

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

CM No. _____/2024 in APPEAL NO.387/2023

AHMAD ALI

V/S

POLICE
& OTHERS

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Dated: 15thMay, 2024

APPELLANT

Through:

MUHAMMAD MAAZMADNI,
ADVOCATE HIGH COURT, PESHAWAR
TF-291, 292, Deans Trade Centre,
Peshawar Cantt:
0333-9313113, 0314-9965666
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16-05-24

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL, PESHAWAR

CM No. _____/2024 in APPEAL NO.387/2023

AHMAD ALIS/O Wali Muhammad, Ex-FC#763 FRP Peshawar,
Tahan Cham, PO Lahor Raporary, Tehsil Lahor, Swabi.

.....APPELLANT

VERSUS

1- DEPUTY COMMANDANT (FRP),
Khyber Pahtunkhwa, Peshawar.

2- COMMANDANT FRP,
Khyber Pakhtunkhwa, Peshawar.

3- INSPECTOR GENERAL OF POLICE,
Khyber Pakhtunkhwa, Peshawar.

.....RESPONDENTS

Khyber Pakhtunkhwa
Service TribunalDiary No. 12794Dated 15-05-2024**APPLICATION FOR PLACING ON FILE ADDITIONAL
DOCUMENTS***Respectfully Sheweth;*

1. That the above title appeal is pending adjudication before this Tribunal and is fixed for hearing on 16.05.2024.
2. That some additional documents are required to be place on file for just & fair decision in the case.
Additional Document attached as Annexure A
3. That counsel for the appellant (Shah Faisal Ilyas) has been appointed as Additional Advocate General Khyber Pakhtunkhwa hence, engaged me as his counsel in the instant appeal.
Wakalatnama is attached

It is therefore, most humbly prayed that additional documents be placed on file.

Dated: 15-05-2024

Ahmad
Appellant

Through:

Muhammad MAAZ MADNI
Advocate, High Court, Peshawar

A F F I D A V I T

I, Ahmad Ali s/o Wali Muhammad, do hereby solemnly affirm on oath that the contents of the CM are true and correct to the best of my knowledge and belief and nothing has been concealed from this Honourable Tribunal.

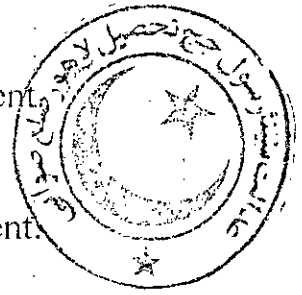


Ahmad
DEPONENT
16201-3071581-3

مستند عدالت لاہور (سوابی) فی موروثہ املاک کے متعلق

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Court of ASJ-II, Lahor (Swabi)



Order- 25
20.06.2023

Sr.PP Javed Ur Rehman for the State present.

Accused **Ahmed Ali** on bail present.

Learned counsel for the accused also present.

26/ SPL
17/3/20
20/6/23

1. My this Order is directed to dispose of application filed under section-265-K Cr.P.C for acquittal of accused who was charged in case **FIR No.84** dated: 05.02.2020 U/S 9(c) & 11(a) KP CNSA registered at Police Station Lahor (Swabi).

2. Allegations against the accused facing trial were that the local police of PS Lahor, had recovered and taken into possession 180 grams of charas and 02 gram of ice from his possession in the occurrence being fully narrated in the above-mentioned case FIR.

3. After arrest of accused and completion of investigation, report under S.173 Cr.P.C was submitted against the accused. Copies supplied within the meaning of S.265-C Cr.P.C. Charge was framed against the accused to which he pleaded not guilty and claimed trial. PWs were summoned accordingly.

