

IN THE COURT OF JUDICIAL MAGISTRATE-I, KALAYA, ORAKZAI

Case No33/2 of 2023.

Date of institution.....13.06.2023.

Date of decision.....19.08.2023.

Case FIR No. 43 Dated: 25.04.2023 U/S 381-A PPC, PS Kalaya.

Order. No. 09

19.08.2023

Dy.PP for the state present. Accused Shamshir on bail along with counsel present. Complainant also present. Arguments on application u/s 249-A Cr.PC on behalf of counsel for accused already heard. Arguments on behalf of Dy.PP for the state heard today and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that on 25.04.2023, complainant Khan Buhadar reported to the local police that he along with his family members were present in Speen Darah Park, Lower Orakzai. He parked his motorcycle Honda 125 bearing registration number S-2043, Kohat of black color. After having picnic, when he returned he found his motorcycle missing. He was searching for real culprits. Accused Shamshir R/O Qaum Bezot was arrested by the local police and the stolen motorcycle was recovered from his possession. On the following day, he reported the occurrence to the local police. On the strength of report of complainant, the instant case was registered against the accused facing trial.


ZAHIR KHAN
Civil Judge/JM
Kalaya Orakza

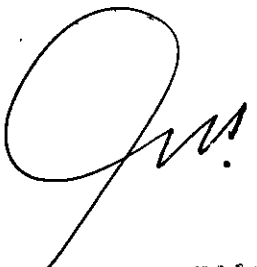
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After completion of investigation, complete challan was put in court against accused. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused. So far, 03 PWs have been examined.

Sub Inspector, Aftab Hassan was examined as PW-01. He stated during the days of occurrence, he was posted as SHO PS Kalaya. On 25.04.2023, complainant Khan Buhadar S/O Wisal Khan R/O Mir Buhadar Colony, Distract Kohat reported to him regarding the occurrence which he reduced in shape of FIR Ex.PA. Report was read over to complainant and he thumb impressed the same as token of its correctness. One Muhammad Hassanain thumb impressed the report as verifier. Copy of FIR was handed over to investigation staff for investigation. His statement was recorded u/s 161 Cr.PC.

SI Muhammad Haneef was examined as PW-02. He is IO of the case. He stated that accused Shamshir was arrested by SHO Aftab Ahmad on 25.04.2023. Accused was handed over to him for interrogation/ investigation. He visited the spot and prepared site plan Ex.PB on the pointation of complainant. He recorded statements of PWs u/s 161 Cr.PC. On 26.04.2023, he produced the accused before the Illaqa Magistrate for obtaining his physical custody vide his application Ex.PW-2/1. 02 days physical custody was granted. He interrogated the accused and recorded his statement u/s 161 Cr.PC. Accused also led him to the spot for spot pointation and pointation memo was prepared accordingly. The same is Ex.PW-2/2. As accused


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confessed his guilt before him, therefore, he produced the accused before the court for recoding his confessional statement vide his application Ex.PW-2/3. Accused refused to confess his guilt before the court, resultantly, he was committed to judicial lockup. After completion of investigation, he handed over the case file to SHO for submission of complete challan.

PW-03, is the statement of complainant Khan Bahadar. He stated that on the day of occurrence, he along with his family members were present in Speen Darah Park, Lower Orakzai. He parked his motorcycle Honda 125 bearing registration number S-2043, Kohat of black color. After having picnic, when he returned he found his motorcycle missing. He was searching for real culprits. His motorcycle was recovered by the local police within 30/40 minutes. Accused Shamshir R/O Qaum Bezot was arrested along with motorcycle. On the following day, he reported the occurrence to the local police. His report was reduced into writing and he thumb impressed the report as token of its correctness. PW Muhammad Hassanain thumb impressed the report as verifier. He pointed out the spot to the IO. Now he has patched up the matter with accused facing trial and if he is acquitted, he has got no objection.



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Perusal of record transpires that the alleged occurrence took place on **24.04.2023** at 14:30 hours at Speen Darah park situated at Utman Khel, Orakzai and FIR was registered on **25.04.2023** at 10.20 hours.

PW-01, stated in his cross examination that it is correct that source of information regarding the involvement of accused in the commission of offence was not disclosed by complainant. He does not know as to whether the stolen motorcycle was brought to PS on 25.04.2023 or not. Similarly, PW-02 stated in his cross examination that at the time of preparation of site plan, accused was not arrested. Accused was handed over to him on 25.04.2023. He does not remember the time of handing over accused to him. When accused was handed over to him, motorcycle was parked in PS. The stolen Motorcycle was recovered by SHO at Chaman Jana. He cannot tell the time of recovery of motorcycle. He recorded statement of verifier of the report after preparation of site plan at 12:55 p.m. Per his investigation, there is no criminal history of accused.

PW-03, stated in his cross examination that he has not seen the accused with his own eyes stealing the motorcycle. It is correct that there is no eye witness to the occurrence. It is correct that the motorcycle was recovered by the local police within 30/40 minutes of the occurrence. He has forgiven the accused in the name of Almighty Allah. Soon after the occurrence, he informed the contractor of the park who informed the police. Call was made on the wireless. After recovery of the motorcycle, he was asked to visit the nearby police check post but as his family members were present with him and it was near evening time, therefore, he visited police station on the next day of the occurrence. Before registration of the case, motorcycle was recovered by the local police.



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Record shows that source of information regarding involvement of accused in commission of the offence has not been disclosed by the complainant. There is no eye witness to the occurrence. The occurrence is un-witnessed one. Per record, the stolen motorcycle was recovered from possession of the accused on 25.04.2023 but complainant stated that the motorcycle was recovered from the accused facing trial after 30/40 minutes of the occurrence which took place on 24.04.2023. Statement of complainant contradicts the record. Record further shows that accused was arrested on 25.04.2023 however, complainant stated that accused was arrested on 24.04.2023. No private person has been associated during recovery proceedings. Mandatory provisions of 103 Cr.PC have not been complied with. Recovery is doubtful. Furthermore, complainant has forgiven the accused and he is no more interested in prosecution of the accused. He has got no objection on the acquittal of the accused facing trial. Accused facing trial has not confessed his guilt before the court. There is no criminal history of accused facing trial.



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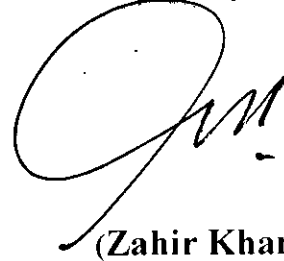
There are so many dents and doubts in case of prosecution benefit of which goes to the accused. There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused facing trial is acquitted from the charges leveled against him. He is on bail. His sureties stand discharged from their liability.

19-8-23

Case property i.e. the motorcycle has already been released on superdari to the complainant..

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

Announced.
19.08.2023



(Zahir Khan)
Judicial Magistrate-I,
Tehsil Kalaya, Orakzai