

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

Case No .....12/2 of 2023.

Date of institution.....02.03.2023.

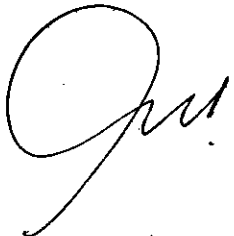
Date of decision.....25.09.2023.

Case FIR No. 125 Dated: 27.12.2022 U/S 379/34 PPC, PS Kalaya**Order. No. 21**

25.09.2023

Dy.PP for the state present. Accused Naveed on bail present. Accused Khair Ullah Absent. Accused Mudasir is absconding. Complainant Hashmat Ullah absent. Arguments on application u/s 249-A Cr.PC on behalf of counsel for accused/petitioners 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 complainant submitted a written application to the local police to the effect that he hails from Qaum Feroz Khel, Jalaka Mela, Lower Orakzai. His brother namely Rustam Khan is raising construction as contractor in Kalaya Headquarter Sports Stadium and for the purpose of the construction, he had dumped 123 ton steel (Sarya) in the stadium out of which 12/13 ton steel was stolen by unknown persons. He was searching for actual culprits. He reported the occurrence to the local police of PS Kalaya through a written application which was incorporated in DD vide mad No. 07 dated 18.12.2022. Inquiry was initiated by the local police. During inquiry, 80 kg each steel was recovered from the houses of accused Khair Ullah, Mudasir and



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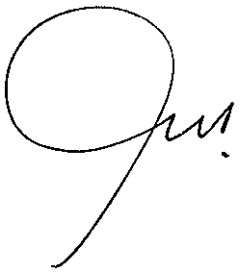
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Naveed, resultantly, he charged the above named accused for the commission of the offence. He pointed out the spot to the IO who prepared site plan on his pointation.

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

Assistant Sub-Inspector, Murtaza was examined as PW-01. He stated that after registration of the case, copy of FIR along with relevant documents were handed over to him for investigation. He proceeded to the spot and prepared site plan Ex.PB on pointation of complainant Hashmat Khan. He recorded statements of PWs u/s 161 Cr.PC. As accused were avoiding their lawful arrest, therefore, vide his applications Ex.PW-1/1 and Ex.PW-1/2 applied for warrant u/s 204 and proclamation notices u/s 87 Cr.PC. He recorded statement of search witness. Accused Khair Ullah was arrested by SHO, PS Kalaya. 02 days custody of accused was granted. He interrogated the accused and recorded his statement u/s 161 Cr.PC. On 08.05.2023, he produced the accused before the court for obtaining his further remand vide his application Ex.PW-1/3 which was turned down and accused was committed to judicial lock-up. After completion of investigation, he



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handed over case file to SHO for submission of complete challan against accused.

Investigation officer, SI Muhammad Hanif was examined as PW-02. He stated that accused Muhammad Naveed was arrested by SHO PS Kalaya on 29.03.2023. He produced the accused before the court for obtaining his physical custody vide his application Ex.PW-2/1, 02 days custody of accused was granted. At the time of medical examination of accused by medical officer, accused was not found fit for remand, therefore, he requested the court to commit the accused to judicial lock-up vide his application Ex.PW-2/2. He recorded statement of accused u/s 161 Cr.PC and accused was committed to judicial lock-up accordingly. Similarly, accused Khair Ullah was arrested by SHO PS Kalaya. Accused was handed over to him. As ASI Murtaza who was investigating the case, was on leave, therefore, he vide his application Ex.PW-2/3 produced the accused before the court for obtaining his physical custody. 02 days custody was granted. On arrival of ASI Murtaza, accused and case file was handed over to him.


Complainant Hashmat Ullah was examined as PW-03, He stated that he is a contractor by profession. His brother namely Rustam Khan is raising construction as contractor in Kalaya Headquarter Sports Stadium and for the purpose of the construction, he had dumped 123 ton steel (Sarya) in the stadium out of which 12/13 ton steel was stolen by unknown persons. He was searching for real culprits. He reported the occurrence to the local police of PS Kalaya through a written application which was incorporated in DD vide mad No. 7 dated



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18.12.2022. He pointed out the spot to the IO who prepared site plan on his pointation.

Perusal of record transpires that the alleged occurrence took place on 18.12.2022 at unknown time near Kalaya Headquarter Sports Stadium, Orakzai and it was allegedly reported on 18.12.2022 and FIR was registered on 27.12.2022. There is delay of 09 days in registration of the FIR. Source of information regarding involvement of accused in the commission of the offence has not been disclosed by the complainant. Nothing incriminating has been recovered from possession of the accused or on their pointation. Accused have not confessed their guilt before the court. There is no criminal history of the accused facing trial. There is no eye witness to the occurrence. Furthermore, complainant (Hashmat Ullah) who deposed as PW-03, stated in his cross examination that recovery of the stolen steel was not made by the local police from the houses of nominated accused rather he himself recovered the stolen steel from a group of thieves consisting of 12 members. There were 04 others suspects/culprits arrested by the police and they disclosed names of the accused facing trial and absconding accused. He also stated in his cross examination that the stolen steel was not recovered from the houses of nominated accused rather recovery was effected from the houses of persons other than the nominated accused. Recovery of the alleged stolen steel is doubtful. He further deposed that he is no more interested in prosecution of the accused facing trial and if they are acquitted, he has got no objection.

  
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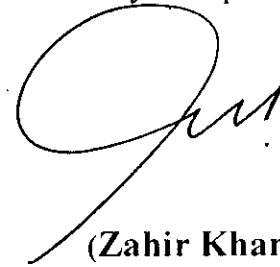
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Case of prosecution is full of dents and doubts benefit of which goes to the accused. There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused facing trial namely Naveed and Khair Ullah are acquitted from the charges leveled against them. They are on bail. Their sureties stand discharged from their liability. Accused Mudasir is absconding. He is declared as proclaimed offender. His name be entered in the list/register of proclaimed offenders. Perpetual warrant of arrest be issued against him.

Case property be dealt with in accordance with the law.

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

**Announced.**  
25.09.2023



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