4. Thereafter only two PWs that is to say complainant Fazal Amin SI and PW Amir Khan ASI (marginal witness to the recovery memo) were examined as PW.01 & PW.02. The prosecution abandoned the IO being dead and the learned counsel for the accused thereafter filed the instant application. After hearing the arguments and going through the available record, this Court has been driven to conclude that the accused/petitioner was entitled to be acquitted on the following amongst other grounds:

a) On 08.01.2021, formal charge was framed against the accused facing trial wherein accused denied the charge and claimed trial, prosecution had been directed to produce it's evidence. Now for more than two years have passed and the prosecution

Syed Ali Raza,
Additional District & Sessions Judge-II
Lahor (District Swabi)

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Court of ASJ-II, Lahor (Swabi)

could produce only two witnesses to support it's case against the accused facing trial and the prosecution could not succeed even to produce all the remaining PWs which showed that prosecution had got no interest in the completion of trial and for the same reasons the instant trial had been prolonged.

b) Complainant (PW.01) admitted in his cross-examination that the police party had left for gusht during evening on the relevant day, however, he could not specify the exact time of the occurrence as during the course of gusht they had been through a number of places like Kunda Mor and Lahor Shakh etc, while on the other hand marginal witness (PW.02) admitted that they had left for gusht in routine at 6:00 a.m and a number of villages were searched during patrol and he did not remember the names of the places patrolled. Both the PWs also admitted that they could not specify the brand of match box and the cigarette box from which the alleged recovery had been effected at the relevant time.

c) Moreover, this fact was also vital to be observed that the initial case was put in Court on 17.03.2020, followed by framing of charge on 18.01.2021 but during the last two and half years only two PWs were examined; one on 18.02.2021, while the last one on 09.12.2021, meaning thereby that during the last 18-months the prosecution badly failed to produce the remaining PWs in the Court and the situation warranted that the accused should not be let to suffer unnecessarily for the fault of the prosecution.

5. A single reasonable doubt in prosecution's case was considered sufficient for acquittal of accused. Keeping in view the non-availability of evidence in respect of safe chain of custody of allegedly recovered substances, I did not see any probability of accused facing

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Additional District & Sessions Judge-II,
Lahor (Lahor Swabi)

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Court of ASJ-II, Lahor (Swabi)

trial being convicted of the charge leveled against him – especially when the I.O had already died who was abandoned by the prosecution. No useful purpose would be served by proceeding any further with the instant trial. The accused could not be punished with rigors of a prolonged trial, especially when chances of conviction were almost nil.

6. It was by now, a settled law laid down not only by the Hon'ble Higher Courts of the Land as well as prevailing in any criminal justice system, that to convict an accused for an offence, the same was required to be proved through cogent, reasonable, and coherent evidence and that too without any shadow of the slightest doubt. This principle was also a guideline for all those dealing with criminal justice system in any domain that it would be convenient and in the interest of justice as well as society if 99 accused were acquitted instead of convicting one innocent. The case in hand also fell within the same category as no minor discrepancies but many considerable loopholes came to surface, which could in no case be overlooked.

7. These facts have created serious doubts in the story of prosecution which went to the very base of the case and if the base was defective the structure was bound to fall. In the instant case, if the remaining evidence was recorded, even then there was no chance & probability of conviction of the accused and to proceed further with trial would be nothing but just a futile exercise and mere wastage of precious time of court.

8. Therefore, instant application u/s 265-K Cr.PC was allowed and extending the benefit of all the doubts, which came on record to the accused facing trial **Ahmed Ali**, he was acquitted of the charge. As he was on bail, his bail bonds stood cancelled and sureties were discharged from liabilities of bail bonds.

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Syed Ali Raza, Judge-II
Sessions Judge-II
Lahor (Swabi)

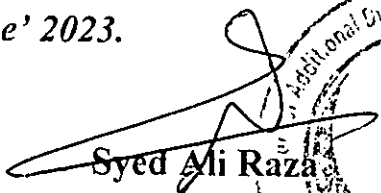
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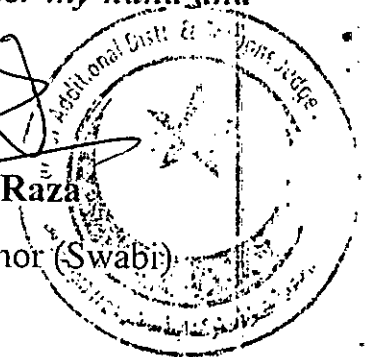
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Court of ASJ-II, Lahor (Swabi)

