

IN THE COURT OF ADDITIONAL SESSIONS JUDGE-II
ORAKZAI, AT BABAR MELA

Criminal Revision No.1/10 of 2021

Date of institution.....17.02.2021

Date of decision.....03.03.2021

**Kameen Gul s/o Shana Gul r/o Kharkay, Ghiljo Tehsil upper District
Orakzai** **(Petitioner)**

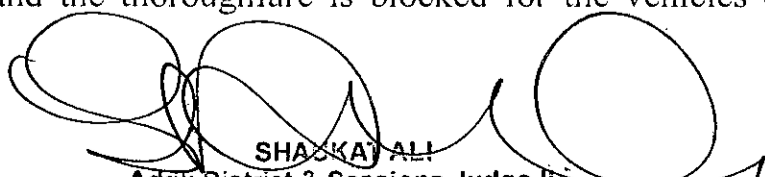
VERSUS

**Muhammad Hanif s/o Khan Haider r/o Kharkay, Ghiljo Tehsil Upper
District Orakzai** **(Respondent)**

JUDGMENT

Petitioner (Respondent in the complaint u/s 133 Cr.PC) through the instant criminal revision petition has assailed the legality of order dated 04-02-2021 of learned Judicial Magistrate-I, Orakzai, vide which the conditional order dated 07-10-2020 issued u/s 133 Cr.PC was made absolute and the SHO PS concerned was directed to open the thoroughfare for public use and removed the barriers installed by the petitioner in the disputed thoroughfare.

Brief facts of the case are that the respondent (Complainant in the complaint u/s 133 Cr.PC) on 01-10-2020 instituted complaint u/s 133 Cr.PC that the respondent along with the petitioner are the resident of same locality and the respondent is using the disputed thoroughfare along with other people of the village since his forefathers, that the petitioner on 12-09-2020 blocked the disputed thoroughfare by erecting a piece of wood in the thoroughfare, that the thoroughfare is blocked through which tractor and pick up vehicle could not pass and the thoroughfare is blocked for the vehicles of all


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villagers. The respondent through his petition u/s 133 Cr.PC prayed for the opening of disputed thoroughfare.

The learned Judicial Magistrate recorded the statement of complainant/respondent u/s 200 Cr.PC and notice was issued to the SHO PS Upper Orakzai with the direction to hold inquiry and submit report. On 07-10-2020 the inquiry report was submitted by the SHO and after hearing preliminary arguments conditional order was issued and the petitioner was directed to remove the barrier installed by him in the road and to appear before the court if he has any objection on the conditional order. The petitioner appeared before the court and on 16-12-2020 submitted his objections and the case was fixed for arguments. The learned Judicial Magistrate after hearing arguments of counsels for the parties relied on the inquiry report and the conditional order 07-10-2020 was made absolute and the SHO was directed to open the thoroughfare for public use and removed the barriers installed by the respondent in the disputed thoroughfare vide order dated 04-02-2021. The respondent feeling aggrieved from the impugn order preferred the instant criminal revision petition.

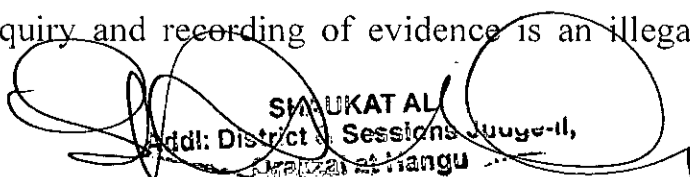
Arguments of the learned counsels for the parties heard and record perused.

The perusal of record would transpire that the learned Judicial Magistrate directed the SHO PS concerned to conduct inquiry and submit his report. The SHO PS concerned in compliance of the court order conducted inquiry regarding the disputed thoroughfare and submitted his report. The learned Judicial Magistrate only relying on the report of

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the SHO passed the final order without recording evidence of the parties and the conditional order dated 07-10-2020 was made absolute. Section 137 Cr.PC provides the procedure where the respondent appears to show cause against the conditional order, the magistrate shall take evidence in the manner provided in Chapter-XX and after recording of evidence if the magistrate is satisfied that the order is not reasonable and proper, no further proceeding shall be taken in the case and if the magistrate is not so satisfied the order shall be made absolute. In the case in hand the petitioner appeared before the court and submitted objection on the conditional order dated 07-10-2020 by submitting that the disputed thoroughfare is the ownership of the petitioner which is his private thoroughfare and the villagers or any other person have no right in the disputed thoroughfare. The petitioner further submitted in his objection petition that there is a separate thoroughfare for the use of people of the village, therefore the conditional order may be withdrawn and the complaint may be dismissed. The petitioner in his objection petition raised such grounds which could only be decided after recording of evidence and it is due to the reason that recording of evidence was made mandatory u/s 137 Cr.PC after submitting of objections on the conditional order. The magistrate cannot make a conditional order absolute only relying on the inquiry report of the SHO without recording evidence. The learned magistrate was required to hold an inquiry by way of recording evidence after objection was filled by the petitioner u/s 133 Cr.PC and final order without such inquiry and recording of evidence is an illegality and


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irregularity. It is also in the best administration of justice and the requirement of fair trial that proper opportunity of hearing must be provided to the parties. Before converting the conditional order dated 07-10-2020 into an absolute order proper opportunity of hearing was required to be afforded to the parties affected by such order but no such opportunity was provided.

As sequel to what has been discussed above, the impugned order dated 04.02.2021 is set aside, which suffers from material illegality and irregularity. The case is remanded to the learned Illaqa Judicial Magistrate-I, Orakzai to decide the same in accordance with law on merits after recording of evidence. The conditional order dated 07-10-2020 shall remain enforced and the thoroughfare shall remain opened till the disposal of the complaint on merits. The parties are directed to appear before the Judicial Magistrate-I on 10-03-2021. The record along with copy of this order be sent to the court of Magistrate concerned.

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

Announced
03rd March, 2021



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CERTIFICATE

Certified that this judgment consists of 04 pages. Each page has been checked, corrected where ever necessary and signed by me.



(SHAUKAT ALI)
Additional Sessions Judge-II,
Orakzai at Babar Mela