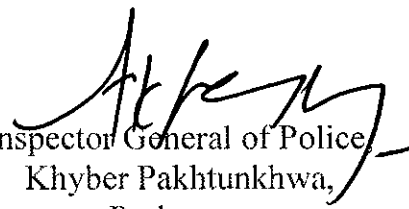
- E. That, since 2016, the accused now respondent has filed Criminal appeal No. 277-M/2016 in the Hon'ble High Court at Mingora Bench (Dar Ul Qaza) Swat, against the judgment dated 24.11.2016. During the court proceedings the Hon'ble Court acquitted the accused now respondent, merely relying upon contradictions raised in cross-examination of PWs of the case, reduction in the contrabands of the case and on changing of contrabands shape i.e. Slabs to Powder, which intends mere poor investigation in the case, as all the grounds and circumstances mentioned in the Judgment of High Court neither remit the sins/acts of the accused now respondent nor rectify his path but only acquitted/released him on surmises and doubts (High Court Judgment dated 03.12.2019 F/E).
- F. That, on clue of the acquittal from the Hon'ble High Court, he filed Service Appeal No. 1407/2020, which fated the same in the favor of accused now respondent, merely depending on the judgment of High Court, which is relied upon doubts and surmises. Thus in light of the acquittal Judgment the Hon'ble Service Tribunal KP, passed its Judgment dated 19.07.2022 for his re-instatement in service with effect from the date of suspension with full pay (F/F), which does not meet the goals of justice and supremacy of law, hence, may be set aside.
- G. That, above all, the accused now respondent was involved in smuggling of Narcotics (**a moral turpitude case**), directly charged in the FIR and caught red handed, secondly during course of enquiry all allegations leveled against him were proved and as punishment dismissed from service, thirdly he was sentenced/convicted for term of life imprisonment along with fine of Rs. 100000/- during Trial of the case, these all are the sufficient grounds to prove him sinner and wrongdoer. Due to his **presence/acts of such lone Black-Sheep, fingers are raised at the Police Department as whole**.
- H. That the objectors has already preferred CPLA in the Hon'ble Supreme Court of Pakistan against the judgment dated 19.07.2022 in S.A No. 1407/2020, which is yet to be decided (F/G).
- I. As per page 217 under chapter **Departmental Proceedings vis-à-vis Judicial Proceedings** of Esta Code KPK both the criminal and departmental proceedings can run parallel to each other against an accused officer/official and such proceedings are not independent on each other vide (Authority: Circular letter No. SOR.II(S&GAD)5/(29)/86(KC) dated 08.01.1990) (F/H).
- J. That, the contents of above para "I" are strongly supported by various authorities of Supreme Court of Pakistan (SCMRs), but here the SCMR 2018 of 2001 & SCMR 562 of 2007 are enclosed herewith as (F/I).
- K. Acquittal in a criminal case does not absolve the charges as well as not sufficient ground to re-instate the delinquent official back in service as he has been declared guilty in departmental proceedings as well as convicted by the Trial Court.
- L. That, as per Court Judgment dated 19.07.2022 the appellant now respondent may be re-instated into service from the date of his dismissal i.e. 03.09.2015, which is totally against the law and rules, because he had been dismissed due to involvement in a criminal case after being found guilty in enquiry. From 03.09.2015 to till date he remained as dismissed hence the department is not liable for payment of salaries during period of dismissal. It is a well settle principle of law **"that work done pay done"**.
- M. That, it might be possible that accused had acquitted from the criminal case on the basis of weak investigation, lack of evidence on case file or some other lacunas in case file but in the case of the respondent (Misal Khan) he has been declared


4
guilty in enquiry and then sentenced/convicted by the Trial Court. So there is no chance that he has not been treated as per prevailing law.

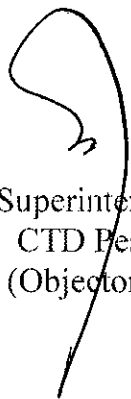
N. That at the same time two proceedings on one issue cannot be taken place hence the present execution petition is not maintainable in the eye of law.

Prayer:

It is therefore humbly prayed that on acceptance of instant objection petition an appropriate order may kindly be passed to stay the execution petition process till the outcome of CPLA already been lodged at Hon'ble Supreme Court of Pakistan.


Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Objector No. 1)


Deputy Inspector General of Police,
CTD Khyber Pakhtunkhwa,
Peshawar.
(Objector No. 2)


Senior Superintendent of Police,
CTD Peshawar.
(Objector No. 3)

5

BEFORE THE KHYBER PAKHTUNKHWA SERVICES TRIBUNAL
PESHAWAR.

Objection Petition in Execution Petition No. 91/2023

In Service Appeal No. 1407/2020.

1. Inspector General of Police/ Provincial Police Officer, KP, Peshawar.
2. Deputy Inspector General of Police, Counter Terrorism Department KP Peshawar.
3. Senior Superintendent of Police, CTD, Peshawar.

.....(Objectors)

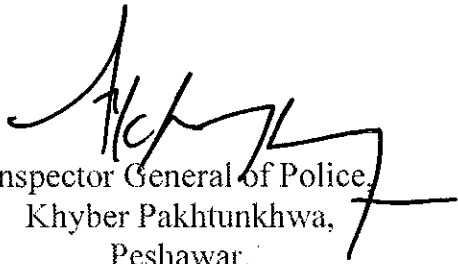
VERSUS

Misal Khan s/o Toor Khan, Ex-Driver/Constable C.T.D,
Peshawar.....


.....(Respondent)

AFFIDAVIT

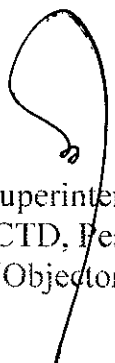
We, the below mentioned objectors, do here by solemnly affirm and declare on oath that the contents of objection petition submitted are correct and true to the best of our knowledge and belief and that nothing has been concealed from this Honorable Court.


Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.

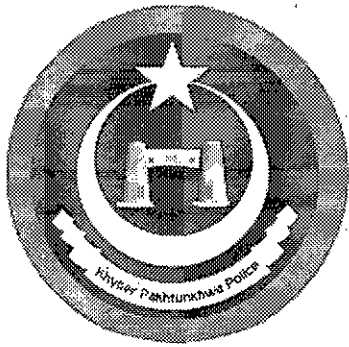
(Objector No. 1)


Deputy Inspector General of Police,
CTD, Khyber Pakhtunkhwa,
Peshawar.

(Objector No. 2)


Senior Superintendent of Police,
CTD, Peshawar.

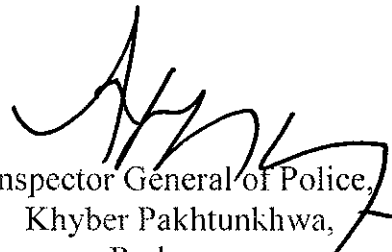
(Objector No. 3)

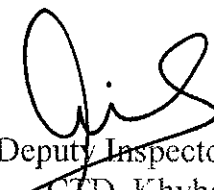


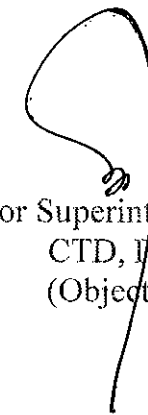
OFFICE OF THE
INSPECTOR GENERAL OF POLICE,
KHYBER PAKHTUNKHWA,
PESHAWAR.

AUTHORITY LETTER

We, the undersigned, do hereby authorize DSP Syed Amir Abbas having CNIC# 17301-8836248-7, and SI Gulzad Khan having CNIC# 17301-5214940-9; both of CTD Peshawar KPK to submit objection petition in **Execution Petition No. 91/2023** titled "**Misal Khan Vs IGP & Others**" and to pursue the matter on behalf of the objectors.


Inspector General of Police,
Khyber Pakhtunkhwa,
Peshawar.
(Objector No. 1)


Deputy Inspector General of Police,
CTD, Khyber Pakhtunkhwa,
Peshawar.
(Objector No. 2)


Senior Superintendent of Police,
CTD, Peshawar.
(Objector No. 3)

مدر بیان

F/A

دست قائل

(7)

ابتدائی اطلاعی رپورٹ

Shangha

9P INV

112

11.

تاریخ وقت رپورٹ

نام و کنونت اطلاع دہندہ مستفیث

تعمیر کنونت جرم (مدونہ کمال اگر کچھ یا کوئی کوئی شہادت یا ثابتی ہو تو درج کروانے کے لئے)

جانے تو دراصل تھانہ سے درست

نام و کنونت ملزم

کارروائی کی توثیق کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرد

تھانہ سے روائی کی تاریخ و وقت

تقریباً سارا معاملہ سمجھ لیا ہے۔

میں نے روز کے کھار سہ واقعہ جہلی پیدے کے سے 968 برنگ ریشد اگر ہڈی کے

درہ آڑوں کے فہیدہ خالوں سے میرے 968 برنگ کے پیرا 388 کے برنگ کے

میرا تقریباً 968 برنگ کے پیرا 388 کے برنگ کے پیرا 388 کے برنگ کے

تعمیر کنونت جرم (مدونہ کمال اگر کچھ یا کوئی کوئی شہادت یا ثابتی ہو تو درج کروانے کے لئے)

جانے تو دراصل تھانہ سے درست

نام و کنونت ملزم

کارروائی کی توثیق کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہوا تو وجہ بیان کرد

Attested
Asst. S. Alpendi
18.4.015
DSP/INV
CTD KP

ابتدائی اطلاعی رپورٹ

2

ابتدائی اطلاعی نسبت جرم قابل دست اندازی پولیس رپورٹ شدہ زیر دفعہ 154 مجموعہ ضابطہ فوجداری

تھانہ:-	الہوری	شائع:-	شائع
نمبر:-	112	تاریخ وقت وقوع:-	18-04-2015
		وقت:-	13:00 بجے

1.	تاریخ و وقت رپورٹ	18-04-2015	وقت:-	14:00	بجے
2.	نام و سکونت اطلاع دہندہ مستفیث	حبیب سید خان SHO			
3.	مختصر کیفیت جرم (معدہ دفعہ) مال اگر کچھ لیا گیا ہو	NCCNSA برآمدگی 11388 گرام			
4.	جائے وقوعہ فاصلہ تھانہ سے اور سمت	چیک پوسٹ شانگلہ ٹاپ بفاصلہ 10/11 KM جانب شرق از تھانہ			
5.	نام و سکونت ملزم	(1) ظاہر شاہ ولد نوروز (2) مثل خان ولد طور خان سکنہ بدرگہ درگئی ملاکنڈ			
6.	کارروائی جو تفتیش کے متعلق کی گئی اگر اطلاع درج کرنے میں توقف ہو تو وجہ بیان کریں۔	برسیدگی مراسلہ مقدمہ قائم کیا جاتا ہے			
7.	تھانہ سے روانگی کی تاریخ و وقت	بہ سبیل ڈاک			