9. The procedure as laid down in section 516-A Cr.P.C r/w S. 34B (4) of KP-CNSA 2019 was not adopted for destruction/disposal of bulk of case property (narcotics) at first instance. The narcotics shall now be disposed of according to prevalent procedures, but after final decision of appeal/revision, if any, against this order/judgment. File be consigned to the record room after it's proper completion and compilation.


Pronounced in open court at Lahor and given under my hand and the seal of the court on this 20th June' 2023.

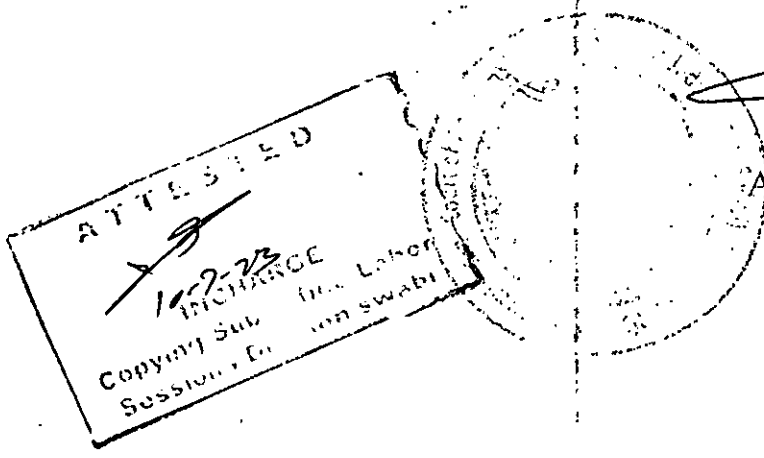

Syed Ali Raza
ASJ-II/JSC, Lahor (Swabi)



CERTIFICATE

Certified that this judgment consists of (04) pages. Each page has been read, signed and corrected by me wherever necessary.


Syed Ali Raza
ASJ-II/JSC, Lahor (Swabi)


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Session, Swabi

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**THE COURT OF SYED HAMID QASIM,
ADDITIONAL SESSIONS JUDGE-I/JSC, LAHOR
(SWABI).**

Case No. 71/SPL of 2021

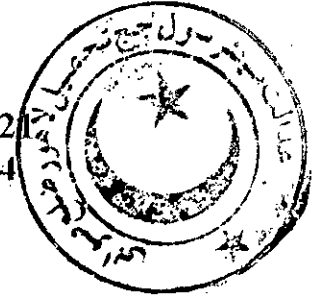
Date of institution: 16/10/2021

Date of decision: 06/03/2024

The State

Through

Iltaf Khan SHO of Police Station Lahor.



(Complainant)

VERSUS

Ahmad Ali son of Wali Muhammad,

R/o Thana Cham Lahor, Tehsil Lahor, District Swabi.

(Accused facing trial)

Charged in;

Case F.I.R No. 674, dated: 17/09/2021,

U/S 9-D KP CNSA, 2019 P.S Lahor, District Swabi.

Present:

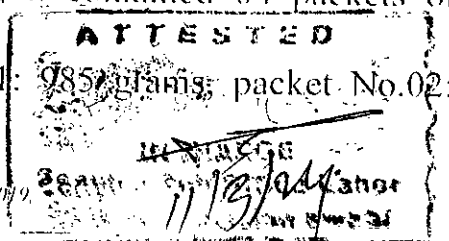
Mr. Rashid Khan, learned Dy.P.P for the State,

Mr. Sajid Khan advocate for accused facing trial.

