

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

CRIMINAL REVISION NO. : 6/10-R OF 2023
DATE OF INSTITUTION : 23.08.2023
DATE OF DECISION : 29.08.2023

STATE THROUGH DISTRICT PUBLIC PROSECUTOR

..... (PETITIONER)

-VERSUS-

1. MUHAMMAD SHARIF S/O SHAUKAT ALI,
2. MUTAHIR ALI S/O NAIB KHAN
BOTH R/O TRIBE BAR MUHAMMAD KHEL, MERAZAI KHEL
KHANAN GARHI KUREZ, DISTRICT ORAKZAI

..... (RESPONDENTS)

Present : DPP, Umar Niaz for State
: Khursheed Alam Advocate for respondents

JUDGEMENT
29.08.2023

This is a criminal revision petition vide which the order/judgment dated 07.08.2023 of Senior Civil Judge/Judicial Magistrate, Orakzai vide which the respondents/accused have been discharged of the offence, has been assailed.

- (2). The respondents/accused namely, **Muhammad Sharif** and **Mutahir Ali** along other co-accused were charged in case FIR No. 29, Dated 05.08.2023, u/s 188 PPC of Police Station Kurez Boya on the basis of allegation that they along with co-accused were involved in leading a gathering of people, delivering hatred speeches and instigating the people to cause damage to the public property in violation of the order of Deputy Commissioner, Orakzai u/s 144 CrPC. The said accused, after their arrest when produced before the court of

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learned Civil Judge/Judicial Magistrate, Orakzai at Baber Mela, were discharged of the offence vide impugned order dated 07.08.2023 on the ground, that while filing complaint against the accused, the provision of section 195(1) CrPC have not been complied with.

(3). The State through learned DPP, being aggrieved of the impugned order, filed the instant revision petition on the ground, that section 195 CrPC has been amended vide Code of Criminal Procedure (Amendment) Act, 2022 vide which section 188 PPC has been excluded; therefore, the compliance of 195 CrPC was not mandatory.

(4). I heard arguments, perused the material available on file and the law on point. As per available record the Deputy Commissioner, Orakzai vide order dated 05.08.2023 has imposed a complete ban on all gatherings, rallies, processions of more than five persons, delivering objectionable, pre judicial and hateful speeches in the limits of Orakzai. The order has been given effect from 05.08.2023 to 04.09.2023. The law on the point as envisaged in section 195 (1) Cr. PC reads as below;

195. (1) *No Court shall take cognizance:*

(a) *Prosecution for contempt of lawful authority of the public servant;*

of any offence punishable under sections 172 to 188 of the Pakistan Penal Code, except on the complaint in writing

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of the public servant concerned or of some other public servant to whom he is subordinate.


As per Code of Criminal Procedure Amended Act, 2022, section 188 PPC has been excluded from section of 195 CrPC, which reads as below;

1. Short title and commencement. – (1) This Act may be called the Code of Criminal Procedure (Amendment) Act, 2022.

(2) It shall come into force at once.

2. **Amendment of section 195, Act V of 1898.** – *In the Code of Criminal Procedure 1898 (V of 1898), in section 195, in sub-section (1), in clause (a), for the figure “188” the figures “187”, shall be substituted.*

In view of what is discussed above, it is held that the subject FIR has been registered on 05.08.2023 on the basis of allegation of being in violation of the order of Deputy Commissioner, Orakzai under section 144 Cr. PC having effect from 05.08.2023 to 04.09.2023. As section 195 CrPC has been amended excluding section 188 PPC from the formalities of section 195 CrPC and the prior complaint of the Deputy Commissioner or his representative is not necessary for taking cognizance of the offence. The other grounds mentioned by the learned Judicial Magistrate in the impugned order, involve deep appreciation of evidence and cannot be discussed at this early stage.


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- (4). Hence, on acceptance of instant revision petition, the order dated 07.08.2023 of learned Senior Civil Judge/Judicial Magistrate Orakzai at Baber Mela, is set aside. File of this court be consigned to record room. Copy of this order be placed on police and judicial file while copy of this order be sent to learned Senior Civil Judge, Orakzai for information.

Pronounced
29.08.2023



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at Baber Mela



CERTIFICATE

Certified that this order consists of four (04) pages.
Each page has been read, corrected wherever necessary and signed by me.

Dated: 29.08.2023



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at Baber Mela