ابتدائی اطلاع نیچے درج کرو

توصیف علی نمبر 507 موصول ہو کر متن ذیل ہے۔ بخدمت آفسرانچارج تھانہ اطلاع تھی کہ کیری ڈبہ کسی بھی وقت ضلع شانگلہ کو بھاری مقدار میں مٹھیات لایگا۔ اس اطلاع کے پیش نظر میں معہ شیر محمد خان، ASI امیر حسن نمبر 810، توصیف علی نمبر 507، سیف اللہ نمبر 260 دیگر نفری پولیس زیر قیادت سرگل DSP ریاض خان بوقت صدر بحیرہ بسلسلہ ناکہ بندی، چیک پوسٹ شانگلہ ٹاپ پر موجود تھا۔ کہ جانب سوات سے ایک کیری ڈبہ نمبری LRK/9653 برنگ سفید آکر بذریعہ کنسٹیبل سیف اللہ نمبر 260 رکوا یا جس کے ڈرائیونگ ظاہر ولد نوروز سکنہ بدرگہ درگئی ملاکنڈ ایجنسی کر رہا تھا۔ اس کے ساتھ فرنٹ سیٹ پر بیٹھے ہوئے شخص نے اپنا نام مثل خان ولد طور خان سکنہ بدرگہ درگئی ملاکنڈ ایجنسی بتلایا۔ گاڑی کو تفصیلی چیکنگ کے لئے روڈ کے کنارے واقع پہلی پیڈ جگہ میں کھڑا کر کے بذریعہ خود تلاشی لی۔ بدوران تلاشی گاڑی کے دروازوں کے خفیہ خانوں سے چرس 9 عدد ایک جو زرد رنگ کے پلاسٹک میں لپیٹے ہوئے ہیں۔ برآمد ہو کر بذریعہ ڈیپٹی کمیشنر ترازو وزن کرنے پر کل 11388 گرام پائے گئے۔ ہر ایک پیکٹ میں 10/10 گرام چرس برائے تجزیہ علیحدہ علیحدہ پارسلوں میں بند کر کے جبکہ بقایا چرس 11298 بھی علیحدہ علیحدہ پارسلوں میں بند کر کے برائے فرد بر موقع قبضہ پولیس میں کی گئی۔ ہر دو ملزمان بالا کو مرکبان جرم بالا کا پاکر حسب ضابطہ گرفتار کئے گئے۔ گاڑی متذکرہ بالا کو بطور وجہ ثبوت معہ کلید اتے بھی برائے فرد قبضہ پولیس کی گئی۔ مراسلہ ضبط تحریر میں لا کر بدست کنسٹیبل توصیف علی نمبر 1507 ارسال تھانہ ہے۔ شعبہ تفتیش کو مامور تفتیش کیا جائے۔ مراسلہ گزارش ہے۔ دستخط انگریزی حبیب خان SHO مورخہ 18.04.2015 کارروائی تھانہ پس آمد مراسلہ حرف بحرف درج صدر ہو کر پرچہ جرم بالا چاک کر کے اصل مراسلہ نقل پرچہ برآمد تفتیش حوالہ OII / INV کیا جاتا ہے۔ آفسران کو اطلاع دی جا رہی ہے۔ پرچہ گزارش ہے۔ -SD-

ASIA عزیز الرحمن خان تھانہ الہوری ضلع شانگلہ

مورخہ 18/04/2015

Attached
Amir

18/04/2015

F/B (9)

CHARGE SHEET.

1) I, SOHAIL KHALID, PSP, SENIOR SUPERINTENDENT OF POLICE, KHYBER PAKHTUNKHWA, PESHAWAR as a Competent Authority, hereby charge you Driver Constable Missal Khan No 157 of this Unit as follows:-

- I. It has been reported by SHO, PS CTD Peshawar that you have been left for home and was due to report back on 17.04.2015 but instead to report you absented yourself intentionally and deliberately from lawful duties without any kind of leave or permission from your superiors vide DD No 22 dated 17.04.2015.
- II. During your absence, you were arrested by Local Police of PS Alpori Distt: Shangla and recovered 11.388 Kilogram of "Hashish" from your possession and a Case vide FIR No 112 Dated 18.04.2015 under section 9-c/CNSA Police Station Alpori Distt: Shangla was registered against you and you were sent to District Jail Shangla.
- III. All this speaks highly adverse on your part and is against Police Disciplinary Rules, 1975 read with Amendments 2014.

By reason of the above, you appear to be guilty of misconduct under Police Rules, 1975 read with Amendments 2014 and have rendered yourself liable to all or any of the penalties specified in the Rules:-

- 2). You are, therefore required to submit your written defence within 7 days of the receipt of this Charge Sheet to the Enquiry Officer as the case may be.
- 3). Your written defence, if any, should reach to the Enquiry Officer within the specified period failing which it shall be presumed that you have no defence to put in and in that case, exparte action will be taken against you .
- 4). You are also at liberty, if you wish to be heard in person.
- 5). Statement of allegation is enclosed.

A Hestad
[Signature]

**(SOHAIL KHALID) PSP
SENIOR SUPERINTENDENT OF POLICE,
CTD, Khyber Pakhtunkhwa,
Peshawar.**

SUMMARY OF ALLEGATIONS.

1). I, SOHAIL KHALID, SSP, CTD, KHYBER PAKHTUNKHWA, PESHAWAR, am of the opinion that Driver Constable Missal Khan No 157 of this Unit has rendered himself liable to be proceeded against as he committed the following acts/omissions within the meaning of Police Disciplinary Rules, 1975.

STATEMENT OF ALLEGATIONS.

It has been reported by SHO, PS CTD Peshawar that he has been left for home and he has to report back on 17.04.2015 but instead to report he absented himself intentionally and deliberately from lawful duties without any kind of leave or permission from his superiors vide DD No 22 dated 17.04.2015. During his absence, he was arrested by Local Police of PS Alpori Distt: Shangla and recovered 11 Kilogram and 388 gram of "Hashish" from his possession and a Case vide FIR No 112 Dated 18.04.2015 under section 9-c/CNSA Police Station Alpori Distt: Shangla was registered against he and he was sent to District Jail Shangla.

2). For the purpose of scrutinizing the conduct of the said accused with reference to the above allegations, Mr. DGP Sameen Jan of CTD, Khyber Pakhtunkhwa, Peshawar is appointed as Enquiry Officers, to conduct enquiry under the Rules.

3). The Enquiry Officer, will, in accordance with the provision of the Police Disciplinary Rules, 1975 read with amendments 2014 provide reasonable opportunity of hearing to the accused, record its findings and make within 15 days of the receipt of this order, recommendation as to punishment or other appropriate action against the accused.

No 4337-39/HC(Ops)/CTD

Dated Peshawar the. 24/04/2015.

Copy of above is forwarded to the:-

- 1). PSO to Worthy IGP, Khyber Pakhtunkhwa for information w/r to his office letter No 3065-66/PPO dated 21.04.2015.
- 2). Mr. Sameen Jan DGP of this Unit, is hereby directed to initiate departmental proceedings against the accused under the Police Rules.
- 3). Driver Constable Missal Khan NO 157 to appear before the Enquiry Officer on the date time and place fixed by the Enquiry Officer for the purpose of enquiry proceedings.

Attested
Am
SPAINV
KP

(SONAIL KHALID) PSP
SENIOR SUPERINTENDENT OF POLICE,
CTD, Khyber Pakhtunkhwa,
Peshawar.

فائینڈنگ انکوائری

(11)

(برخلاف ڈرائیور کنٹریبل مشل خان نمبر 157 سی ٹی ڈی، پشاور)

جناب عالی:-

ملزم مشل خان ولد ملور ساکن بدرک جو کہ CTD آپریشن سٹاف میں ایلور ڈرائیور تعینات ہے۔ مذکورہ کنٹریبل پر بحوالہ مقدمہ علت 112 مورہ 18/04/2015 جرم CNSA-(C) 9 تھانہ اپوری ضلع شانگلہ میں گرفتار ہو کر جس وزنی 11,388 گرام برآمد ہونے کا الزام ہے۔ اندر میں بارہ ہو جب حکم نمبری 391-4337 مورہ 18-04-2015 جاریہ جناب SSP صاحب آپریشن CTD پشاور انکوائری مجھے مارک ہوئی۔ الزام علیہ ڈرائیور مشل خان کو حسب قاعدہ چارج شیٹ بمعہ تفصیل بالزامات جاری کیا جا کر جس نے اپنا تحریری جواب بھجوا کر شامل انکوائری کیا گیا ہے مذکورہ نے موصولہ بیان میں جس کی برآمدگی سے انکار کیا ہے۔

چنانچہ انکوائری کے سلسلہ میں ضلع شانگلہ جا کر مدعی مقدمہ SHO تھانہ اپوری حبیب سید خان، I/O اسب انسپکٹر اسٹی کیشن سید رحیم خان اور گواہان فرد کے بیانات لیے گئے۔ واقعی ڈرائیور کنٹریبل مشل خان نمبر 157 روز دوہ سوڑو کی کیری ڈبہ نمبری 9653-LRK میں سفر کرتا ہوا کیری ڈبہ سے جس متذکرہ برآمد ہو چکا ہے۔ اس کے علاوہ ڈرائیور کنٹریبل مشل خان نمبر 157 بحوالہ مد نمبر 22 روز نامچہ 17/04/15 تھانہ CTD پشاور غیر حاضر شدہ پایا گیا ہے بیانات متعلقین لیے گئے ہیں۔

مشل مقدمہ کی نقولات، FIR، فرد مقبوضگی، نقشہ موقع، فرد نشاندہی، ملزم ڈرائیور کنٹریبل مشل خان کے موبائل کی CDR کے علاوہ زیر دفعہ 364/CrPc قلمبند شدہ مجسٹریٹی بیان ازان مشل خان سے صاف عیاں ہے کہ جس مذکورہ کرایہ مبلغ 40,000/- روپے پر بازار کوٹ لارہا تھا جس میں مبلغ 8,000/- روپے سوڑو کی ڈبے والے کو کرایا دیا ہے اور جملہ حالات واقعات سے پردہ اٹھا کر جرم خود کو تسلیم کیا ہوا ہے۔ جناب والا:-

انکوائری سے اس نتیجہ پر پہنچا ہوں کہ مذکورہ ڈرائیور کنٹریبل مشل خان نمبر 157 پولیس ڈیپارٹمنٹ میں ہوتے ہوئے اس قبضہ عمل میں شریک رہا ہے اور جس کی سگنگ میں مذکورہ کا اہم کردار ہے۔ مذکورہ ابھی جوڈیشل حوالات میں ہے۔ رپورٹ عرض ہے۔

(مشین جان)

DSP/CTD، پشاور

09/05/2015

Attached

Amir
PSE/CTD

جناب SSP آپریشن پشاور:

Driver Constable Missal Khan No. 157
CTD Operation.

No. 7650 /HC/Opss:
Dated 12/8/2015

(12)

FINAL SHOW CAUSE NOTICE.

Whereas, You Driver Constable Missal Khan No 157 of this Unit have been found guilty in the formal departmental enquiry of having the following allegations on your part that:-

- i. It has been reported by SHO, PS CTD Peshawar that you posted in operation team CTD Peshawar you absent himself from lawful duties without any kind of leave or permission from your superiors vide DD No. 22 dated 17-04-2015 during your absence.
- ii. You was arrested by the local police of PS Alpori Distt: Shangla and recovered 11 kilogram and 388 gram of "Hashish" from your possession and a proper case vide FIR No 112 dated 18-04-2015 under section 9-c/CNSA police station Alpori Distt: Shangla was registered against you and sent to Judicial lockup at District Jail Shangla.

Hence, it has been proposed to impose a suitable punishment on you, as envisaged in Police disciplinary Rules, 1975 read with amendment 2014

Therefore, I, Sohail Khalid, PSP Senior Superintendent of Police, Operation CTD, Peshawar hereby call upon you Driver Constable Missal Khan No 157, to show cause within 07 days as to why the proposed punishment should not be awarded to you.


If your reply is not received within stipulated period, it will be presumed that you have no defence to make and ex-parte decision will be passed in the case.

You are also allowed to appear before the undersigned for personal hearing if you want.

