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In the name of almighty Allah who has unlimited jurisdiction over and beyond the universe.

BEFORE THE COURT OF
ADDITIONAL SESSIONS JUDGE, ORAKZAI

Cr. Revision No. 1/10 (R) of 2022

Date of institution: 10.01.2022

Date of decision: 14.02.2022

Noormat Khan Son of Nasar Ullah Jan resident of Qaum Mula Khel, Tappa Charkhela, village Dray Sootay, District Orakzai.... **(Petitioner/complainant)**

...Versus...

Yarmeen Shah, Naseem Gul and Zerri Gul sons of Zareen gul, all residents of Qaum Mula Khel, Tappa Charkhela, village Dray Sootay, District Orakzai..

.. **(Respondents/2nd party)**

Criminal Revision against Order dated 27-11-2021 in Cr. MA No. 05/4 of 2021.

JUDGMENT

1. Noormat Khan, petitioner/complainant has invoked the criminal jurisdiction of this Court in instant Revision, being dissatisfied from Order dated 27-11-2021, passed by learned Judicial Magistrate-I, Orakzai; whereby, the complaint under Section 133 of Code of Criminal Procedure 1898 was dismissed on the score of being non-maintainable.

2. Brief facts of the case are that there was a public thoroughfare/road towards the houses of the complainant, which is in their use for a long time. That now the respondents have blocked the same by putting stones over such thoroughfare/link road which has caused inconvenience to the complainant as well as to all the co-villagers that has given birth to public nuisance.

3. On receiving the complaint, learned area Magistrate, after recording the statement of the petitioner/first party on oath, issued notice to the S.H.O concerned for inquiry and report. The S.H.O concerned visited the spot and recorded statements followed by presentation of Inquiry Report dated 19-05-2021. The questioned thoroughfare was termed temporary approach path for

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Adl: District Sessions Judge
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tractor established during cultivation season and is owned, possessed and prepared by the respondent. The same is still in use of all concerned as approach track; however, unusable for transportation as road. There is no blockage and public is using the same as pathway in peaceful environment.

4. Inquiry report dated 19-05-2021 was rejected by learned Judicial Magistrate on the ground that it is not exhaustive of the circumstances and directed the SHO of Police Station Daboori for inquiry afresh in light of the complaint with the further direction of recording of statements of relevant persons vide Order No.4 dated 01-06-2021.

5. The SHO concerned has visited the spot, recorded statements and prepared Final Report dated 03-08-2021. It is in the report that the disputed approach path had been established by the respondent/2nd party some 22 years back in his own property which is still in use by general public as pathway. If the petitioner/complainant want to use it as road for vehicles, he has to offer some piece of land in consideration to respondent/2nd party. The complainant is bent upon the use of pathway as road and the respondent is refusing on the ground of non-payment of consideration in terms of land.

6. Learned counsel for the parties have been heard for determination of the question of maintainability and consequently, the complaint was dismissed against which instant Criminal Revision has been filed. Record was requisitioned and respondents were served with notice. On putting appearance before the Court, learned counsel rendered professional assistance to the Court by way of arguments.

7. Learned counsel representing petitioner/complainant argued that the photographs of the disputed pathway clearly reflects blockage. The complainant is not a single person aggrieved rather all the residents residing in the neighborhood are suffering in general. The Police Report dated 19-05-2021 and

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2nd Report dated 03-08-2021 are contradicting each other. It is clear case of public nuisance and was dismissed without proper consultation of law. All the requirements of Criminal Revision can collectively be attracted for reversal of the questioned order.

8. Learned counsel representing respondent/2nd party was of the stance that the matter agitated is not falling within the ambit of public nuisance. The petitioner is residing in the area alone and using the disputed land as pathway in a peaceful environment. There is no issue involved and if it all, there is an issue, that may be determined by civil court. Dismissal of complaint was natural outcome of the proceedings that is being backed by law.

9. Provision of the Section-133 of the Criminal Procedure Code, 1898 is meant to redress complaint of public nuisance in a speedy manner with the ultimate goal of avoiding irreparable loss and eminent danger. The unlawful obstruction to any way lawfully used by the public is falling within the ambit of public nuisance. But before invoking the above provision, it is necessary to be satisfied that the act or omission is public nuisance rather a civil dispute between individuals and that eminent danger to the public interest exists. Preservation and improvement of environment is another area to be looked into while proceeding with the matter of public nuisance. In this legal background, the following points shall be clarified in inquiry or evidence or both for reaching to the just conclusion of the matter.

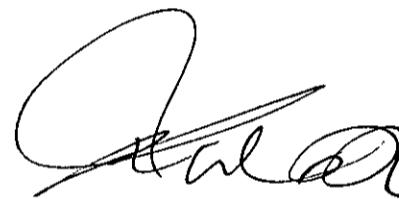
- i. At present, what is the exact number of residents using this approach path including petitioner as a regular user?
- ii. What is the approximate number of casual or irregular user of disputed approach path?
- iii. Whether disputed approach path is being used as road and if yes, by whom and for how much period of the time?

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 SAVED PRAJATI WADCOOD
 Adm. District & Sessions Judge
 District of Haveri

iv. Happening or likelihood of happening eminent danger to the public interest?

10. Discussion under Paragraph No. 09 is reflecting that these questions have neither been inquired about by police nor the petitioner has been provided opportunity of leading evidence on it; therefore, the impugned order of dismissal is obviously before time and unsustainable. Consequently, instant revision petition stands accepted. The learned Trial Court shall inquire about the questions framed above with the addition of any other point which is helpful in determination of public nuisance through police concerned and may procure evidence of the parties if deemed necessary. Requisitioned record be returned back with copy of this Judgement and file of this Court be consigned to District Record Room Orakzai after necessary completion and compilation within span allowed for.

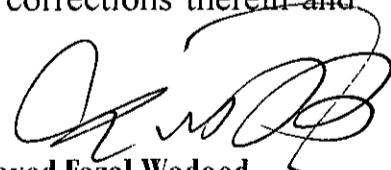
Announced in the open Court
14.02.2022



Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela

CERTIFICATE.

Certified that this Judgment consists of four (04) pages; each of which has been signed by the undersigned after making necessary corrections therein and read over.



Sayed Fazal Wadood,
ADJ, Orakzai at Baber Mela