

IN THE COURT OF ZAHIR KHAN CIVIL JUDGE-I, KALAYA, ORAKZAI

Case #	=	5/4 of 2021.
Date of Institution	=	11.12.2021.
Date of Decision	=	06.09.2023.

Muhammad Bilal S/O Gul Akbar R/O Qaum Mishti, Tappa Haider Khel, Tehsil Central, District Orakzai and 18 others.

.....(Applicant)

Versus

Banaras Khan S/O Zareef Khan R/O Qaum Mishti, Tappa Haider Khel, Tehsil Central, District Orakzai and 10 others.

.....(Respondents)

COMPLAINT U/S 133 Cr. P.C.**ORDER****06.09.2023**

Complainant namely Kiramat Ullah and Ajmal Khan present.
Respondents namely Muhammad Tahir, Fazal Khaliq and Miraj along with counsel present. Arguments already heard and record perused.

Through this order, I am going to decide the complaint U/S 133 Cr. PC in hand filed by complainant Muhammad Bilal etc against the respondents Banaras Khan etc.

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(1). Brief facts as per contents of complaint U/S 133 Cr.PC are that complainant party belong to Qaum Mishti, Tappa Haider Khel, Central Orakzai and there is a public pathway known as Gujar Khelo Kalli road leading to village of complainant party passing through the village of respondents and used by the complainant party and general public since long but recently, respondents have blocked/obstructed the said


pathway by putting rocks which has caused inconvenience to the complainant party and other inhabitation of the area/co-villagers and has become a public nuisance. That respondents were asked to open the pathway but in vain, hence, the present complaint.

(2). Complaint in hand was filed on 11.12.2021. Joint statement of complainant party was recorded. SHO concerned was directed to hold inquiry and submit report on date fixed. Inquiry report was submitted by SHO concerned. Inquiry was conducted and inquiry report was received and placed on file, resultantly, the court, vide order dated: 12.03.2022, passed conditional order directing the respondents to remove the obstruction and open the pathway, otherwise, show cause/file objections, if any.

(3). Respondents appeared, filed objections to the effect that there is no public road/pathway at the alleged place and that the pathway in question is their exclusive ownership and that there is civil litigation between the parties regarding the pathway in question. Lastly, it was requested that the instant complaint be dismissed accordingly.

(4). Thereafter, parties were directed to produce their desired evidence. During course of recording evidence, complainant party produced five witnesses while respondent opted not to produce evidence. Inquiry Officer, sub-inspector Naseeb Khan was examined as CW-01.


(5). Ajmal Khan appeared and deposed as PW-01, Muhammad Bilal as PW-02, Musa Khan as PW-03, Habib Shah as PW-04 and Shan


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Akbar as PW-05. They reiterated the averments of the complaint. PW-02 produced pictures regarding the pathway in question which are Ex.PW-2/1 and Ex.PW-2/2.

Thereafter, evidence of complainant party was closed.

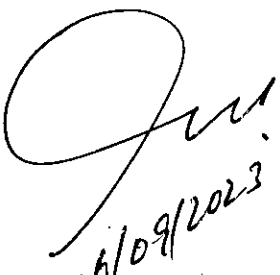
- (6). Respondents opted not to produce evidence in defense. Sub-inspector Naseeb Khan, ex-SHO, PS Mishti Mela was summoned as CW, who appeared and deposed as CW-01. He stated that he conducted inquiry in light of the directions of the court. During inquiry, he inspected the spot, collected information, prepared site plan Ex.CW-1/1 and after completion of inquiry, he submitted inquiry report/final report as Ex.CW-1/2.
- (7). After completion of evidence, arguments of the learned counsels for the parties were heard and record of the case file was gone through with their valuable assistance.
- (8). Chapter X of Cr. PC deals with the public nuisances. The law clearly stipulates every step which the Magistrate has to take when an information regarding public nuisance is placed before him. Section 133 Cr. PC gives the power to Magistrates for removal of a nuisance including the power to prohibit the conduct of any trade or occupation or the keeping of any goods or merchandise which is injurious to health, physical comfort of the community and also gives the power for the removal of such trade or occupation and obstruction.


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Section 133 Cr. PC is attracted only in case of emergency and imminent danger. The idea behind the section is that the danger

complained of should be such that if the Magistrate does not take action under this section and directs the public to have recourse to the ordinary courts of law, irreparable damage would be done.

- (9). As stated above, applicants are claiming that respondents have obstructed/blocked public road/public thoroughfare leading to their houses and land and in order to resolve the matter in controversy, a Jirga was held but in vain. Evidence produced by applicants shows that there is a private dispute regarding pathway between the parties. PWs have admitted that the pathway is in the land owned and possessed by respondents. SHO PS Mishti Mela, who deposed as CW-01 has also admitted in his final report Ex.CW-1/2, that the pathway is the exclusive ownership of respondents as it passes through the land owned and possessed by them. In the final report Ex.CW-1/2, it is also mentioned that there is no public road/public thoroughfare at the spot. Applicants have neither challenged the final report Ex.CW-1/2 nor the site plan/sketch Ex.CW-1/1. No objection was raised when the inquiry report was submitted by CW-01. No application for re-inquiry was filed. Per Ex.CW-1/2, the pathway is not a public thoroughfare or a public road. PWs have also admitted that there is civil litigation between the parties regarding the pathway as the present applicants in capacity of plaintiffs have filed a declaratory suit to the effect that the suit property/pathway is the exclusive ownership of applicants which means that the pathway in question is not a public thoroughfare/road. None from the public/village appeared before the


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court to support the claim of applicants. No elder/Malak of the area was produced as witness. Evidence produced by the parties suggests that there is no public road/public thoroughfare at the spot. As per Ex.CW-1/1 and Ex.CW-1/2, applicant has sought right of passage/way in the land/fields owned and possessed by respondents. There is no documentary proof with respondents regarding ownership of the land and pathway as there is no land record in this newly merged district. Per record, there is a long-standing dispute between the parties in respect of the pathway in question which indicates that there is no such emergency or imminent danger to the public interest. Therefore, action cannot be taken under section 133 Cr. PC. Proceedings U/S 133 Cr. PC are not intended to settle private disputes between members of public or to be used as a substitute to settle civil disputes.

(10).For, what has been discussed above, proceedings are hereby dropped. Complaint stands dismissed.

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

ANNOUNCED
06.09.2023



Zahir Khan
JMIC-I, Kalaya, Orakzai