A copy of the finding of Enquiry Officer is enclosed.

Attested

DSP/INV
CTD KP


(Sohail Khalid)PSP,
Senior Superintendent of Police,
CTD, Operation Peshawar.

ORDER

My this order so far relates to the disposal off Departmental enquiry against Driver Constable Missal Khan No. 157 of this unit on the score of following allegations leveled against him:-

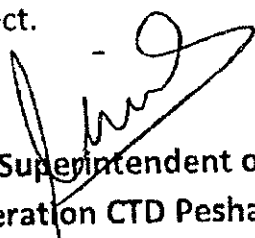
- a) As reported by SHO, CTD. Driver Constable Missal Khan No. 157 of this unit absent himself intentionally and deliberately from his lawful duties.
- b) He has been arrested by the local police of PS Alpori Distt: Shangla and recovered 11.388 kilo gram of "Hashish" from his possession and a proper case vide FIR No. 112 dated 18-04-2015 under section 9-c/CNSA police Station Alpori Distt: Shangal was registered against him and sent to judicial lockup at District Jail Shangla.

Being involved in criminal case the defaulter Driver Constable Missal Khan was placed under suspension vide this office order No. 4186-91/EC/CTD dated 22-04-2015 and proper departmental enquiry was initiated against him. He was issued charge sheet along with summary of allegation vide this office No. 4337-39/HC/Opss/CTD dated 24-04-2015 to him. Mr. Sameen Jan khan was nominated as inquiry officer probe into the matter. After completion the enquiry officer forwarded his findings of the enquiry found the defaulter guilty of the charges and recommended for major punishment.

Later on the Senior Superintendent of Police operation CTD Peshawar issued him final Show Cause notice vide this office No. 7650/HC/Opss: CTD dated 12-08-2015 but he did not submit reply within stipulated period. The undersigned also agreed with the recommendation of the enquiry officer.

Now, I SOHAIL KHALID SENIOR SUPERINTENDENT OF POLICE, OPERATION CTD, PESHAWAR, the power vested in me under Police Rules 1975 read amendment 2014 have no option but to order of his dismissal from service with immediate effect.

OB. NO. 236
Dated 03/09/15


Senior Superintendent of Police,
Operation CTD Peshawar.

No. 8394-97HC/Opss/CTD dated Peshawar.

3/9/2015.

Copy of above is forwarded to all concerned for information and necessary action please.

Attested

DSP IN CH
CTD KP



بیان مثل خان ولد طور خان، سکنہ بزرگہ ڈالہ خانہ ڈیرہ گڑھی، تحصیل درگشا، ضلع مالاکنڈ ملنم نوالہ مقدمہ عدالت غرض 112 مورثہ 2015 A.B. 2015 مورثہ 9 C, CNSA، چخان ایپوری نہر دفعہ 164 ص. ف

بیان کیا کہ میں 1.7.1988 کو محکمہ پولیس سپیشل برانچ میں تختیت ڈرائیور تھی
پھر ڈرائیور ہوں اور تقریباً 5 سال سے CTD پشاور میں تعینات ہوں اور یہی آپ کا 1971 A
آپ کا سہواری کا سودا میں ایشانی تھی۔ منگروں عظیم غائب ہو گیا تھا جس پر قرضوں
کام شروع ہوا۔ مورثہ 16/4/2015 کو میں اپنی ڈیوٹی سے قطعاً گذارنے اپنے گھر آیا
بازار کوٹ شائقہ کے این شخص اس علی شاہ کو 9 پیکیٹ چرس پیپا پانچ
اور ساتھ ہی علی شاہ کا جو بائل غنیمت میں منگروں نے 40 ہزار روپے کی بات طے ہوتی
کئی دن مع سوہرے ظاہر شاہ کی گاڑی سوزوں کیری بیلج 8000/- روپے کرایہ پر حاصل
قصید خالوں میں ہم نے 9 پیکیٹ چرس ڈال کر شائقہ کی طرف روانہ ہو گئے
نے علی شاہ کے ساتھ نسل روٹہ تقریباً 30:7 بجے جمع روانہ ہوئے۔ راستہ میں میں
میں روڈ کے کنارے میرا انتظار کر رہا تھا۔ جب ہم شائقہ ٹاپ پہنچے تو پولیس
گاڑی کے بندی تھی۔ پولیس نے ہماری گاڑی روک کر تلاش کی اور ہماری
کی حالت میں قرض فراہمی سے تنگ آکر گیا ہے۔ میں نے یہ جرم مجموعی



میں کمر درست تسلیم کیا۔
محمد عامر جوڈیشیل جسرٹ ڈریسنگ اور 16
ایپوری شائقہ

مثل خان ولد طور خان - ملنم
15401-0691488-3

21.4.2015

certified v/s 364 Cr.P.C. Certificate v/s 364 Cr.P.C is attached as page 3

JUDGE
Magistrate
District Shantla

Attached
DSP/INV
CTD KP

بعدالت محمد عاصم جوڈیشل مجسٹریٹ/علاقہ قاضی الپوری ضلع شانگلہ

اقبال جرم زیر عدہ 364/164 ض ف

مقدمہ علت نمبر 112 مورخہ 18/04/2015 جرم NSA-PPC 90 قاضی الپوری اقبال جرم از اس لٹرم مشل خان ولد طور خان سکنہ بدرک تحصیل درگی ضلع باکوڈ۔

51

A
15



میں محمد عاصم جوڈیشل مجسٹریٹ/علاقہ قاضی الپوری شانگلہ بمقام الپوری آج بتاریخ 21/04/2015 کو تقرر کیا۔
یادداشت تحقیقات

سوال: کیا تم مجھے جانتے ہو؟

جواب: ہاں۔

سوال: کیا تم مجھ کو خود اقبال جرم کرتے ہو؟

جواب: جی ہاں۔

سوال: تم اقبال جرم کیلئے مجھ کو نہیں ہوں، کیا تم یہ سمجھتے ہو؟

جواب: ہاں۔

سوال: کیا تم کو پولیس نے وعدہ معاف گواہ بنانے کی لالچ دیا ہے؟

جواب: نہیں۔

سوال: کیا تم کو کسی نے کوئی لالچ دیا ہے یا تم ڈر کی وجہ سے اقبال جرم کر رہے ہو؟

جواب: میں اپنی مرضی سے اقبال جرم کرتا ہوں

سوال: مقامی پولیس کے ساتھ کتنے دن حراست میں رہے ہو؟

جواب: تین دن۔

سوال: کیا تم پر پولیس حراست میں کوئی تشدد کیا گیا ہے؟

جواب: نہیں۔

سوال: کیا تم یہ سمجھتے ہو کہ اقبال بیان قلمبند کرنے کے بعد تمہیں جوڈیشل حالات بھیجا جائے گا؟

جواب: جی ہاں۔

سوال: اگر تم اقبال جرم کرتے ہو تو یہ تمہارے خلاف بطور شہادت استعمال کیا جاسکتا ہے کیا تم اس حقیقت کو جانتے ہو؟

جواب: جی ہاں۔

سوال: کیا تم سمجھتے ہو کہ بصورت نہ کرنے اقبال جرم تمہیں جوڈیشل حالات بھیجا جائے گا اور حوالہ پولیس نہیں کیا جائے گا؟

جواب: ہاں۔

سوال: تم اقبال جرم کیوں کرتے ہو؟

جواب: میں حقیقت بیان کرنا چاہتا ہوں۔

سوال: کیا میں اب تمہارا اقبال بیان قلمبند کروں۔

جواب: جی ہاں۔

میں کو درست تسلیم کیا



شانگلہ ڈسٹرکٹ جج

زیر عدہ 364/164 ض ف تصدیق کیا گیا۔

CIVIL JUDGE
Magistrate 1st Class

Alipora District Shangla
جوڈیشل مجسٹریٹ/علاقہ قاضی الپوری

Expw 6/1
Munil
ST/JSC/20 (SH)
at cc. sweat
24.2.16

Attested
DSP
CTD KP

نام اہلیہ ملزم:

16

مش خان ولد طور خان قوم بہمنہ عمر تقریباً 50 سال سکندہ بدو کہ تحصیل درگی ضلع ملاکنڈ

رنگ: گندی موٹھ رنگی ہوئی ہے، شیوہ کرتا ہے، انگریزی فیشن بال۔ ناخواندہ

قد: 5 فٹ 7 انچ

عمر: تقریباً 50 سال

شناختی علامت: ہاتھ پر زخم کا نشان

شناختی کارڈ نمبر: 5401-0691488-3



﴿ تصدیق زیر دفعہ 364 ضف ﴾

میں نے سٹی مش خان ولد طور خان عمر تقریباً 50 سال سکندہ بدو کہ تحصیل درگی ضلع ملاکنڈ کو سمجھایا ہے کہ وہ مکمل طور پر ازاد ہے کہ وہ اقبال جرم کرتا ہے یا نہیں کرتا۔ تاہم اگر وہ اقبال جرم کرتا ہے تو وہ اس کے خلاف بطور شہادت استعمال کیا جائیگا۔ میں یقین سے کہتا ہوں کہ ملزم مش خان نے اپنی مرضی سے اقبال جرم کیا ہے۔ ملزم مش خان نے میری موجودگی میں اقبال جرم کیا ہے۔ میں نے وہی کچھ لکھا ہے جو ملزم مش خان نے مجھے بطور اقبال جرم بتایا ہے۔ ملزم مش خان کا اقبال جرم قلم بند کرنے کے بعد میں نے ملزم مش خان کو اس کا ساما بیان پڑھ کر سنایا سمجھایا جسکو اس نے درست تسلیم کیا۔ ملزم مش خان کو سیدرحیم سی ایس ایسٹیشن الہوری نے اقبال جرم کے لئے 13:00 بجے پیش کیا اور ملزم سے ہتھکڑیاں اتاریں گئی۔ تمام پولیس اہلکاران کو ملزم مش خان کی عدالت آمد پر عدالت سے باہر کیا۔ ملزم مش خان کو 30 منٹ سوچنے کا موقع دیا گیا۔ یادداشت تحقیقات میں جو سوالات درج ہیں وہ ملزم سے پوچھنے کے بعد جب یہ تسلی ہوئی کہ ملزم اپنی مرضی سے اقبالی بیان قلمبند کرانا چاہتا ہے تو اس کا بیان اپنے ہاتھ سے قلمبند کیا۔ ملزم مش خان کا بیان آج مورخہ 21/04/2015 بوقت 13:30 بجے ریکارڈ کرنا شروع کیا اور 14:00 بجے ختم ہوا۔

زیر دفعہ 364/164 ضف تصدیق شد

محمد عامر

سول جج / جرنل مشل محکمہ عدالت الہوری
CIVIL JUDGE
Cum Judicial Magistrate 1st Class
Ahwal District Shangla.

Exp-6/3
ST/JSC/29 SH
at cc. smeat
24.2.16

Attested

Amir
DSPINW
CTD MP

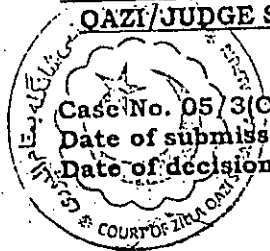
"B"

R/D

17

111

IN THE COURT OF BABAR ALI KHAN SESSIONS JUDGE-ZI
OAZI/JUDGE SPECIAL COURT, SHANGLA CAMP COURT AT
SWAT.



Case No. 05/3(CNSA).

