

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. 1/12 (R) of 2023

Date of institution: 09.06.2023

Date of decision: 10.08.2023

Noor Muhammad son of Muhammad and 03 others, r/o Shadaly Tambai, Tehsil Lower, District Orakzai. **(Petitioners/complainants)**

...Versus...

Wazir Jafar son of Noor Jafar and 01 other, r/o Qaum Ali Khel, Tappa Panjam, Zanka Khel, presently resident of Shadaly Tambai, Tehsil Lower, District Orakzai. **(Respondents/2nd party)**

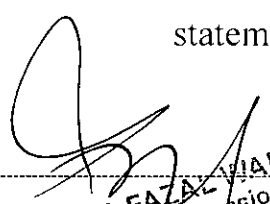
Criminal Revision against Judgement/Order dated 06.05.2023 in complaint under Section 133 Code of Criminal Procedure, 1898 of 2023.

JUDGMENT

Noor Muhammad and others being petitioners/complainants have invoked the criminal jurisdiction of this Court in instant Revision, being dissatisfied from Order dated 06-05-2023, passed by learned Civil Judge-II, Kalaya Orakzai; whereby, conditional order in the complaint under Section 133 of Code of Criminal Procedure 1898 was passed but not implemented.

2. Brief facts of the case are such that public thoroughfare located nearby the dwelling houses is in the use of general public since long. The respondents have blocked such passage by excavation and that sizeable hole has caused inconvenience to the complainants as well as to all the co-villagers which 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 1/13 of 2023.

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


SAYED FAZAL WADOOD
Addl: District & Sessions Judge
Orakzai & Hangu

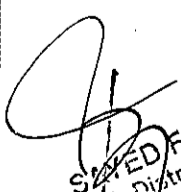
concerned for inquiry and report. The S.H.O concerned visited the spot and recorded statements followed by presentation of Inquiry Report dated 05-02-2023. It was reported that the disputed thoroughfare is used by general public which has been blocked through digging by the respondents.

4. Inquiry Report dated 05-02-2023 was obtained by learned Judicial Magistrate and respondents were issued notices. On procurement of attendance, conditional order was passed; whereon, respondents have been asked to file objection.

5. The petitioners being aggrieved presented instant Criminal Revision praying therein the conditional order for removal of nuisance may be modified followed by issuance of direction to SHO concerned for its implementation; which is under consideration.

6. Learned counsel representing petitioners/complainants argued that all the residents residing in the neighborhood are suffering in general. The Police Report dated 05-02-2023, clearly indicates that it is clear case of public nuisance and conditional order was without proper consultation of law for being ambiguous. It was added that petitioners have been placed at the mercy of respondents for removal of nuisance which is irregularity. All the requirements of Criminal Revision can collectively be attracted for reversal of the questioned order.

7. Learned counsel representing respondents/2nd party was of the stance that the matter agitated is not falling within the ambit of public nuisance. The conditional order is passed within the four corners of law and the remedy available to the petitioners for implementation of order before the learned area magistrate has been ignored. He added that the revision in hand is not maintainable on other


SYED FAZAL WADOOB
Asst. District & Sessions Judge
Orakzai at Hangal

29

grounds including its form and frame. The conditional order has rightly been subjected to invitation of objection those are yet to be submitted.

8. The technical aspect of the case is taken first for its consideration being matter of procedure. 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.

9. 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. Chapter-X-Ss. 133 to 143 of the Code of Criminal Procedure, 1898 deals with the branch of preventive jurisdiction of a Magistrate to redress all categories of public nuisance and required to be taken into consideration jointly. It is well prescribed procedure that Magistrate, on receiving information and examination of complainant on oath followed by initial inquiry make a Judicial mind to pass or not to pass a conditional order being matter of discretion. But, when the Magistrate opts to pass a conditional order, the order should not be vague indefinite and ambiguous. It should be explicit affording in his terms what is directed to be done. Where the Magistrate has failed to follow such clarity of directions, it is nullity in the eye of law and not sustainable. The impugned order is just containing the sentence "conditional order is passed" which is neither clarifying the act or omission to be done nor elucidating what to be complied with.


10. For what has been discussed above, instant Criminal Revision is allowed. Consequently, impugned order dated 06-05-2023 is set aside. The case is

3/P
SAYED FAZAL WABOOD
Additional District & Sessions Judge
Orakzai District

30

remanded to the learned Judicial Magistrate-II Kalaya, Orakzai with the direction to decide the passing of conditional order in accordance with the observation recorded under paragraph No. 9 above. Requisitioned record be returned back with copy of this Judgement and file of this Court be consigned to District Record Room Orakzai after necessary completion and compilation within span allowed for.

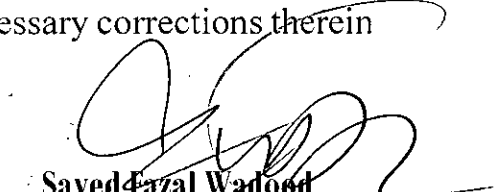
Announced in the open Court
10.08.2023



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

CERTIFICATE.

Certified that this Judgment consists of Four (04) 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