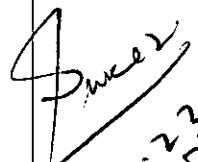


(10)

COURT OF SENIOR CIVIL JUDGE/JM, ORAKZAI AT BABER MELA

Case Title: State VS Tor Khan etc

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order No 13	05.09.2023	<p>APP for the state present. Accused namely Tor Khan and Siyal Badshah on bail present. PWs absent despite of service. Application u/s 249-A Cr.P.C of the accused petitioners is pending adjudication, notice of which is already given to prosecution. Arguments heard.</p> <p>Brief facts necessary for the disposal of instant application are that the above-named accused are facing trial in case FIR No. 20, Dated: 19.10.2022, U/S 430/432/506/186/189/34 PPC of PS: Dabori. Complainant Abdur Rehman, SDO, PHE Ghiljo, District Orakzai wrote a letter No. 1-4/W-1-B, Dated: 27.09.2022 to the SHO, PS Dabori with the subject of Water Supply Scheme, Mazri Garhi, wherein it was mentioned that the accused/petitioners have illegally stopped the installation of pipe line work of the Water Supply Scheme, Mazri Garhi due to which the scheme cannot be completed and consequently, the people of the area also boycott campaign in the past, therefore, it is requested that necessary action may be taken against the accused.</p> <p>After receipt of the said letter, the same was incorporated into Naqalmd No. 03, Dated: 04.10.2022 and an inquiry u/s 157(1) Cr.P.C was initiated. Site Plan was prepared and after recording statements u/s 161 Cr.P.C of the people of the area, the case file was sent for obtaining legal opinion of the learned DPP, Orakzai who opined for registration of the FIR as per law on 17.10.2022 and later on the instant FIR was chalked out against the accused petitioners on 19.10.2022 with the same contents mentioned in the letter.</p>


5.9.23
BAKHT ZADA
Senior Civil Judge
Orakzai at Baber Mela

①

COURT OF SENIOR CIVIL JUDGE/JM, ORAKZAI AT BABER MELA

Case Title: State VS Tor Khan etc

Order No 13 Continued..	05.09.2023	<p>After completion of investigation, complete challan in the case was submitted and the case was put in court for trial on 05.01.2023. The accused were summoned, who appeared before the court on 20.01.2023 and formalities U/S 241-A Cr. PC were complied with. Formal charge against the accused was framed on 24.02.2023, to which the accused pleaded not guilty and claimed trial. The prosecution was asked for production of evidence, in response the prosecution produced and recorded the statements of following PWs.</p> <p>PW-01: Gul Aghar, SI, the then Moharrir PS Dabori, District Orakzai. He has conducted inquiry U/S 157(1) after registration of the Naqalmad No. 03. He has prepared the site plan at the pointation of one Ghafoor Khan which is Ex. PW-1/1 and recorded statements of PWs U/S 161 Cr. PC. He submitted his final report on 06.10.2022 which is Ex. PW-1/2. He wrote application to DPP for obtaining legal opinion. His application is Ex. PW-1/3. FIR is Ex. PW-1/4. All the said documents are correct and correctly bear his signatures. His statement was cross-examined by the counsel for the accused at length.</p> <p>PW-02: Complainant Abdur Rehman, SDO/PHE Ghiljo, District Orakzai now posted at District Tank reproduced the contents of his letter No. 1-4/W-1-B dated 27.09.2022, which is Ex. PW-2/1 and again informed the SHO through letter No. 1-4/W-1 dated 14.10.2022 which is Ex. PW-2/2 and asked for legal action. He was also cross examined by the counsel for the accused.</p> <p>PW-03 is the statement of Qasim Khan, Contractor, Tappa Aziz Khel, Star Kalay, Dabori. He stated that he has installed tube well and solar system as per scheme and</p>
----------------------------	------------	--

S. Ameer

BAKHJ ZADA
Senior Civil Judge/JM
Orakzai at Baber Mela

(12)

COURT OF SENIOR CIVIL JUDGE/JM, ORAKZAI AT BABER MELA

Case Title: State VS Tor Khan etc

<p>Order No 13 Continued..</p>	<p>05.09.2023</p>	<p>when he started to install the pipeline, the accused namely Tor Khan and Siyal Badshah came to him and stopped him from work. They also threatened him.</p> <p>Today remaining PWs are absent despite of service and after hearing arguments on application U/S 249-A Cr. PC, it is found that the law came into action after letter of the complainant bearing No. 1-4/W-1-B dated 27.09.2022 Ex. PW-2/1 and in the said letter, neither any allegations regarding criminal intimidation or mischief by causing diminution of supply of water for agriculture purpose or obstructing public servant in the execution of his duty in the discharge of his public function has been made, rather the complainant has mentioned that the accused stopped the installation of pipeline, but it has not been stated by the complainant that whether the property was acquired for the said purpose from the accused facing trial, because the same is allegedly the ownership of the accused facing trial and no work can be carried out in their property without their consent. In this regard during arguments it is stated that Civil Suit was filed by the accused facing trial for restraining the complainant etc from interference in their property which is decreed by the court of Civil Judge-I, Orakzai vide his order dated 14.04.2023 and revision/appeal against the said order is pending adjudication. Astonishingly, the site plan has been prepared by the inquiry officer at the pointation of one Ghafoor Khan instead of the complainant Abdur Rehman. The statement of complainant Abdur Rehman is PW-02 is completely silent about any kind of criminal intimidation or mischief and it is fundamental right guaranteed by the green book that no one including state can use the property of other</p>
------------------------------------	-------------------	---

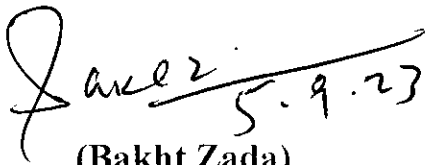
Arce

BAKHT ZADA
Senior Civil Judg/JM
Orakzai at Baber Mela

(13)

COURT OF SENIOR CIVIL JUDGE/JM, ORAKZAI AT BABER MELA

Case Title: State VS Tor Khan etc

<p>Order No 13 Continued..</p>	<p>05.09.2023</p>	<p>person without his permission and proper acquisition. In the present case, neither the property has been acquired, nor any consent has been sought from the owners. Name of a single eye-witness regarding the occurrence is not mentioned in the complaint/FIR. The time of occurrence is also unknown. The statement of investigation officer is PW-01 and complainant PW-02 were badly shattered during cross-examination. PW-02 admitted during cross examination that site plan has not been prepared at his pointation. He also admitted that acquisition of land is not the job of his department. He admitted during cross examination that the accused/petitioners came to his office, meaning thereby that they properly informed the complainant for non-acquisition of their property for the water supply scheme and in fact no altercation and intimidation has taken place at the spot. All these facts and circumstances are creating doubts about the case of the prosecution and there is no probability of the conviction of the accused even if statements of all the remaining PWs are recorded. I, therefore, accept the instant application U/S 249-A Cr. PC and acquit both the accused from the charges levelled against them. They are on bail. Their sureties are exonerated from the liabilities of their bail bonds. Case property, if any be kept intact till the expiry of period provided for revision/appeal under the law.</p> <p>Case file be consigned to the record room after necessary completion and compilation.</p> <p><u>Announced:</u> 05.09.2023</p> <p> (Bakht Zada) SCJ/JM, Orakzai (at Baber Mela)</p>
------------------------------------	-------------------	--