

21

IN THE COURT OF SHAUKAT AHMAD KHAN
SESSIONS JUDGE, ORAKZAI (AT BABER MELA)

CRIMINAL REVISION NO. : 1/10-R OF 2023
DATE OF INSTITUTION : 12.01.2023
DATE OF DECISION : 15.02.2023

ABDUL WAHID S/O AKRAM KHAN, R/O CASTE MALAK DIN KHEL,
DISTRICT KHYBER, PRESENTLY RESIDING AT VILLAGE
LAGHONAY, TEHSIL LOWER, DISTRICT ORAKZAI

..... (PETITIONER)

-VERSUS-

1. SHAHZAD KHAN S/O NADAR KHAN
 2. PALOS KHAN S/O MUSHARAF KHAN
 3. ASMAT ULLAH S/O ZARIF KHAN
- ALL RESIDENTS OF CASTE MANDRA KHEL, TAPPA MADAD KHEL,
VILLAGE LAGHONAY, TEHSIL LOWER, DISTRICT ORAKZAI


..... (RESPONDENT)

Present: Muhammad Arif Jaan Afridi Advocate for petitioner.
: Abid Ali Advocate of respondent No. 3.
: DPP, Umar Niaz for the State.

JUDGEMENT
15.02.2023

Impugned herein is the order and judgment dated 28.10.2022 of learned Judicial Magistrate-I, Tehsil Kalaya, District Orakzai vide which complaint u/s 133 CrPC of the petitioner has been dismissed.

- (2). The petitioner Abdul Wahid through a complaint u/s 133 CrPC before the court of learned Judicial Magistrate-I, Tehsil Kalaya, District Orakzai claimed that he being residing in Laghonay, District Orakzai along with other co-villagers are using a road/thoroughfare since long but the respondents have blocked the same which has caused inconvenience to the public. After conducting inquiry through SHO, the learned trial court passed a conditional order directing the respondents to remove the obstruction or show cause as to why the obstruction should not be removed. Respondents No. 1 & 2 raised no objection upon


Shaukat Ahmad Khan
District & Sessions Judge,
Orakzai at Baber Mela
15/02/23

opening of the said road/thoroughfare while respondent No. 3 submitted reply of the notice and contented that there is no road/thoroughfare rather the property in question is his ancestral property and that there is a separate road constructed by the government for approach of the public to their houses.

The parties were given opportunity to produce their evidence. Accordingly, petitioner appeared in the witness box as PW-1 and also produced Aziz Khan, Mazhar Khan and Hadi Khan as PW-2 to PW-4. On the other hand, respondent No. 3 besides testifying as RW-1, produced Wajid Khan and Muhammad Sahib as RW-2 and RW-3 respectively.

After having heard the arguments, the learned trial court dismissed the complaint of petitioner. Being aggrieved of the impugned judgment, petitioner filed the instant criminal revision petition.

(3). I heard arguments heard and record perused.

(4). It is evident from the record that the petitioner claims the thoroughfare in question as a public road/way blocked by the respondents. On the other hand, the contesting respondent No. 3 admitted the blockage of the thoroughfare in question but denied it to be a public way. The petitioner in order to prove his contention has appeared in witness box as PW-1, wherein he has contended that he is residing in village Laghonay since his forefathers. A thoroughfare linking his house with the main road was blocked by the respondent, Asmat Ullah. The dispute was settled through a Jirga and an alternate pathway was provided by the respondent which has also been blocked by him for about

Shaukat Ahmad Khan
District & Sessions Judge
Orakzai at Baber Mela
15/07/23

06/07 years and that the public has also been using the said thoroughfare. The other witnesses in their statements have also narrated the same story. However, in cross examination the petitioner as well as his witnesses have admitted that the thoroughfare in question was ended at the house of petitioner and that the petitioner has used the same for approach to his house in a vehicle. Not a single person from public has been produced as to testify to the fact that the thoroughfare in question has been used by him as a member of public society. Even none of the PWs produced by the petitioner has spoken a single word in this respect.

- (5). In view of what is discussed above, it is held that there is private dispute between the parties over a thoroughfare and there is no public road or thoroughfare on the spot. The learned trial court has rightly held that no action can be taken u/s 133 CrPC in the circumstances. Hence, the instant criminal revision petition is dismissed being devoid of merits. File of this court be consigned to record room and copy of this judgment be sent to learned trial court for information.



Pronounced
15.02.2023

SHAUKAT AHMAD KHAN
Sessions Judge, Orakzai
at Baber Mela

CERTIFICATE

Certified that this judgment consists of three (03) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 15.02.2023

SHAUKAT AHMAD KHAN
Sessions Judge, Orakzai
at Baber Mela