

In the name of almighty Allah who has unlimited jurisdiction over and beyond the universe.

BEFORE THE COURT OF
ADDITIONAL SESSIONS JUDGE, ORAKZAI

Cr. Revision No. 2/12 (R) of 2023

Date of institution: 01.04.2023

Date of decision: 06.06.2023

Muhammad Haneef son of Khan Haider r/o Qaum Mala Khel, village
Kharkay, Tehsil Upper District Orakzai. **(Petitioner/complainant)**

...Versus...

Kameen Gul son of Shana Gul r/o Qaum Mala Khel, village Kharkay, Tehsil
Upper District Orakzai. **(Respondent/2nd party)**

**Criminal Revision against Judgement dated 28.02.2023 in complaint No.
3/133 of 2022.**

JUDGMENT

Muhammad Haneef, petitioner/complainant has invoked the criminal jurisdiction of this Court in instant Revision, being dissatisfied from Order dated 28-02-2023, passed by learned Senior Civil Judge, Orakzai; whereby, the complaint under Section 133 of Code of Criminal Procedure 1898 was dismissed being meritless.

2. Brief facts of the case are such that public thoroughfare located nearby the dwelling house of the respondent is in the use of general public since long. The respondent has blocked the street by putting wood in the same which has caused inconvenience to the complainant as well as to all the co-villagers that has given birth to public nuisance. Consequently, preventive and curative jurisdiction of the learned Area Magistrate has been attracted in petition under Section 133 Code of Criminal Procedure, 1898 registered as 3/133 of 2020.

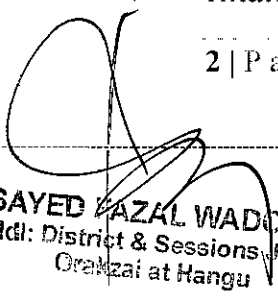
3. On receiving the complaint, learned area Magistrate, after recording the statement of the petitioner/first party on oath, issued notice to the S.H.O

concerned for inquiry and report. The S.H.O concerned visited the spot and recorded statements followed by presentation of Inquiry Report dated 07-10-2020. It was reported that the disputed thoroughfare is used by general public which has been blocked by the respondent on putting wood in the same.

4. Inquiry Report dated 07-10-2020 was acted upon by learned Judicial Magistrate and respondent was directed to remove the wood from the said access and open the way for use of general public through conditional order dated 07-10-2020. Show Cause Notice was issued to respondent; whereon, respondent has filed objection. Counsel representing parties have been heard and the conditional order dated 07-10-2020 was converted into absolute vide Order No. 8 dated 04-02-2021 by the then learned Magistrate.

5. The respondent being aggrieved presented Criminal Revision in the Court of the then learned ADJ-II Orakzai, praying therein the dismissal of petition for removal of nuisance. The case was remanded back with the direction to decide the petition after procurement of evidence of the parties; however, the conditional order dated 07-10-2020 of the learned Area Magistrate was kept intact.

6. Petition was registered on its old Number Neem and parties have been asked to adduce evidence. The complainant produced 05 witnesses. Israfeel appeared as CW-01 who stated that there are three main thoroughfare of Qaum Mala Khel, one from Dabori to Kharki Talab, the second is from Dabori to Baran Talab and third is from Dabori to Roonre Talab. The dispute is on a Kacha thoroughfare and the same is ownership of the respondent situated in front of his house. Mr. Abdu Sattar appeared as PW-2, who stated that 03 thoroughfares come out of Dabori and that the disputed thoroughfare to through Jalo and a hill and finally reaches Ghaz Tang. Mr. Zareem Khan appeared as CW-03, who state that


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the disputed thoroughfare is a public thoroughfare since long but the same is blocked by the respondent. CW-04 is the statement of Mr. Seena Gul who stated that there are three thoroughfares coming out from Dabori but disputed one is blocked by the respondent. The complainant Muhammad Haneef, himself appeared as PW-5, who narrated the same story as in the complaint. In rebuttal, the respondent produced himself RW-01 as a single witness, who fully denied the claim of the complainant by stating that the disputed thoroughfare is his own property which is not a public thoroughfare.