JUDGMENT:

06/03/2024

1. Accused Ahmad Ali who is in custody, faced trial in the above captioned case.
2. Brief facts of the case are that on 17/09/2021, the complainant Iltaf Khan SHO along with other police party during patrolling on the service road, when at about 17.35 hours, the accused facing trial Ahmad Ali was coming from the motorway side, having a white plastic sack on his shoulder who was stopped for the purpose of checking and on checking the plastic sack, it contained 04 packets of charas weighing packet No.01: 985 grams; packet No.02:



Case No. 71/SPL of 2021

The State VS Ahmad Ali,

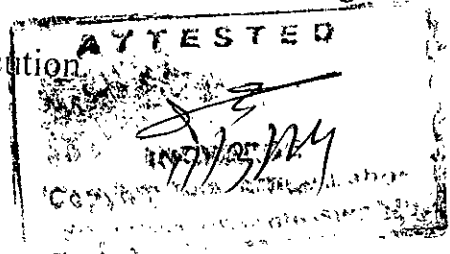
FIR No.674, Dated: 17/09/2021, U/S 9-D KP-CNSA, 2019,

P.S Lahor, Tehsil Lahor, District Swabi.

(7)

1030 grams, packet No.03: 1020 grams, and packet No.04: 1020 grams, total 4055 grams charas. After separation of samples for the purpose of FSL and sealing the samples and remaining contraband in their respective parcels, the contrabands were taken into possession vide recovery memo EX.PW2/1, the accused facing trial was formally arrested in the case vide arrest card EX.PW4/1, whereafter Murasila EX.PA/1 was drafted and sent to the Police Station through constable Saddam 1296 for registration of the FIR on the basis of which Sahir ASI registered the case FIR EX.PA.

3. After registration of the FIR, investigation ensued and after completion of investigation, challan was forwarded by prosecution for put in court on 30/09/2021 which was received to this court for disposal in accordance with law. On 16/10/2021, the accused facing trial was produced in custody. Copies of the relevant documents were delivered to the accused within the meaning of section 265-C Cr.P.C and on 19/12/2022, the accused facing trial was charge sheeted to which he did not plead his guilt and claimed trial and; therefore, PWs were summoned. Out of the **Eight (08)** PWs, the prosecution produced and examined as many as **05 (Five)** witnesses while the remaining PWs were abandoned being unnecessary for the case of the prosecution.



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4. A gist of prosecution evidence is as under:

- i. PW-01 Constable Fareed148; is the samples bearer.
- ii. PW-02 Zahid ul Haq ASI; is the marginal witness to the recovery memo EX.PW2/1.
- iii. PW-03 Maqsood Ali ASI; is the Moharrir of the Police Station.
- iv. PW-04 Iltaf Khan SHO; is the seizing officer/complainant of present case.
- v. PW-05 Ayan Ullah SI; is the investigation officer of the present case.

5. Thereafter, the prosecution closed its evidence. Followed by the statement of accused facing trial under Section 342/364 Cr.P.C, wherein he pleaded his innocence however, neither wished to be examined on oath nor opted to produce evidence in his defence.

6. Remaining arguments heard and record gone through.

7. The accused facing trial was charged for the recovery of 04 packets of charas weighing 4055 grams from his possession when he was apprehended by the local police at the place of occurrence. The prosecution was bound to prove that; some incriminating articles were recovered from the possession of the accused facing trial, as is alleged in the

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Murasila EX.PA/1; that the said incriminating articles was charas; that the said contrabands, after its recovery, had remained in the safe custody of the local police; and that the samples separated from the said contraband were safely transmitted to the FSL.