Date of submission of complete challan:

09/05/2015

Date of decision:

24/11/2016

State

Versus

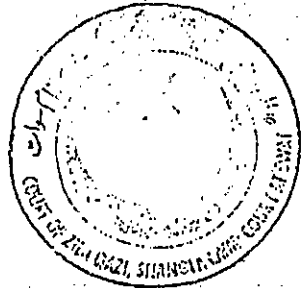
1. Zahir Shah s/o Nowrooz Khan
2. Misal Khan s/o Toor Khan both r/o Badraga, Malakand Agency
3. Ali Shah s/o Baz Khan r/o Bazar Kot, Tehsil Alpurai District Shangla.
4. Aziz-ur-Rehman s/o Abdul Samad r/o Bacha Banda, Pir Saddi, Takht Bai District Mardan:.....(Accused)

CASE FIR NO. 112 DATED: 18/04/2015 U/S- 9 C- CNSA, PS Alpurai, Shangla.

Judgment:

District & Sessions Judge, Shangla
(Camp Court, Swat)

1. Complete challan against the accused named above submitted by the prosecution in case FIR No. 112 dated: 18/04/2015 u/s- 9-C CNSA PS Alpurai, District Shangla.
2. Brief facts of the case of prosecution are that on dated 18/4/2015 at 13:00 hours complainant Habib Sayed Khan SHO PS Alpurai District Shangla received spy information that some narcotics would be smuggled to District Shangla in Carry Van bearing Registration No.LRK/9653; white in color, due to which "Naka Bandi" was arranged at Shangla Top Check-post when in the meantime the vehicle already spotted to them emerged from the side of Swat valley which was signaled to stop. That upon inquiry, the driver of the vehicle disclosed his name as Zahir Shah, whereas another person sitting next to him in the front seat was identified as Misal Khan. The vehicle was subjected to thorough search which led to the recovery of Chars weighing 11388 grams which was smartly concealed in the secret cavities. Thereafter the said vehicle was seized and the contraband material was recovered and the accused were arrested.



Attested
BSP/INV
CTD KP



During the investigation of the case, accused Misal Khan made a judicial confession u/s 164/364 Cr.P.C wherein he disclosed that the narcotics is owned by Ali Shah to whom the Chars was to be dispatched from co-accused Aziz-ur-Rehman. As such the instant FIR was registered against the accused facing trail at PS Alpurai District Shargla.

3. After the usual investigation complete challan was submitted against the accused. Accused Misal Khan and Zahir Shah produced before the court in custody while accused Aziz-ur-Rehman and Ali Shah attend the court on bail. After the compliance of section 265-C Cr.P.C the formal charge was framed in which accused met with the denial and claimed trial. In support of charge prosecution produced the following evidence.

4. PW-1 Khadi Khan IHC PS Dandai District Shargla, who was then posted as IHC PS Alpurai. He is marginal witness to the recovery memo Ex.PW-1/1 vide which the I.C. presence took into possession one mobile phone from accused Zahir Shah and one Nokia mobile phone from accused Misal Khan. He verified his signature thereon as correct.

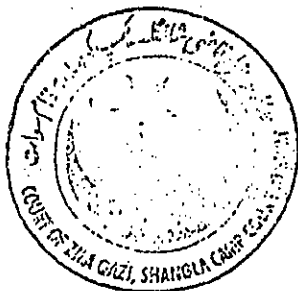
5. PW-2. Aziz-ur-Rehman ASI PS Alpurai who on receipt of Murasila registered the formal FIR Ex.PA. He verified his signature thereon as correct.

6. PW-3 Fazal Muhammad # 910 PS Kamach was then posted at PS Alpurai, is the marginal witness to the pointation memo, Ex.PW-3/1 vide which the accused Zahir Shah & Misal Khan pointed the Carry Van No.LRK/9653 parked in PS Alpurai, that it is their ownership and from the secret cavities of which 11388 grams Chars was recovered. He verified the pointation proceedings as well as his signature thereon as correct.

7. PW-4. Habib Sayed Sub Inspector P.T.C Hungu, who was then posted as SHO PS Alpurai who is the complainant/seizing officer of the Narcotics. He recorded the same statement as

Attested

OSP/...
CTD



113

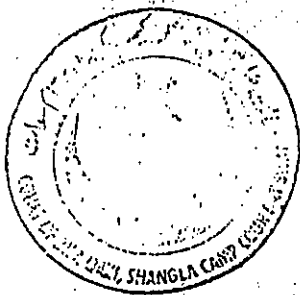
19



brief facts of the case with addition that he took into possession the narcotics vide recovery memo Ex.PC, Carry Van bearing registration No.LRK/9653 along with documents Ex.P-1 while Chars Ex.P-2, arrested the accused Zahir Shah & Misal Khan vide arrest card Ex.PC/1, drafted Murasila Ex.PA/1 and sent to PS for registration of case, snapped photographs through his gunner Ex.PC/2 to Ex.PC/12 and investigating officer also prepared site plan at his pointation. He testified his signature on the various documents as correct.

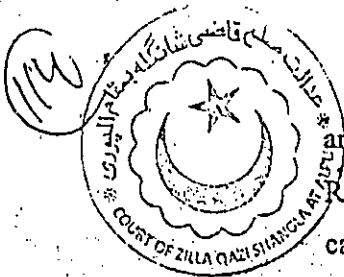
8. PW-5. Sher Mohammad Khan ASI Police Lines Shangla, who was then posted as ASI at Check post Shangla Top. He is the marginal witness to the recovery memo Ex.PC vide which the seizing officer SHO took into possession Carry Van bearing registration No.9653/LRK and recovered 09 packets Chars from the secret cavities of the said vehicle weighing 11388 grams in his presence and from each packet 10/10 grams Chars was separated for FSL analysis. He verified the recovery proceedings as well as his signature thereon as correct. District & Sessions Judge (Camp Court, Shangla)

9. PW-6 Muhammad Asim Judicial Magistrate Alpurai at present posted as Senior Civil Judge Buner who on 21/4/2015 recorded confessional statement of the accused Misal Khan. After compliance of codal formalities he recorded confessional statement of accused w/s 164/364 Cr.P.C. The Questioner is Ex.PW-6/1, confessional statement of accused is Ex.PW-6/3 while certificate is Ex.PW-6/2. He testified the signatures thereon as correct.



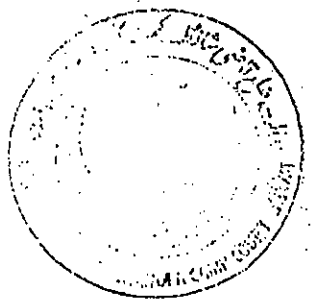
10. PW-7 Sayed Rahim Khan SI PS Alpurai District Shangla who is the investigating officer of the case. He prepared site plan Ex.PB at the pointation of complainant. He obtained two days custody of accused Misal Khan & Zahir Shah from the court of competent jurisdiction vide application Ex.PW-7/1. During the interrogation, the accused admitted their guilt and accused Misal Khan disclosed that he was dispatching the Chars at the instance of accused Aziz-ur-Rehman to Bazar Kot

Arrested,
[Signature]
D.S.P.



and Carry Van of accused/driver Zahir Shah was rented at Rs.8000/- for this purpose. Both the accused pointed the secret cavities of the vehicle in which the Chars was concealed and the I.O prepared the pointation memo Ex.PW-3/1 at their pointation in the presence of witnesses. He produced both the accused before the court of Judicial Magistrate for recording their confessional statements u/s 164/364 Cr.P.C vide application Ex.PW-7/2 where the accused Misal Khan recorded his confessional statement. He took into possession one Q-Mobile phone Ex.P-3 from accused Zahir Shah while one Nokia Mobile phone Ex.P-4 & service card Ex.P-5 from accused Misal Khan vide recovery memo already Ex.PW-1/1. That accused Misal Khan nominated the co-accused Aziz-ur-Rehman & Ali Shah in his confessional statement therefore he declared Aziz-ur-Rehman and Ali Shah as accused vide memo Ex.PW-7/3, arrested accused Ali Shah vide card Ex.PW-7/4, obtained his one day police custody vide application Ex.PW-7/5 and produced the accused before the court for recording his confessional statement vide application Ex.PW-7/6 where the accused resiled and was sent to Judicial Lockup. As the accused Aziz-ur-Rehman was absconding therefore he obtained warrant u/s 204 Cr.P.C vide application Ex.PW-7/7, on 26.4.2015 he arrested the said accused vide arrest card Ex.PW-7/8, obtained three days police custody of the accused vide application Ex.PW-7/9 and on expiry of the custody he again produced the accused before the court for recording his confessional statement vide application Ex.PW-7/10 but the accused resiled and was sent to Judicial Lockup. He got CDR reports of accused Aziz-ur-Rehman and Misal Khan Ex.PW-7/11 and prepared summary of CDR reports Ex.PW-7/12. He sent sample of Chars to FSL for chemical analysis vide application Ex.PW-7/13 and placed on file FSL report Ex.PK in positive. He also snapped photographs of pointation Ex.PW-7/14 to Ex.PW-7/17. He recorded statements of the PWs u/s 161 Cr.P.C.

District & Sessions Judge (70), Sirajganj



Attested,

[Handwritten signature]

DSP/INV
CTD KP

15

21



11. After examining the above mentioned PWs, the learned DPP for the state summed up/closed the prosecution's evidence being complete.

12. Statement of accused u/s-342 Cr.P.C recorded in which they claimed themselves to be innocent and falsely charged. They did not wish to be examined on Oath u/s 340(2) Cr.P.C nor desire to produce defense evidence.

13. I have heard the arguments of learned counsel for the accused facing trial and DPP for the state and have gone through the record available on file.

14. First I will take start regarding observation of the case from PW-3 constable Fazal Muhammad who is witness to the pointation memo Ex.PW-3/1 through which accused Zahir Shah and Misal Khan pointed out the secrete cavities of the vehicle in the Police Station in which they had kept the contraband material and thereafter a proper photography session from Ex.PW-7/14 to Ex.PW-7/17 was effected. This witness was subjected to cross examination but nothing material could be extracted from him which could benefit the case of defense rather the cavities made in the carry van have been highlighted by the accused named above.

District & Sessions Judge, Shandla



15. Complainant of the case Habib Sayed Inspector who during the days of occurrence was posted as SHO PS Alpurai recorded his statement and fully supported the averments of Murasila Ex.PA/1 and that of FIR Ex.PA and narrated the same facts which took place right from the arrest of the accused Zahir Shah and Misal Khan and to extent of weighment of Chars by means of a digital scale, separation of 10 grams of chars from each slab coupled with seizer of Suzuki van bearing registration No. LRK/9653 white in color as Ex.P-1. The learned counsel for defense cross examined this witness at length wherein certain contradictions have been pointed out but the remaining portion of his evidence was un-rebutted and nothing material could be extracted from him to benefit the case of defense rather he reconfirmed the process of

Attested

DSP/INV
CTD KP

15



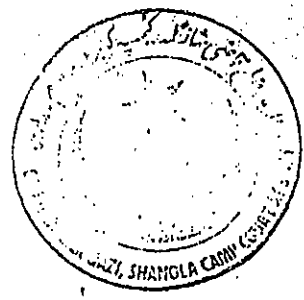
11. After examining the above mentioned PWs, the learned DPPS for the state summed up/closed the prosecution's evidence being complete.

12. Statement of accused u/s-342 Cr.P.C recorded in which they claimed themselves to be innocent and falsely charged. They did not wish to be examined on Oath u/s 340(2) Cr.P.C nor desire to produce defense evidence.

13. I have heard the arguments of learned counsel for the accused facing trial and DPP for the state and have gone through the record available on file.

