

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

CRIMINAL REVISION NO. : 2/10-R OF 2023
DATE OF INSTITUTION : 10.05.2023
DATE OF DECISION : 30.05.2023

STATE THROUGH DISTRICT PUBLIC PROSECUTOR

..... (PETITIONER)

-VERSUS-

SHAFI ULLAH S/O MOMIN KHAN, R/O CASTE MALA KHEL,
DABORI, DISTRICT ORAKZAI

..... (RESPONDENT/CONVICT)

Present: DPP, Umar Niaz for State

JUDGEMENT

30.05.2023

Impugned herein is the order/judgment dated 03.04.2023 of Sub-Divisional Forest Magistrate Upper, Orakzai vide which the respondent/convict Shafi Ullah s/o Momin Khen being charged in Challan No. Nil, dated 29.03.2023, u/s 58/59 of the Forest Ordinance 2002, has been convicted with fine of Rs. 35,000/- returning the vehicle along with wood to the respondent/convict.

- (2). SDFO, Orakzai vide Challan No. Nil, dated 29.03.2023, u/s 58/59 Forest Ordinance, 2002 has made a report to the fact that Noor Muhammad Forester along with Saif Ullah Forester and the police party, acting on secret information having laid a picket on the spot, were present over there when at the time of occurrence a pick-up bearing Registration No. 7664/Peshawar was stopped, the search of which led the forester officials to the recovery of 89 planks of wood of the nature *Khael* regarding which the driver namely,

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Shafi Ullah s/o Momin Khan, the respondent/convict could not produce any license or valid permit, hence the present case.

On 01.04.2023 the respondent/convict was produced before the Sub Divisional Forest Magistrate Upper Orakzai where the respondent/convict was convicted as below;

"Today on 01.04.2023, the accused appeared before the court. Saif Ullah and Noor Ahamad both Foresters (representing state) were also present. The accused was told that he may plead this case through a counsel. However, he himself pleaded not guilty and stated that the wood were taken from Qaumi forest and were to be used in construction of his house which is badly affected during militancy and were not meant to be sold or transport to other district. He further argued that the vehicle was caught by the representative of Forest department within the territorial limits of District Orakzai. He further requested that as he was not aware of the legal procedure for transportation of timber within the district so he may be exonerated as he was not transporting the timber outside the district. He pleaded not guilty and requested that being an extremely poor person who can neither pay heavy fines nor afford expensive construction material, his vehicle and planks may kindly be released. However, the forest representative argued that the accused had no permit for transportation of timber within the District.

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Keeping in view the above, it is concluded by this court that the vehicle along with wood planks be released after recovering of a fine of Rs. 35000/- (thirty-five thousand only) on strong surety bonds".

The District Public Prosecutor Orakzai, being aggrieved of the order, filed the instant appeal. The main arguments of the learned DPP for the state was that the order/judgment of the Sub Divisional Forest Magistrate, is ab-initio void, as the trial of respondent/convict has neither been conducted under chapter XX of CrPC relating of trial of cases by Magistrate nor under chapter XXII relating to summary trials and that the relevant provisions of the Forest Ordinance, 2002 regarding confiscation of wood and conveyance used in the transportation of wood, have also not been complied with. The respondent/convict did not opt to engage a private counsel and submitted that he is a poor person and was taking the wood for personal use.

- (3). After having heard the arguments and going through the record, it is observed that as the offence for which the respondent/convict is charged is punishable with imprisonment which may extend to 06 months or with fine which may extend to Rs. 30,000/- or both; therefore, the same was summarily triable under chapter XXII of the Criminal Procedure Code, 1898 where, as per section 262 of the ibid code, during trial the procedure prescribed for trial by

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Magistrate under chapter XX shall be followed except the procedure prescribed u/s 263 and 264 of CrPC. Section 263 CrPC deals with record of the cases where no appeal lies which is reproduced as below;

“In cases where no appeal lies. The Magistrate or Bench of Magistrate need not record the evidence of the witnesses or frame a formal charge; but he or they shall enter in such form as the Provincial Government may direct the following particulars;


- (a) the serial number,
- (b) the date of the commission of the offence;
- (c) the date of the report or complaint;
- (d) the name of the complainant (if any);
- (e) the name, parentage and residence of the accused;
- (f) the offence complained of and the offence (if any) proved, and in cases coming under clause (d), clause (e) clause (f) or clause (g) of sub-section (1) of section 260 the value of the property in respect of which the offence has been committed.
- (g) the plea of the accused and his examination (if any),
- (h) The finding, and, in the case of a conviction, a brief statement of the reason therefore,
- (i) The sentence or other final order, and
- (j) the date on which the proceeding terminated.

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Section 264 CrPC deals with record in appealable cases which is reproduced as below;

“In every case tried summarily by a Magistrate or Bench in which an appeal lies, such Magistrate or Bench shall record the substance of the evidence and also the particulars mentioned in section 263 and shall, before passing any sentence, record a judgment in the case”.

As the orders passed by Special Forest Magistrate are appealable u/s 97 of the Forest Ordinance, 2002, before the court of District & Sessions Judge; therefore, the learned Sub Divisional Forest Magistrate was required to have followed the procedure prescribed in section 264 of the CrPC. But as evident from the impugned judgment/order the learned Sub Divisional Forest Magistrate has not followed the procedure prescribed by the law mentioned above; therefore, the impugned judgment/order dated 03.04.2023 of Sub Divisional Forest Magistrate is void ab-initio; hence, the same is set aside. The case is remanded back to Sub Divisional Forest Magistrate Upper Orakzai with the directions to decide the same afresh after following the procedure prescribed by law mentioned above. File of this court be consigned to record room. Copy of this judgment along with record be sent to Sub Divisional Forest Magistrate Upper Orakzai for information and compliance. The representative of Forest department is


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directed to appear before the office of Sub Divisional Forest
Magistrate Upper Orakzai on 06.06.2023.

Pronounced
30.05.2023



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CERTIFICATE

Certified that this order consists of six (06) pages. Each
page has been read, corrected wherever necessary and signed
by me.

Dated: 30.05.2023



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