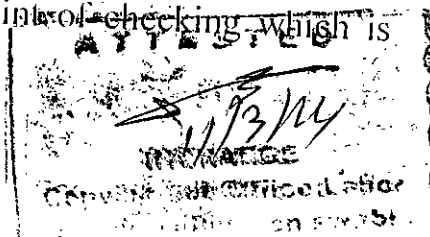
8. To prove the recovery of charas from the possession of the accused facing trial, the prosecution examined the seizing officer Itaf Khan SHO as PW-04 whereas, the statement of the marginal witness Zahid ul Haq ASI to the recovery memo EX.PW2/1 was recorded as PW-02. In order to prove the safe custody of the case property at the Police Station and the safe transmission of the samples from the Police Station to the FSL, the Moharrir Maqsood Ali ASI of the Police Station was examined as PW-03 while the police official who took the said samples to the FSL was examined as PW-01 (Constable Fareed No.148). The Investigation Officer Ayan Ullah SI appeared as PW-05. Thus, I will scrutinize their testimonies with great care and caution. Minute scrutiny of the statements of Altaf Khan SHO (PW-04) and Zahid ul Haq ASI (PW-02) reveals that both these witnesses are not trustworthy and reliable witnesses to record conviction of the accused facing trial. The reasons are discussed as below:

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2. The seizing officer (PW-04) during his cross examination stated that a number of villages were searched during gusht however he do not remember their names. The marginal witness (PW-02) stated in cross examination that during gusht at village Lahor, they have gone through a number of villages and therefrom Lahor they lastly received information regarding the present occurrence and took away to the spot location to village Jalsai. However such fact of receiving the information has neither been mentioned in the Murasila by the complainant nor during his examination in chief. This fact creates serious doubt in the story of the prosecution. The seizing officer (PW-04) stated in cross examination that there was no checking on the day of occurrence however the occurrence had taken place when they were set in motion for gusht. He also stated that nobody was searched neither before the present occurrence nor after it. The marginal witness (PW-02) during his cross examination stated that this was about 8 minutes earlier before the present occurrence that they had started checking while moving on. He also stated that one hour after the checking was started, they finished the checking. Thus, the seizing officer (PW-04) and marginal witness (PW-02) have contradicted each other on the point of checking which is



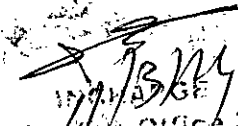
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another dent in the story of the prosecution. The seizing officer (PW-04) during cross examination stated that on arrival of the IO on the spot location, the case property was still available there. Marginal witness (PW-02) stated that on the arrival of the IO the case property along with the accused were still available there. The seizing officer (PW-04) during his cross examination stated that there was no wrapper around the contraband. The marginal witness (PW-02) during his cross examination stated that the wrapper of the contraband was yellow in colour. The seizing officer (PW-04) during his cross examination stated that the contraband was containing in separate slabs and not was in a single slab. The marginal witness (PW-02) stated that whole case property was in single slab having no multiple layers. Similarly, the seizing officer (PW-04) during his cross examination stated that there was no place of protection for the local police who have avoided the public eyes. On the other hand, marginal witness (PW-02) stated in cross examination that there was place of protection for the local police in the shape of bushes.

10. Thus, both these witnesses i.e. complainant (PW-04) and marginal witness (PW-02) are not truthful and reliable witnesses, which creates serious doubt regarding the actual

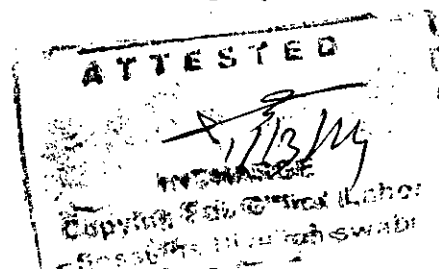
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mode and manner of the recovery and its genuineness. The above facts have seriously contradicted the story of the prosecution regarding the recovery of narcotics from the accused facing trial and its investigation by the PW-07.

11. The presence of police officer, on official duty, can only be verified through the entries in daily diary of a Police Station showing his departure from the Police Station and his arrival thereto. However, the extracts of the said daily diary regarding the departure of the complainant/seizing officer from the Police Station were never brought on record. Such fact is admitted by the investigation officer PW-05 during his cross examination that he has not placed on file the extracts of the DD regarding departure of the seizing officer from police station to confirm his movement at the relevant date and time. This shows that the very presence of the seizing officer and the accused facing trial at the spot as given in the Murasila EX.PA/1 is too disputed. The prosecution could not prove the presence of the seizing officer at the spot and therefore, the mode and manner of the occurrence in the present case is very much disputed.