14. First I will take start regarding observation of the case from PW-3 constable Fazal Muhammad who is witness to the pointation memo Ex.PW-3/1 through which accused Zahir Shah and Misal Khan pointed out the secrete cavities of the vehicle in the Police Station in which they had kept the contraband material and thereafter a proper photography session from Ex.PW-7/14 to Ex.PW-7/17 was effected. This witness was subjected to cross examination but nothing material could be extracted from him which could benefit the case of defense rather the cavities made in the carry van have been highlighted by the accused named above.

District & Sessions Judge, Shamgla



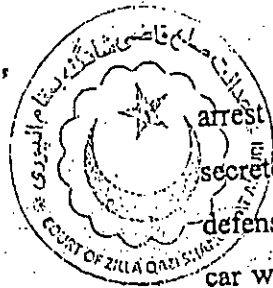
15. Complainant of the case Habib Sayed Inspector who during the days of occurrence was posted as SHO PS Alpurai recorded his statement and fully supported the averments of Murasila Ex.PA/1 and that of FIR Ex.PA and narrated the same facts which took place right from the arrest of the accused Zahir Shah and Misal Khan and to extent of weighmentof Chars by means of a digital scale, separation of 10 grams of chars from each slab coupled with seizer of Suzuki van bearing registration No. LRK/9653 white in color as Ex.P-1. The learned counsel for defense cross examined, this witness at length wherein certain contradictions have been pointed out but the remaining portion of his evidence was un-rebutted and nothing material could be extracted from him to benefit the case of defense rather he reconfirmed the process of

Attested

DSP/INV
CTD KP

116

23



arrest of the accused, recovery of the contrabands from the
 secret cavities of Carry van etc. However learned counsel for
 defense objected that this witness has admitted that when the
 car was stopped on the basis of suspicion at the Check point/
 "Naka Bandfi" the same was taken to a deserted place near to
 the check point which should not have been done by police and
 it should have been checked on the check point where it was
 stopped. In this regard the court observes that the vehicle in
 question was stopped at main Shangla Top Check post which
 is situated on the main road and if its checking was started at
 the said place, it would have led to a long queue of cars which
 would have certainly created hurdle in the smooth running of
 the traffic as there is no other road leading towards Alpurai at
 Shangla, therefore the said vehicle was taken to a side, the
 same is justifiable where the local police could do the checking
 process without creating any hurdle in the traffic and in swat
 manner. Another objection taken by the learned counsel is that
 in Para-5 of the cross examination of PW-4 it has been stated
 that the Chars was recovered in shape of slabs but when it was
 examined in the court the same were in powder form. The
 witness has himself clarified this aspect of the situation that the
 Chars usually gets in powder form when it is taken from one
 place to another. The prosecution witness in this regard is
 correct as the contraband material after its sealing would have
 been shifted to several places right from the place of
 occurrence, police station, Malkhana and to the court etc.
 coupled with the fact that the contraband material might have
 also changed its nature due to climatic conditions of the area
 being very cold especially in winter season. Another objection
 which was laid down was that the local police has not
 associated any independent witness to the entire inquiry
 proceedings. In this regard it is stated that apart from the fact
 that there are no nearby shops located from where the recovery
 was effected but it is usual routine of the locals that they try
 not to associate themselves in the investigation proceedings so



Attested

[Signature]

**BSP/INV
CTD KP**

24

11



as to avoid enmity with either of the party and on the other hand there are numerous judgment of the honorable superior courts whereby it has been stated that the police officials are as good witnesses as any independent witness provided no mala fide is established on their behalf. In the instant case no such mala fide could be established on part of the local police which could justify that accused facing trial have been falsely enrobed into the case in hand, therefore this objection of the learned counsel as raised stands declined.

16. Muhammad Asim learned Judicial Magistrate, Alpurai presently posted as Senior Civil Judge Buner has recorded confessional statement of the accused Misal Khan son of Toor Khan as Ex.PW-6/2 and during his statement the learned Judicial Magistrate has given a detailed statement regarding the same but nothing material could be extracted from him in the process of cross examination rather on the basis of said confession so recorded u/s 164/364 Cr.P.C co-accused Aziz-ur-Rehman and Ali Shah were also made accused after due investigation. The confessional statement of accused Misal Khan would be discussed subsequently.

District & Sessions Judge, Shargha (Camp Court Swat)



17. Sayed Rahim Khan SI/SHO Alpurai is the investigating officer of the case who after recording of his statement was put to lengthy cross examination but nothing material could be extracted from him other than the fact that he admitted that as per his investigation he could not collect any material evidence against the accused Aziz-ur Rehman and Ali Shah.

18. These are the material witnesses of the case who deposed evidence in favor of the prosecution which has been properly discussed.

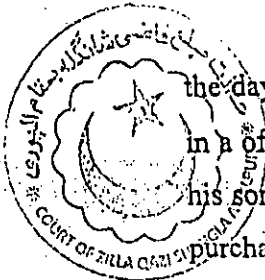
19. Now I would like to discuss the confessional statement of accused Misal Khan Ex.PW-6/2 which is quite in detail but would simply observe that he has explained the whole scenario by averting therein that he got inducted in police department (Special Branch) as driver on dated 01.7.1988 and thereafter serving five years he got posted to CTD Peshawar and during

Attested

DSP/INV
CTD KP

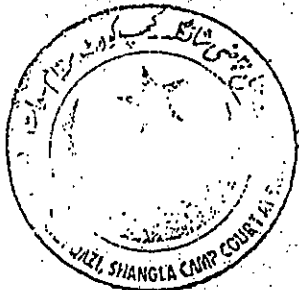
118

25



the days of occurrence he was performing his duties as driver in a official pickup bearing No.A-1971. That two years before his son stood guarantor for his friend namely Azim relating to purchase of a motorcar but in between said Azim disappeared and the whole responsibility of the debt of the car shifted to his shoulders due to which he started the business of transporting Chars from one place to another. That on dated 16.04.2015 he took leave and came to his native village whereby on the following day i.e. 17.4.2015 he met accused Aziz-ur-Rehman who handed over the task of transporting the contraband material in question from Badraga to District Shangla for consideration of Rs.40,000/- to accused Ali Shah due to which he hired the Suzuki van of accused Zahir Shah for the sum of Rs.8000/- and thereafter the Chars was kept in the secrete cavities of the Suzuki van and subsequently they were held at Naka Bandi Point at Shangla Top. Such a detailed confessional statement cannot be ignored as it has explained the role of each accused who participated in the crime. This story as narrated by the accused was not even known to the investigating officer of the case nor to any other private person. It is further stated that the confessional statement has not been retracted by the said accused.

Ali Shah
District & Sessions Judge
(Camp Court Swat)



20. It appears from the record available on file that the occurrence took place on 18.4.15 at 1300 hours while the report is made on the same day at 1340 hours. SHO PS Alpurai is complainant of the present case and as stated earlier he has recovered Chars weighing 11388 grams from a vehicle smartly concealed in its secrete cavities . Meaning thereby that accused Misal Khan and Zahir Shah are directly charged in a prompt FIR . So far as case of the accused Ali Shah and Aziz-ur-Rehman is concerned it is stated that they were neither present on the spot nor any recovery whatsoever has been effected from their immediate possession or on their pointation but it was during the course of investigation while co-accused Misal Khan made a judicial confession and named them. In the given

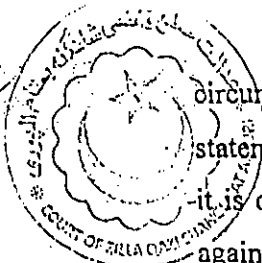
Attested

[Signature]

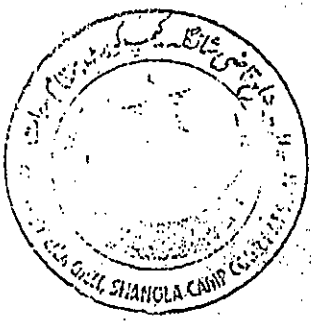
DSP/INV
CTD KP

119

26



circumstances the evidential value of the confessional statement of co-accused Misal Khan qua if looked into detail, it is observed that statement of one accused is not acceptable against another accused even if it is a confessional statement if the same is not corroborated by any cogent evidence therefore case of these two accused to the extent of conviction is set aside. Huge quantity of contraband has been recovered at the hands of local police from the secrete cavities of the vehicle on the spot and in presence of accused Zahir Shah being its driver and co-accused Misal Khan sitting in its front seat. Both these accused have made pointation of the recovery/secret cavities of the vehicle in PS vide pointation memo Ex.PW-3/1 which has been properly photographed while photographs available on record which are Ex.PC/2 to Ex.PC/12 till its weighment by means of digital scale. In this regard site plan Ex.PB is also prepared which is another supporting document to the case of prosecution. Apart from this accused Misal Khan has made a proper judicial confession u/s 164/364 Cr.P.C before learned Judicial Magistrate Alpurai District Shingla which has been retracted. It is also worth to mention that the accused have recorded their statements u/s 342 Cr.P.C but have not wished to examined on oath u/s 340(2) Cr.P.C neither they have produced any defense which would have convinced the court. Meaning thereby they had nothing in re-buttal to justify their stance. Moreover the FSL report of the recovered contraband from accused Zahir Shah and Misal Khan Ex.PK is also in positive. Needless to mention that the Carry Van which was used for the offence has been returned to the brother of accused Zahir Shah which further convinces the court that he is equally involved in the transportation of Narcotics. The offence is of high moral turpitude and is against the society in general public due to which no concession can be given to the accused from whose possession the chars has been recovered.



Attested

[Signature]

DSP/INV
CTD KP

21. As discussed above in detail case against accused Aziz-ur-Rehman and Ali Shah could not be established through any

120



Cogent evidence therefore they are acquitted of the charges leveled against them. They are on bail their bail bonds stands cancelled and the sureties are discharged from the liabilities of bail bonds:

- 22. So far case against co-accused Misal Khan and Zahir Shah is concerned, it is held that prosecution has remained successful in proving the allegations against them therefore keeping in view the quantity of Chars i.e. 11388 grams and section of law mentioned in the FIR i.e. 9-C of the Control of the Narcotics Substances Act 1997, each accused Misal Khan and Zahir Shah are sentenced under 9-C of the CNSA to undergo imprisonment for life along with fine of Rs.100000/- (one lac) each or in default to undergo SI for one year each. The accused are in custody, benefit of section 382-B Cr.P.C is extended to them accordingly.
- 23. Case property i.e. contraband material/Chars weighing 11388 grams be destroyed while Carry Van having registration No. LRK/9653, white in colour be auctioned in accordance with law but after the period of expiry of appeal/revision.
- 24. Copy of the judgment is provided to the convicts free of cost today in the court and their thumb impressions to this extent have been taken on the border of the order sheet as a token of proof.
- 25. File of this court be consigned to record room after necessary completion and compilation.

Announced.
24/11/2016



6/10/21
6/10/21

hsh
(BABAR ALI KHAN)
Sessions Judge Special Court,
Shangla Camp Court At Swat.

CERTIFICATE.

Certified that this judgment consist of 10 pages, each page has been read, signed and corrected by me, wherever necessary.



6/10/21

hsh
24/11/2016
(BABAR ALI KHAN)
Sessions Judge Special Court,
Shangla Camp Court At Swat.

