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IN THE COURT OF ZAHIR KHAN,
JUDICIAL MAGISTRATE-I, TEHSIL KALAYA, ORAKZAI

Case No. 59/2 of 2021

Case FIR No. 79 Dated: 21.06.2021 U/S 337-F(i), 342,387,148,149 PPC,
PS Kalaya

Order. No. 23


18.04.2023

APP for the state present. Accused Muhammad Anwar and Ayub on bail along with counsel present. Rest of the accused are exempted. Complainant absent. Arguments on application U/S 249-A Cr. PC already heard and record gone through.

Brief facts as per contents of FIR are that complainant namely Mushtaq Khan has charged accused facing trial (eight in number) for forcibly taking away his excavator machine with cash of Rs. 200,000/- in its tool box, for wrongful confinement and beating of the driver and cleaner of the excavator machine after forming unlawful assembly.

Accused were arrested and later on, released on bail. Complete challan was put in court against the accused. Accused were summoned. They appeared before the court. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused. Prosecution produced 02 witnesses.


01) PW-01, constable Nikzad Ali who is one of the marginal witnesses to the recovery memo Ex. PW-1/1, vide which SI Shal Muhammad took into possession excavator model 2011 DX-140 JMA parked in front of the house and Hujra of the accused namely Zia and Rustam facing trial. Tool box of the excavator was checked, however, the alleged stolen amount of Rs. 200,000/- was not found therein.


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02) PW-02, SI Aftab Hassan, who partially investigated the case. The case was initially investigated by SI Shal Muhammad and when he became SHO PS Kalaya, case file was entrusted to him for onward investigation. On 21.06.2021, SI Shal Muhammad took into possession excavator Model 2011 DX-140 JMA parked in front of the house and hujra of accused Zia and Rustam in his presence. Tool box of the excavator was searched and no alleged stolen cash amount was recovered from it. As accused Mujahid was absconding, therefore, he, vide his applications Ex.PW-2/1 and Ex.PW-2/2 applied for warrant of arrest u/s 204 and proclamation notices u/s 87 Cr.PC. On 27.08.2021, he formally arrested the accused Mujahid Khan and issued his card of arrest Ex.PW-2/3. On 28.08.2021, he produced the accused before Illaqa Magistrate with request for his 03-days physical custody which was turned down and accused was committed to judicial lock-up. Application for physical custody is Ex.PW-2/4. He recorded statement of accused u/s 161 Cr.PC.

Per Ex.PW-1/1, the excavator machine, parked in front of the house and hujra of accused Zia and Rustam, was recovered by SI Shal Muhammad however, PW-01 in his cross examination stated that house of accused Rustam is situated in Jalaka Mela while house of accused Zia is situated in Speen Dara. There is a distance of about 08 KM between Jalaka Mela and Speen Dara. He further deposed that at the time of recovery of the excavator machine, accused Zia and Rustam were not arrested. Similarly, PW-02 stated in his cross examination that no private/independent person was associated during recovery proceedings. He further deposed that accused did not confess their guilt before him and per his investigation, there is no criminal history of the accused facing trial.

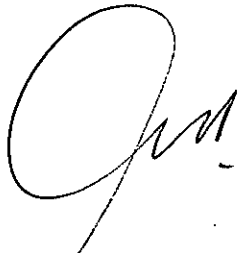

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Per contents of FIR, no specific role has been attributed to the accused facing trial. Nothing incriminating has been recovered from possession or on pointation of accused facing trial. Accused have not confessed their guilt before the court. There is no criminal history of accused facing trial. Moreso, complainant Mushtaq Khan effected compromise with accused facing trial at the time of ad-interim pre-arrest bail by the accused which fact is duly reflected in bail before arrest confirmation order dated 15.07.2021 passed by the Worthy District & Sessions Judge, Orakzai. Per reports of DFC, complainant has gone abroad (Qatar) while the alleged injured Jumma Rehman has gone to Balochistan Province. Challan was put in court against the accused facing trial on 28.09.2021 and since then, neither the complainant nor the injured appeared before the court which shows their lack of interest in prosecution of the case. Accused facing trial are facing agony of trial since 2021. Even otherwise, there is no probability of conviction of accused on the basis of available record.

There are so many dents and doubts in case of prosecution. Recording of remaining evidence would be a futile exercise and wastage of precious time of the court.

Keeping in view the above facts and circumstances, it is held that there is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused are acquitted from the charges levelled against them. They are on bail. Their sureties stand discharged from their liability.


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Case property i.e. excavator machine has already been released on Superdari by the court.

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

Announced.
18.04.2023



(Zahir Khan)
Judicial Magistrate-I,
Tehsil Kalaya, Orakzai