12. As per the story of the prosecution, the recovery memo and the card of arrest were prepared prior to the registration of the case at the spot. At the time of preparation



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of these documents, the case FIR was in field, thus the seizing party had no information regarding the number of the FIR. However, in the headnote of the said documents, the number of case FIR has been mentioned which doubt the mode and manner of the preparation of the recovery memo and card of arrest as has been alleged by the prosecution is seriously doubtful. It appears that both the documents were never prepared at the spot but later on prepared at the Police Station after the registration of the case.

13. So far as the positive FSL report available on file is concerned, the same would show that several tests (rapid tests) were conducted by the forensic authorities for the specification of samples as Charas (Cannabis Resin) which include Duquenois-Levine (DL) and Thin layer Chromatography (TLC). At this stage, it is also pertinent to mention that in every case the endeavour shall be to achieve the highest form of selectivity which is always done through Structural Information supported by Chemical and Physical Characteristics. This Highest Standard is obtained through Techniques mentioned in Category A i.e. Mass Spectrometry etc. This sincere endeavour of highest selectivity is missing in case in hand. "DL" and "TLC" tests were applied by Forensic Authorities for obvious reason of

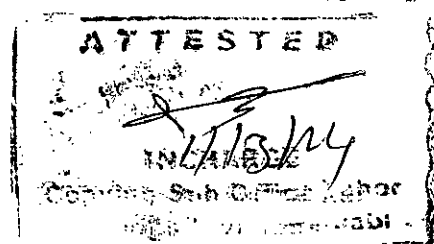
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being the most easy, simple and inexpensive tests. In absence of mandatory, confirmatory tests, FSL report is inconsequential.

14. Another material lacuna which is transpired from perusal of FSL report EX.PK is that no chemical analysis etc were conducted in respect of each sample separately. No doubt, four samples of 05 grams each were received by FSL for examination. The chemical examiner was duty bound to conduct analysis of each sample separately and mention the results along with protocols accordingly. This mandatory requirement is substantially missing in FSL report EX.PK.

15. According to prosecution 05 gram samples were separated from each parcel of charas (parcels No.01 to 04). In this scenario, the prosecution was duty bound to connect the samples with its origin beyond the shadow of any reasonable doubt. To avoid such doubt prosecution was required to mark numbers on each parcel as well as numbers on each representative sample. In other words, this separate numbering was essential in order to dislodge the doubt of preparation of samples from one parcel or / and to confirm that there is representative sample from each parcel. The testimonies of the seizing officer (PW-04) and marginal witness (PW-02) as well as contents of Murasila are

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suggestive of the fact that the parcels of charas as well as its representative samples were not separately numbered.

16. To prove the safe custody of the case property at the Police Station, and the safe transmission of the samples to the FSL, the prosecution relied upon the statements of Maqsood Ali ASI (PW-03) and constable Fareed 148 (PW-01) and the extracts of register No.19 and 21 as EX.PW3/1 and EX.PW3/2. PW-03 stated in his examination-in-chief that complainant of the case handed over to him parcel No.01 to 04 containing 5/5grams charas and parcel No.05 containing 4035-grams charas regarding which he made entry in register No.19 and 21. The application for sending the representative samples to the FSL which is a carbon copy, bear the reference of receipt No.978/21K with date of dispatch as 20/09/2021, but the date of dispatch has been changed by writing the digit 20 with blue ink which questions the authenticity of the said document and seriously dispute the date of dispatch of the samples to the FSL. Moreover, as per the FSL report EX.PK, the date of receipt of samples is 20/09/2021 but the extracts of register No.19 available on the record would show the date of dispatch of the samples as 18/09/2021. The samples received to the FSL laboratory with a delay 03 days which

Handwritten notes in Urdu: "مکمل" and "مکمل"

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Officer in Charge Lahor
District Swabi

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has never been explained by the prosecution. Though, a note is given on the FSL application that Saturday and Sunday are public holidays that's why the samples were sent to FSL on 20/09/2021, however the FSL laboratory remained opened even on the public holidays to receive the case property in narcotics cases. Thus, the safe custody and safe transmission of samples from the spot to the police station and thereafter from the police station to the FSL could not be established by the prosecution in which circumstances the positive report of the FSL is of no use for the case of the prosecution.