Certified to be True COPY
EX. *hsh*
District & Sessions Judge,
SHANGLA

6/10/21

Attested
hsh
DSP/INV
CTD KP

R/E

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)

1) Cr.A No. 255-M/2016

Zahir Shah s/o Nowrooz Khan r/o Badraga Dargai, Malakand Agency. (Appellant)

Versus

The State. (Respondent)

2) Cr.A No. 277-M/2016

Misal Khan s/o Toor Khan r/o Badraga, Tehsil Dargai, Malakand. (Appellant)

Versus

The State. (Respondent)

Present:

Farhana Marwat, Advocate for appellant Zahir Shah.

M/S Adil Khan Khalil and M. Masoom Shah, Advocates for appellant Misal Khan.

Mr. Haq Nawaz, Assistant A.G. for State.

Date of hearing: 03.12.2019

JUDGMENT

SYED ARSHAD ALI, J.- Our this judgment is aimed to dispose of and decide the instant Cr.A No. 255-M/2016 filed by appellant/convict Zahir Shah as well as the connected Cr.A No. 277-M/2016 preferred by appellant/convict Misal Khan, as both these appeals are emanating from one and the same judgment of the learned Sessions Judge/Judge, Special Court Shangla, Camp Court Swat, in case F.I.R. No. 112 dated 18.04.2015 registered at Police



ATTESTED
Encl. 01
Peshawar High Court Bench
Mingora (Dar-ul-Qaza), Swat.

Attested

DSP/INV
CTD KP

Station Alpurai, District Shangla, whereby both the appellants were convicted u/s 9 (c) of the Control of Narcotic Substances Act, 1997 and sentenced to life imprisonment with fine of Rs.100,000/- each or to undergo further one year S.I in case of non-payment of fine.



2. The police of District Shangla had received information that huge quantity of narcotics will be smuggled through a Carry Van to District Shangla, therefore, Habib Said Khan, S.H.O of P.S Alpurai (PW-4) in the company of Sher Muhammad Khan ASI (PW-5) and constables Amir Hussain, Tausif Ali and Saif Ullah (not produced) leaded by DSP Circle made a barricade at Shangla Top check post on 18.04.2015. At 13:00 hours, a Carry Van bearing Registration No. 9653/LRK, being driven by appellant/Convict Zahir Shah, was stopped by constable Saifullah. The person occupying the front seat of the said vehicle disclosed his name Misal Khan (appellant/convict in the connected appeal). The vehicle was thoroughly searched during which nine packets of chars, covered in yellow plastic bags, were recovered from secret cavities of the doors of the vehicle. On weighing the chars through digital scale, the same were found to be of 11388

ATTESTED

Examiner
Peshawar High Court Bench
Mingora District Swat.

Attested
[Signature]
DSP/INV
CTD KP

grams. 10 grams from each packet were separated for analysis through the Forensic Lab and sealed in separate parcels whereas the remaining bulk of 11298 grams were also sealed in separate parcels. In this regard recovery memo Ex.PC was prepared and both the appellants were arrested on the spot.



3. The matter was reported through *Murasila* (Ex.PA/1) on the basis whereof formal F.I.R (Ex.PA) was registered initially against the present appellants/convicts. During investigation, appellant/convict Misal Khan recorded his confessional statement (Ex.PW-6/2) on 21.04.2015 before the Judicial Magistrate (PW-6) in light whereof the acquitted co-accused Ali Shah and Aziz-ur-Rehman were also arrayed as accused in the case.

ATTESTED
Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

4. After completion of investigation, challan was put in Court for trial of the accused. Upon commencement of trial against them, the prosecution produced seven witnesses in support of its case whereafter they were examined u/s 342, Cr.P.C wherein they professed innocence, however, they neither recorded their own statements on oath nor opted to examine any witness in their defence. On conclusion of trial, the present appellants.

Attested

[Handwritten signature]

DSP/INV
CTD KP

convicts namely Zahir Shah and Misal Khan were convicted and sentenced through the impugned judgment whereas their two co-accused were acquitted of the charge. Hence, these appeals.



5. We have heard the arguments of learned counsels appearing on behalf of the appellants/convicts and the learned Assistant A.G. on behalf of State and perused the record with their able assistance.

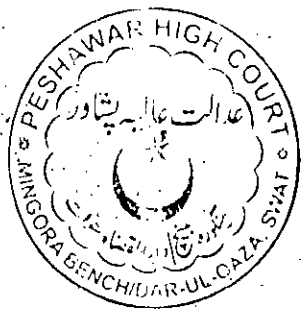
6. The prosecution version is that the recovery of chars from the secret cavities of the Carry Van No. LRK/9653 was effected by Habib Said S.H.O (PW-4). According to this witness, when the vehicle was stopped by constable Saifullah at the check-post, on cursory search thereof he had noticed yellow packets in the vehicle and thereafter the vehicle was moved to the nearby helipad for the purpose of thorough search, where the chars were recovered from the said vehicle. PW-4 during cross-examination stated that:

ATTESTED
 Examiner
 Peshwar High Court Bench
 Mingora Dar-ul-Quadr Swat.

Attested

DSP/INV
 CTD KP

چیک پوسٹ پر میں نے گاڑی کا سرسری ملاحظہ نہیں کیا تھا۔ گواہ نے ہر کہا کہ
 چیک پوسٹ پر میں نے گاڑی کا سرسری ملاحظہ کیا تھا۔ بدور ان سرسری ملاحظہ
 میں نے زرد پیکٹ دیکھے تھے اور تفصیلی چیکنگ کیلئے یہی پیکٹ پڑے جانے پر
 برآمدگی پرس کی۔۔۔۔۔۔ چیک پوسٹ پر جب میں نے گاڑی میں زور تھیلے
 ملاحظہ کی تو وہ تھیلے میں نے گاڑی سے نہیں اُتارے اور نہ ہی چیک کیے۔



Close perusal of the F.I.R and statement of the recovery officer (PW-4) would reveal that prosecution has adopted two different versions regarding the recovery of contraband from the vehicle. According to the first version mentioned in the F.I.R and examination-in-chief of PW-4, the chars were recovered from secret cavities of the vehicle but according to the second version emerging from cross-examination of PW-4, he had noticed yellow packets on cursory checking of the vehicle at the check post and recovered the narcotics by taking the vehicle to helipad at a distance of 40/50 feet according to the statement of I.O (PW-7). In such situation, we cannot determine that which of the two versions is true. If statement of the recovery officer is accepted as true then it would definitely nullify the other version of prosecution in the F.I.R that the narcotics were recovered from secret cavities of the vehicle. Thus, the mode and manner of the recovery has not remained the same as set forth by prosecution in *Murasila/F.I.R.*

ATTESTED

Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

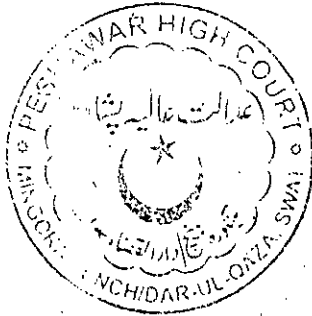
Attested

DSP/INV
CTD KP

Z. It is evident from the record that the appellants were at some distance from the vehicle at the time of its search by S.H.O. Although the recovery officer (PW-4) has stated that:

جب طرمان کو گاڑی سے بہرا تو طرمان کچھ فاصلے پر کھڑے تھے اور ہم نے گاڑی/اڈبہ کی تلاشی شروع کی۔ از خود کہا کہ تقریباً ڈیڑھ اوردنٹ کے فاصلے پر کھڑے تھے۔

However, Sher Muhammad Khan ASI (PW-5), marginal witness of recovery memo Ex.PC, has admitted in his cross-examination that:



اڈبہ کو چینگ کی غرض سے رکوا یا اور موقع پر چینگ نہیں ہوئی اور اڈبہ مذکورہ کو چیک پوسٹ سے کافی فاصلے پر لے جایا گیا۔ جہاں پر اڈبہ کی تلاشی لی گئی۔ دوبارہ کہا کہ SHO نے تلاشی لی۔ طرمان کو گاڑی سے بہرا کر تلاشی لی گئی۔ طرمان کی جامہ تلاشی سے کوئی چیز برآمد نہیں ہوئی تھی۔ طرمان پہلی پیل پر موجود تھے۔ جو کہ گاڑی سے کافی فاصلے پر تھے۔ میں طرمان کے ساتھ کھڑا تھا۔

The above admissions of PW-5 make it abundantly clear that he was not an eye witness of recovery of chars because he was standing along with the accused at a sufficient distance from the vehicle when it was searched by PW-4. It is pertinent to note here that prosecution has examined only the said Sher Muhammad Khan ASI (PW-4) as attesting witness of the recovery memo and the other marginal witness constable Amir Hussain was abandoned. Thus, in view of the above stated position, the statement of PW-4 cannot be relied upon for maintaining conviction of the present appellants.

ATTESTED

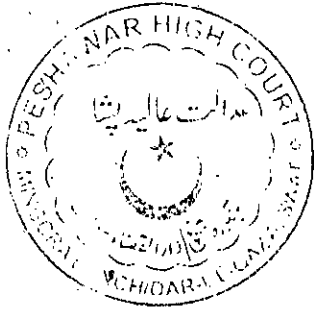
Examiner
Peshawar High Court Bench
Mingora, Swat.

Attested

DSP/INV
CTD KP

Another glaring inconsistency in the prosecution case which we have got notice of is the

number of persons seated in the vehicle when it was stopped by police at the check post. The recovery officer (PW-4) though has stated that only the present appellants were boarded in the vehicle at the relevant time and in response to a suggestion put to him he stated that:



یہ تجویز کرنا ملا ہے کہ ڈیہ مذکورہ میں تین اور سواریاں بھی تھی۔

Against the above assertion of PW-4, the eye witness PW-5 has categorically admitted in his cross-examination that:


مذکورہ ڈیہ میں دو افراد سواری تھے پھر کہا کہ چار افراد سواری تھے۔

The above-mentioned situation has created a serious dent in the prosecution case and it appears that the police had specifically chosen two out of four persons i.e. the present appellants, boarded in the vehicle for their nomination as accused in the present case. The mentioned factor has further rendered the prosecution case doubtful, as such, conviction of the appellants in the circumstances was not safe.

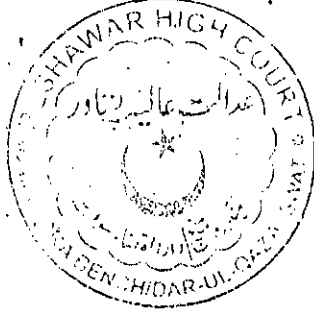
ATTESTED

Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

2. However, the fatal discrepancy in the prosecution case is its failure to establish safe custody/transmission of the contraband and samples to Lab. *Muharrir* of the P.S, to whom the case property was allegedly entrusted, was not produced

Attested,

DSP/INV
CTD KP

before the trial Court to have explained the safe custody of the contraband. While replying certain questions of the defence counsel, the recovery officer (PW-4) stated in his cross-examination that:



میں نے محرم کو مال مقدمہ حوالہ کرتے وقت محرم سے کوئی رسید وصول نہیں کی تھی بلکہ اس نسبت رجسٹر نمبر 19 میں اندراج کروایا گیا۔ رجسٹر نمبر 19 کا متعلقہ صفحہ جوڈیشل سسل پر موجود نہ ہے۔ از خود کہا کہ تھانہ میں F.I.R کی پشت پر درج ہوتا ہے۔ F.I.R کی پشت ملاحظہ کیا گیا ایسی کوئی وضاحت موجود نہ ہے۔

The recovery officer has admitted in cross-examination that each packet of chars was in the form of siab and further clarified that:

ہر ایک پیکٹ ایک siab/تختے کی شکل میں تھی۔

When the parcels of chars were checked before the trial Court the same were found in powder form and it was recorded that:

مال مقدمہ اور عدالت ملاحظہ کیا گیا جو کہ slabs کی شکل میں نہ ہے اور مال مقدمہ مذکورہ پاؤڈر کی شکل میں ہے۔

TESTED
Examiner
Peshawar High Court Bench
Mingora Dar-ul-Qaza, Swat.

