

Order...35

31.03.2023

Present:

SPP for the state.
Accused Fareed Khan on bail in person.
Accused Akhtar Gul is exempted.
Complainant absent.

Accused Akhtar Gul and Fareed Khan are charged in case FIR No. 33, dated 13.09.2021, U/S 380/34-PPC of PS Upper Ghiljo, District Orakzai.

Brief facts as per FIR are that complainant namely Muhammad Fawad on 12.09.2021 at 1100 hours, reported to the local police through daily dairy No.7 that he works with a construction contractor as accountant. On 08.09.2021 when he went to the site of construction, he found out that five bundles of wire and other construction material, all worth Rs.50,000/- were stolen on the night of 07.09.2021. That he is convinced that the said theft was committed by the accused namely Akhtar Gul and Farid khan. The said complaint was later on converted into FIR No.33 dated 13.09.2021.

After completion of investigation, challan was put in court and the accused were summoned. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed U/S 380/34-PPC, to which the accused did not plead their guilt and claimed trial, therefore, the prosecution was called to produce evidence in support of their case.

The prosecution has produced four witnesses and their statement were recorded. Thereafter, counsel for accused filed application U/S 249-A Cr. PC for acquittal of the accused.

Arguments from the counsel for accused and learned SPP already heard and record perused.

Continued...

Samj Ullah
31.03.2023
Samj Ullah
Civil Judge/JM-I
Orakzai (Babar Mela)

Order...35

Continued.

31.03.2023

Record would show that the alleged occurrence took place on 07.09.2021 and the complainant recorded compliant in shape of daily dairy No.7 dated 12.09.2021 at PS Ghiljo, Upper Orakzai, which shows that there is unexplained delay of Five days in setting the criminal law in motion.

This is unseen occurrence and the complainant has charged the accused directly in his complaint. The source of this information has not been disclosed in the investigation. Moreover, there is no on the spot arrest of the accused in the instant case.

Coming to the recovery made by the police, total three bundle wires of different sizes has been recovered by the pointation of the accused. But no independent private witness was associated with the said recovery. Moreover, the said case property has not been exhibited nor were produced before the court in the course of evidence. Furthermore, there is nothing available on record to show that the said case property was taken on Superdari nor have the complaint applied for the same. Which shows the disinterest of the complainant in the case property and which further creates doubt that the said case property might not be the same which has been stolen.

Moreover, accused have not confessed their guilt before the court. The complainant of the instant case despite notices remained absent on dates of proceedings and has never showed up.

Thus, keeping in view, the above discussion, there is no probability of conviction of the accused in the instant case as there are so many dents and doubts in the prosecution case.

Continued.

Lami Ullah
31.03.2023
Sami Ullah
Civil Judge/JM-I
Orakzai (Babar Mela)


Order...35
Continued.
31.03.2023

The trial court can acquit accused U/S 249-A Cr. PC at any stage of the proceedings. Keeping in view the available record, if it is held that there is no probability of conviction of accused. Recording of full prosecution evidence would be a futile exercise and wastage of precious time of the court.

Resultantly, application is **Allowed**. Accused facing trial are acquitted in terms of Section 249-A Cr. PC from the charges leveled against them in case FIR No. 33 Dated: 13.09.2021 U/S 380/34-PPC registered at PS Upper Ghiljo, District Orakzai. Accused are on bail. Bail bonds stands canceled and sureties are discharged from their liability. Case property, if any be dealt with in accordance with law.

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

Announced:
31.03.2023


Sami Ullah
Judicial Magistrate-1,
Orakzai at Baber Mela.