17. In view of the contradictory statements of the seizing officer, marginal witness and the investigation officer, the prosecution could not prove the recovery of the contraband from the possession of the accused facing trial. In similar way, the prosecution has failed to prove the safe custody of the case property at the police station and the safe transmission of the samples from police station to the FSL as a result whereof the positive FSL report EX.PK has no legal worth, and the prosecution could not prove the contraband allegedly recovered from the possession of the accused facing trial was in fact charas.

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18. Resultantly, by extending the benefit of doubt, the accused facing trial Ahmad Ali is hereby acquitted of the prosecution charge. The accused facing trial is in custody; he be released forthwith if not required to be detained in jail in any other case/crime.

19. Case property i.e Charas be confiscated to the State and same be disposed of in accordance with law but after expiry of period of appeal/revision.

20. File be consigned to Record Room after its completion and compilation.

Announced:

06/03/2024

(Syed Hamid Qasim)

Additional Sessions Judge-I/JSC.

Swabi at Lahor

CERTIFICATE

It is certified that this judgment comprising of (12) Twelve pages. Each page has been checked, corrected and signed by me wherever it was necessary.

(Syed Hamid Qasim)

Additional Sessions Judge-I/JSC.

Swabi at Lahor

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Division Swabi

(POWER OF ATTORNEY)

18

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR

Service Appeal No. 387/2023

AHMAD ALI

VS

POLICE & OTHERS

I, Ahmad Ali do hereby nominated and appointed **MUHAMMAD MAAZ MADNI**, Advocate High Court, Peshawar, to be counsel in the above matter for me/us and on my/our behalf as agreed to appear, plead, act and answer in the above court or any appellate court or any court to which the business is transferred in the above matter as and is agreed to sign and file petition, appeals, statements, accounts, exhibits, compromises or other documents whatsoever, in connection with the said matter arising there from and also to apply for and receive all documents or copies of documents, depositions etc and to apply for and issue summons and other writs or subpoena and to apply for and get issued any arrest, attachment or other execution, warrants or order and to conduct any proceedings that may arise there out; and to apply for and receive payment of any or all sums or submit the above matter to arbitration, and to employ an other legal practitioner authorizing him to exercise the power and authorities hereby conferred on the advocate whenever he may think fit to do so.

AND to do all acts legally necessary to manage and conduct the said case in all respects whether herein specified or not, as may be proper and expedient.

AND I/WE hereby agree to ratify and confirm all lawful acts done on my/our behalf; under or by virtue of these present or of the usual practice in such matter. PROVIDED always that I/WE undertake at the time of calling of the case by the court I/MY authorized agent shall inform the advocate and make him appear in the court, if the case, may be dismissed in default, it be proceeded ex-parte the said counsel shall not be held responsible for the same. All costs awarded in favour shall be the right of the counsel or his nominee, and if awarded against shall be payable by me/us.

IN WITNESS WHERE OF I/We hereunto set MY/OUR hand to these presents, the contests of which have been explained to and understood by ME/US this 15th day of May 2024.

EXECUTANT Ahmad
(Ahmad Ali)

Accepted subject to the terms regarding fees:

MUHAMMAD MAAZ MADNI,
ADVOCATE HIGH COURT, PESHAWAR
BC No.(BC-11-1460)
CNIC No. 17101-9263898-1

OFFICE: KHATTAK LAW ASSOCIATES,

TF-291 & 292, Deans Trade Centre, Peshawar Cantt.

Contact#: 0333-9313113, 0314-9965666