Although the recovery officer has tried to explain this situation by stating that the case property can assume the form of powder by shifting it from one place to another, however, this assertion of the recovery officer cannot be accepted because the case property was exhibited before the Court only after almost six months of the recovery. The safe custody of the contraband is further suspected

Alleged
DSP/INV
GTD KP

in view of the admission of the recovery officer stating that:

یہ درست ہے کہ مال مقدمہ میں سے ایک پیکٹ آن ہیروئن کے دو بروعدالت میں موجود نہ ہے۔ یعنی فرد متہون میں 9 عدد پیکٹ درج ہے اور آج عدالت میں 8 عدد پیکٹ پیش کیے گئے۔



The above scenario leads us to the conclusion that safe custody of the contraband has not been established by prosecution.

10. Regarding the transmission of the samples to Forensic Lab, according to application/transit receipt Ex.PW-7/13, the samples were handed over to constable Zia-ur-Rehman No. 927 on 20.04.2015 for its onward transmission to the F.S.L where the same were delivered on the next day i.e 21.04.2015. The prosecution has not bothered to examine the said person to have explained that for what purpose he had retained the samples with him during the night falling between 20th and 21st of April, 2015. Thus, it can safely be concluded that the chain of custody of the contraband since the time of recovery till delivery to the lab has not remained intact, hence, the F.S.L report in the present case cannot be considered as authentic document against the appellants/convicts in view of the mentioned circumstances. Wisdom in this regard is drawn from

TESTED
Examiner
Peshawar High Court Bench
Mingora - Darul-Qaza, Swat.

Detected

DSP/INV
CTD KP

the judgment of the august Supreme Court of Pakistan in the case titled "The State through Regional Director ANF V/s. Imam Bakhsh and others" 2018 SCMR 2039 wherein it was held that:



"The chain of custody begins with the recovery of the seized drug by the Police and includes the separation of the representative sample(s) of the seized drug and their dispatch to the Narcotics Testing Laboratory. This chain of custody, is pivotal, as the entire construct of the Act and the Rules rests on the Report of the Government Analyst, which in turn rests on the process of sampling and its safe and secure custody and transmission to the laboratory. The prosecution must establish that the chain of custody was unbroken, unsuspecting, indubitable, safe and secure. Any break in the chain of custody or lapse in the control of possession of the sample, will cast doubts on the safe custody and safe transmission of the sample(s) and will impair and vitiate the conclusiveness and reliability of the Report of the Government Analyst, thus, rendering it incapable of sustaining conviction".

ATTESTED

Examiner
Peshawar High Court Bench
Mingora - Azad Jammu and Kashmir.

This view was followed by the august

Supreme Court in another judgment handed down in the case of "Mst. Razia Sultana V/s. The State and another" 2019 SCMR 1300.

11. Moving on to the confessional statement of the appellant/convict Misal Khan, when the prosecution case is replete with contradictions and inconsistencies of blatant nature, his conviction

Attested

DSP/INV
CTD KP

on the sole basis of his confession cannot be maintained which was not only recorded after three days of police custody but the same was retracted by him during his examination u/s 342, Cr.P.C. We would not deviate from the settled principle of law that an accused can be convicted even on the basis of his retracted confession but the condition laid down by superior Courts in this regard is that it must be corroborated by the prosecution evidence which factor is missing in the present case. It is also a trite law that prosecution must prove its case against an accused beyond reasonable doubt and his conviction cannot be based on his sole confession. As discussed above, the prosecution case is suffering from various discrepancies and inconsistencies giving rise to many reasonable doubts in prudent mind qua the guilt of the appellants/convicts and the prosecution has badly failed to establish its case against them beyond shadow of doubt, therefore, their conviction cannot be maintained on the basis of sole confession recorded by appellant Misal Khan which neither appears to be voluntary nor true. Guidance is sought from the judgment in the case titled "Dadullah and another V/s. The State" (2015 SCMR 856) wherein though the confession of accused was relied upon



APPROVED

Examiner
Peshawar High Court Bench
Mingora Darul-Qaza, Swat.

Attested

DSP/IN V
CTD KP

but it was considered in combination with other convincing and trustworthy evidence of prosecution and it was laid down that.

"This is settled law that conviction could not be recorded on the sole basis of confessional statement and the prosecution has to prove its case beyond any shadow of doubt".



12. In light of the above discussion, the prosecution has failed to prove the guilt of appellants/convicts beyond shadow of doubt, therefore, their conviction and sentence are not sustainable in the circumstances. Resultantly, these appeals are allowed, the impugned judgment is set aside and the appellants/convicts namely Zahir Shah and Misal Khan are acquitted of the charge in the present case. They be set at liberty forthwith if not required in any other case.

13. Above are the reasons of our short orders of the even date.

Announced
Di: 03.12.2019

JUDGE

Attended
DSP/INV
CTD KP

9/12
WR

S.No. 20
Name of Applicant Sultan Khan
Date of Presentation of Applicant 16-12-19
Date of Completion of Copies 16-12-19
No of Copies 16
Urgent Fee
Fee Charged 30/-
Date of Delivery of Copies 16-12-19

JUDGE

Certified to be true

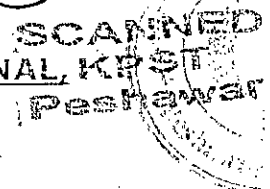
EXAMINER

Peshawar High Court, Muzaffargarh/Der-el-Qaz
Authorized Under Article 17 of the Constitution of Pakistan

F/F

40

**KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, KP ST
PESHAWAR**



Service Appeal No. 1407/2020

**BEFORE: MRS. ROZINA REHMAN ... MEMBER (J)
MISS FAREEHA PAUL ... MEMBER (E)**

**Misal Khan S/O Toor Khan, Ex- Driver/Constable C.T.D, Peshawar.
....(Appellant)**

Versus

1. Senior Superintendent of Police, Hqr; Peshawar.
 2. Deputy Inspector General, C.T.D, Peshawar.
 3. Inspector General of Police, C.P.O, Khyber Pakhtunkhwa Peshawar.
-(Respondents)

Mr. Muhammad Masoom Shah,
Advocate For appellant.

Mr. Muhammad Adeel Butt,
Addl. Advocate General For respondents.

Date of Institution.....10.03.2020
Date of Hearing.....19.07.2022
Date of Decision.....19.07.2022

JUDGEMENT

FAREEHA PAUL MEMBER (E): The service appeal has been instituted under Section 4 of the Khyber Pakhtunkhwa Service Tribunal Act, 1974 against the impugned order of respondent No. 1 dated 03.09.2015 whereby appellant was dismissed from service and O.B NO. 75/CTD dated 10.02.2020 of respondent No. 2 whereby his representation was filed, with the prayer that the orders may be set aside and the appellant may be reinstated in service with all back benefits.

Alleged
Amir

**DSP/INV
CTD KP**

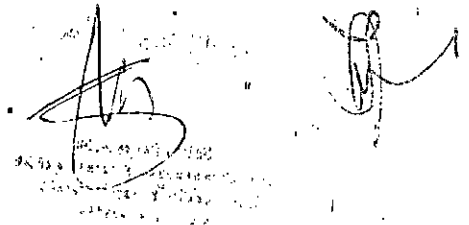
[Handwritten signatures and stamps]

2. Brief facts, as per memorandum of appeal, are that the appellant was appointed as constable/driver on 01.07.1988 in the Police Department and was posted in Special Branch Peshawar. He was implicated in FIR No. 112 dated 18.04.2015, Police Station Alpuri, under Section 9-C, CNSA 1997 and was arrested on spot. He informed the department about lodging of said FIR and his arrest. Departmental proceedings were initiated against him in his absence when he was in custody of District Jail Daggar (District Buner). On 03.09.2015 he was dismissed from service on account of absence. During period of his custody he was kept in different jails including Central Jail Haripur and District Jail Mardan. During that period the Trial Court initiated criminal proceedings against the appellant in the court of District Judge/Zilla Qazi/Judge Special Court Shangla Camp Burt at Swat and after completion of the trial appellant was convicted to life imprisonment alongwith fine of Rupees one lac vide order dated 24.11.2016. Benefit of Section 382 CrPC was also extended to him meaning thereby that he was behind the bar since the date of his arrest i.e. 18.04.2015. Feeling aggrieved from judgment dated 24.11.2016, appellant filed Criminal Appeal No 277-M/2016, which came up for hearing on 03.12.2019. Hon'able Peshawar High Court, Mingora, Bench allowed the appeal and set aside impugned judgment with further direction to release him from jail. It took 10 to 14 days for completion of due process of law and formalities after which he made arrival to his duty but he was handed over the impugned order dated 03.09.2015 of dismissal from service. On 08.01.2020 he submitted departmental appeal before respondent

Attested



DSP/INV
CTD KP




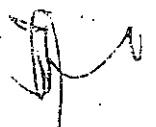
No. 2 which was rejected on 10.02.2020. Feeling aggrieved he submitted the service appeal.

3. Respondents were put on notice who submitted written replies/comments on the appeal. We heard the learned counsel for the appellant as well as the Assistant Advocate General and perused the case file with connected documents minutely and thoroughly.

4. The learned counsel for the appellant contended that the appellant was behind the bar since 18.04.2015 and he had informed his office. He further contended that due process was not followed before his dismissal from service; that neither charge sheet and statement of allegations nor any show cause notice was served upon him through the jail administration. He invited the attention to the impugned order dated 03.09.2015 through which the appellant was dismissed from service and stated that the same was neither endorsed to the appellant nor served upon him, rather it was kept in office. He further stated that appellant was acquitted from the baseless charges levelled against him, he should be reinstated in service.

5. The learned Additional Advocate General on the other hand contended that the appellant was dismissed from service after fulfilling all the requirements. A proper departmental inquiry was carried out and all the charges levelled against him were proved. He further contended that conviction from the trial court and willful absence from duty was sufficient proof for initiating departmental proceedings and awarding major punishment. He drew the attention

Attested

 DSP/INV
 CTD KP



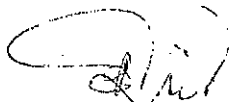
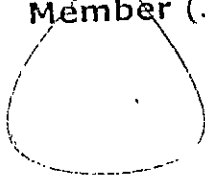
to the statement of the appellant in which he himself confess about committing the crime.


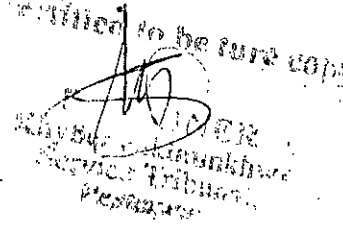
6. Record presented before us indicates that department proceedings were initiated against the appellant in his absence. It evident from the given record that the Hon'ble Peshawar High Court Mingora Bench was convinced that the conviction and sentence of appellant was not sustainable in the circumstances where prosecution failed to prove the guilt of the appellant/convict and hence acquitted him of the charges leveled against him. This Tribunal feels that major punishment given by the respondents to the appellant based on FIR lodged against him is not maintainable as he was acquitted those charges. The appellant had informed his high ups about arrest and a better course of action would have been to put under suspension till the final decision of the court of law. Now as appellant has been acquitted there is no reason to hold punishment of dismissal from service. Hence the impugned orders dated 03.09.2015 and 10.02.2020 are set aside and the appellant reinstated into service w.e.f the date of dismissal. The period which he remained behind the bar shall be treated as suspension with full pay and the rest of his absence to be treated as leave of the kind. Parties are left to bear their own costs.