7. On procurement of evidence, counsel representing parties have been heard and petition for removal of public nuisance was turned down vide Judgement dated 28-02-2023. The complainant being aggrieved knocked the door of this Court in instant Criminal Revision which is under adjudication.

8. Learned counsel representing petitioner/complainant argued that the photographs of the disputed pathway clearly reflects blockage. The complainant is not a single person aggrieved rather all the residents residing in the neighborhood are suffering in general. The Police Report dated 07-10-2020, clearly indicates that it is clear case of public nuisance and was dismissed without proper consultation of law. All the requirements of Criminal Revision can collectively be attracted for reversal of the questioned order.

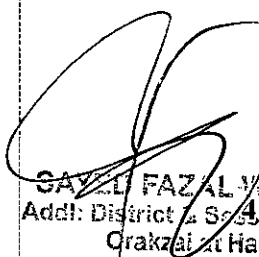
9. Learned counsel representing respondent/2nd party was of the stance that the matter agitated is not falling within the ambit of public nuisance. The petitioner is residing in the area alone and using the disputed land as pathway in a peaceful environment. There is no issue involved and if it all, there is an issue, that may be determined by civil court. Dismissal of complaint was natural outcome of the proceedings that is being backed by law. He concluded that the

revision in hand is not maintainable on other grounds including its form and frame. Review is not competent in criminal jurisdiction and if at all can slightly be scoped; even then, it can only be presented to similar Court.

10. The technical aspect of the case is taken first for its consideration being matter of procedure. The opening part of the document under adjudication categorically speaks about being review petition; however, its contents qualifies the form and frame of criminal revision. In a case reported as 1990 PCr.LJ 1477, it has been settled that Criminal Revision is appropriate and adequate remedy against Order passed under Section 133 of Code of Criminal Procedure, 1898 and thus revision is competent. Therefore, the review petition is converted into criminal revision for securing the interest of justice and to avoid technical knockout as well.

11. Provision of the Section-133 of the Criminal Procedure Code, 1898 is meant to redress complaint of public nuisance in a speedy manner with the ultimate goal of avoiding irreparable loss and eminent danger. The unlawful obstruction to any way lawfully used by the public is falling within the ambit of public nuisance. But before invoking the above provision, it is necessary to be satisfied that the act or omission is public nuisance rather a civil dispute between individuals and that eminent danger to the public interest exists. Preservation and improvement of environment is another area to be looked into while proceeding with the matter of public nuisance. In this legal background, the following points shall be clarified in inquiry or evidence or both for reaching to the just conclusion of the matter.

- i. Acts or illegal omission on part of respondent?
- ii. Cause injury to the public in general?


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iii. What is the eminent danger and emergency?

12. The parties have been provided opportunity of leading evidence. It has categorically been admitted by all the PWs that the disputed thoroughfare is under use of no one except the complainant and thus it does not qualify the nuisance as public one. It has further been admitted that other access are also available to the complainant and if there is issue that shall be counted as that of civil nature existed between two individuals. Legal requirements to established public nuisance have not been proved during course of evidence. Comfort of the community has not been disturbed.

13. Discussion under Paragraph No. 10 to 12 is reflecting that, the impugned order of dismissal is well reasoned and backed by Law. Consequently, instant revision petition stands Dismissed. Requisitioned record be returned back with copy of this Judgment and file of this Court be consigned to District Record Room Orakzai after necessary completion and compilation within span allowed for.

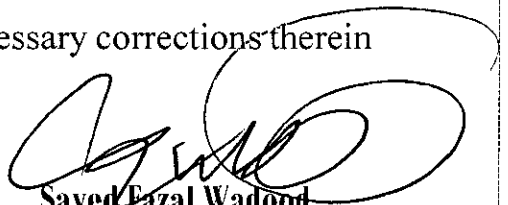
Announced in the open Court
06.06.2023



Sayed Fazal Wadood,
AD&SJ, Orakzai at Baber Mela

CERTIFICATE.

Certified that this Judgment consists of Five (05) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.



Sayed Fazal Wadood,
AD&SJ, Orakzai at Baber Mela