7. Pronounced in open court in Peshawar and given under hands and seal of the Tribunal this 19th day of July, 2022.

Attested

DSP/INV
CTD KP


(ROZINA REHMAN)
Member (J)



(FAREEHA F)
Member


F/G

(45)

IN THE SUPREME COURT OF PAKISTAN
(Appellate Jurisdiction)

CPLA NO. _____/2022

Senior Superintendent of Police, CTD,
Khyber Pakhtunkhwa, Peshawar & others

-----PETITIONERS

VERSUS

Misal Khan

-----RESPONDENT.

Appeal from : *Learned Khyber Pakhtunkhwa Service Tribunal, Peshawar*
Counsel for Petitioner : *Advocate General, Khyber Pakhtunkhwa, Peshawar*
Instituted by : *Mian Saadullah Jandoli, AOR*

Attested


DSP/INV
CTD KP

F/H

(46)

- (7) The enquiry proceedings once started should be held without interruption, as far as possible, on day to day basis.
- (8) On receipt of the enquiry report the case should be processed expeditiously.
- (9) It should be impressed upon the Enquiry Officer that the quality of work produced by him will reflect on his efficiency, which will be recorded in his ACR.
- (10) The initiating officer should record his assessment of the Enquiry Officer's performance in the ACR.

(Authority: Circular letter No.SORII (S&GAD)3(4)/78, dated 3rd October, 1984)

Stoppage of increment under Government Servants (Efficiency & Discipline) Rules, 1973.

Instances have come to the notice of the Government where the penalty of stoppage of increment under the NWFP Government Servants (Efficiency & Discipline) Rules; 1973, has been imposed on Government Servants, who have reached the maximum of the pay scale, thus making the penalty ineffective. I am accordingly directed to request that the competent authorities may, in future, kindly keep in view the stage of the pay scale at which a Government servant is drawing pay before imposing the penalty of stoppage of increment on him under the above rule.

(Authority: Circular letter No.SORII(S&GAD)5(29)/86, dated 27th December, 1986).

Departmental Proceedings vis-a-vis Judicial Proceedings.

The question as to whether or not a departmental inquiry and judicial proceedings can run parallel to each other against an accused officer/official has been examined in consultation with the Law Department.

2. It is hereby clarified that Court and Departmental proceedings may start from an identical charge(s) and can run parallel to each other. They can take place simultaneously against an accused on the same set of facts and yet may end differently without affecting their validity. Even departmental inquiry can be held subsequently on the same charges of which Government servants has been acquitted by a Court. The two proceedings are to be pursued independent of each other and it is not necessary to pend departmental proceedings till the finalization of judicial proceedings.

3. It may also be clarified that Court Proceedings also include criminal proceedings pending against a civil servant.

4. The above instructions may please be brought to the notice of all concerned.

(Authority: Circular letter No.SOR.II(S&GAD)5(29)/86(KC), dated 8.1.1990)

Attested

DSP/INV
CTD KP

2001 SCMR 2018

F/I

(47)

[Supreme Court of Pakistan]

Present: Iftikhar Muhammad Chaudhry, Qazi Muhammad Farooq and Hamid Ali Mirza, JJ

Messrs HABIB BANK LTD.----Petitioner

versus

SHAHID MASUD MALIK and others-- --Respondents

Civil Petitions Nos.564 and 565 of 2001, decided on: 8th May, 2001.

(On appeal from the judgment dated 9-12-2000 passed by the Federal Service Tribunal, Islamabad in Appeals Nos: 117(R)C/E of 2000 and 1886(R) of 1999).

(a) Civil Servants Act (LXXI of 1973)---

---S.16---Departmental proceedings and criminal proceedings---Difference and distinction---Departmental proceedings are different and distinct from criminal charge which if has been levelled simultaneously against civil servant.

(b) Service Tribunals Act (LXX of 1973)---


---Ss. 2-A & 4---Constitution of Pakistan (1973), Art. 185(3)---Dismissal from service---Findings of Service Tribunal based upon findings recorded by other forums---Validity---Acquittal from criminal charge---Effect--Employee of Banking Company was dismissed from service---Labour Court reinstated the employee and Criminal Court acquitted him of the charge--After insertion of S.2-A, in Service Tribunals Act, 1973 matter was transferred to Service Tribunal and the Tribunal on the basis of findings recorded by Labour Court as well as by the Criminal Court allowed appeal of the employee and he was reinstated in service---Legality---Instead of basing its decision on finding of a forum which had no jurisdiction to decide the case, the Service Tribunal should have examined the case independently on the basis of material collected during departmental inquiry including show cause notice and inquiry report--Conclusion drawn by Criminal Court would have no bearing on the departmental proceedings as the latter had to be decided independently ---Where the Tribunal had not applied its independent mind, such findings of the Tribunal were not sustainable---Petition for leave to appeal was converted into appeal, and judgment passed by Service Tribunal was set aside---Case was remanded to Service Tribunal for decision afresh.

Ajmal Kamal Mirza, Advocate Supreme Court and Ejaz Muhammad Khan, Advocate-on-Record for Appellants.

Respondents in person.

Date of hearing: 8th May, 2001.**ORDER**

We have heard learned counsel for the appellants and have also gone through the impugned judgment, dated 9-12-2000 passed by the Federal Service Tribunal, Islamabad. It is noteworthy that the Service Tribunal had based its judgment on the findings of Presiding Officer Labour Court recorded while

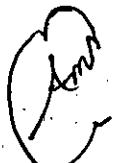
Attested

 DSP/IN
 CTD KP

disposing of application under section 25-A of the I.R.O., 1969 filed by the respondent, the order of the Criminal Court acquitting the respondent-employee from the criminal charge has also been considered as one of the factor for his reinstatement. It is well-settled that the departmental proceedings are different and distinct from the criminal charge which if has been levelled simultaneously against an employee. Likewise the Tribunal may have not taken into consideration the findings recorded in favour of the respondent by the Labour Court because after the amendment in the Civil Servants Act by means of section 2-A for the purpose of the Service Tribunal the respondent employee had been treated to be a civil servant with a right to approach Service Tribunal for his redressal of grievance. Therefore, the Service Tribunal will examine his case independently on the basis of material collected during the departmental inquiry including show cause notice and Inquiry Report etc., instead of basing its decision on the finding of a forum which firstly had no jurisdiction to decide the case secondly any finding recorded by the criminal Court regarding criminal charges against an employee arising out of the same transaction because no conclusion drawn in this behalf by a Criminal Court will have any bearing on the departmental proceedings which ought to have decided independently. It may be noted that in fact impugned orders have not been passed by the Service Tribunal by applying its judicial mind and had disposed of the appeals in a mechanical manner just observing that as Presiding Officer of Labour Court had recorded finding in favour of the respondent and the Criminal Court has also acquitted him of the charge, therefore, he is ordered to be reinstated. Such findings, however, are not sustainable in law thus deserves interference by this Court.

As a result of above discussion, these petitions are converted into appeals and allowed. Both the cases are remanded to the Federal Service for decision of the appeals expeditiously as far as possible within a period of three months preferably. No order as to costs.

Q.M.H./M.A.K./H-38/S

Case remanded.

Attested

 D.
CTD KP

(49)

2007 S C M R 562

[Supreme Court of Pakistan]

Present: Abdul Hameed Dogar and Mian Shakirullah Jan, JJ

SUPERINTENDENT OF POLICE, D.I. KHAN and others---Petitioners

Versus

IHSANULLAH---Respondent

Civil Petition No.384-P of 2005, decided on 14th November, 2006.

(On appeal from the judgment, dated 10-5-2005 of the N.-W.F.P. Service Tribunal Peshawar in Appeal No.180 of 2004).

North-West Frontier Province Service Tribunals Act (I of 1974)---

---S. 4---Dismissal from service on account of his arrest in a criminal case---Acquittal from criminal charges---Time-barred appeal---Civil servant was dismissed from service, after he was arrested in criminal case---Civil servant during his arrest, filed departmental representation but did not avail remedy of appeal before Service Tribunal---Civil servant, after he was acquitted from criminal charge, filed appeal before Service Tribunal, which was accepted and he was reinstated in service---Validity---Appeal before Service Tribunal was filed belatedly from date of his dismissal and after five months from the date of his acquittal from criminal charges---Civil servant had lost his right and could not agitate for reinstatement---Acquittal of civil servant from criminal charges would have absolutely no bearing on merits of case as disciplinary proceedings were to be initiated according to service rules independently---Judgment passed by Service Tribunal, reinstating civil servant in service, after acquittal from the criminal charge was not sustainable in law---Supreme Court set aside the judgment passed by Service Tribunal and order of dismissal of civil servant from service was maintained---Appeal was allowed.

Executive Engineer and others v. Zahid Sharif 2005 SCMR 824 and Sami Ullah v. Inspector-General of Police and others 2006 SCMR 554 ref.

Khushdil Khan, Additional Advocate-General N.-W.F.P. and Altai, S.-I. (Legal) for Petitioners.

Abdul Aziz Kundi, Advocate Supreme Court for Respondent.

ORDER

ABDUL HAMEED DOGAR, J.--- This petition is directed against judgment, dated 10-5-2005 passed by learned N.-W.F.P. Service Tribunal, camp at D.I. Khan whereby Appeal No.180 of 2004 filed by respondent was allowed and he was reinstated into service without back-benefits.

2. Brief facts leading to the filing of instant petition are that respondent was dismissed from service on the allegation that on 12-7-2001 he was found in possession of 225 grams of Charas. Case was registered against him in which he was arrested and sent up to face the trial. According to learned counsel for the respondent he made representation to the competent authority but did not avail the remedy of filing appeal before the learned Tribunal challenging his dismissal. According to him after his acquittal from the criminal case which took place on 9-10-2003 he filed instant appeal before Tribunal on 18-5-2004

Attested

(Signature)
DSP "IV
CTD KP

mainly on the ground that he was acquitted from criminal charges as such be reinstated in service. The appeal before the Tribunal was filed belatedly from date of his dismissal and after five months from the date of his acquittal from the criminal charges. This being so, respondent has lost his right and cannot agitate for reinstatement. By now it is the settled principle of law that acquittal of civil servant from criminal charges would have absolutely no bearing on the merits of the case as the disciplinary proceedings are to be initiated according to service rules independently. Reliance can be made to the cases of Executive Engineer and others v. Zahid Sharif 2005 SCMR 824 wherein it has been held that acquittal of civil servant from Court would not impose any bar for initiation of disciplinary proceedings as his acquittal would have no bearing on disciplinary proceedings at all. In case of Sami Ullah v. Inspector-General of Police and others 2006 SCMR 554 it has been held that acquittal of petitioner from criminal case would have absolutely no bearing on the merits of the case and in the case of N.E.D. University of Engineering and Technology v. Syed Ashfaq Hussain Shah 2006 SCMR 453 it has been held that departmental representation of civil servant was barred by limitation and on the basis of such representation Service Tribunal could not reinstate him in service.

3. In view of what has been discussed hereinabove and the case-law referred (supra) the impugned judgment reinstating the respondent in service after acquittal from the criminal charge is not sustainable in law hence the same is set aside. The petition is converted into appeal and allowed. The order of dismissal from service of respondent is maintained.

M.H./S-81/SC

Appeal allowed.

Attest

Am
DSP/INV
CTD KP