

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

Case No73/2 of 2023.

Date of institution.....01.11.2023.

Date of decision.....12.12.2023.

Case FIR No. 93 Dated: 25.09.2023 U/S 506/186/189/34 PPC, PS Kalaya

Order. No. 07

12.12.2023 ,

APP for the state present. Accused Ghazi Gul, Abdul Salam and Ghameen Gul on bail along with counsel present. Complainant Muhammad Fayaz and PW SI Minhaz Hussain present. Statements of complainant and SI Minhaz Husain recorded as PW-01 and PW-02 respectively. Counsel for accused facing trial submitted application u/s 249-A Cr.PC. On the other hand APP for the state submitted application for withdrawal of the case U/S 5(b) of the Khyber Pakhtunkhwa Prosecution Act, 2005 read with Section 494 Cr.PC. Arguments heard and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that complainant Muhammad Fayaz, who is posted as Tehsildar, Lower Orakzai received information that accused Ghazi Gul, Ghameen Gul and Abdul Salam are raising construction in the disputed land situated near Mandara Khel, check post, Lower Orakzai. On this information, he along with inspector Ajmal Khan, Riaz Khan No. 387 and Zar Wali No. 332 proceeded to the spot where negotiations were made with the above named accused but they were reluctant to stop construction work on the disputed land. They advanced threats of dire consequences and


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obstructed them in discharge of their official duty. Accused were arrested at the spot. Complainant drafted murasila at the spot and sent the same to PS through constable Zar Wali No. 332 for registration of the case. On the strength of murasila, the instant case was registered against the accused facing trial.

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, 02 PWs have been examined.

Complainant Muhammad Fayaz deposed as PW-01. He reproduced the story narrated in the FIR. Card of arrest of accused was exhibited as Ex.PW-1/1, Murasila was exhibited as Ex.PW-1/2, information report bearing No. 909/AC/L was exhibited as Ex.PW-1/3. He also pointed out the spot to the IO. SI Minhaz Hussain, who is IO of the case, deposed as PW-02. He has prepared site plan Ex.PB on the pointation of complainant. Application for physical custody of the accused is Ex.PW-2/1. He has also recorded statements of PWs and accused u/s 161 Cr.PC.

Perusal of record transpires that the alleged occurrence took place on **25.09.2023** at **12:00 pm** near Mandara Khel check post, Lower Orakzai and it was reported on **25.09.2023** at **12:30 pm** and FIR was registered on **25.09.2023** at **01:30 pm**. PW-01, stated in his cross examination that information was received through their own sources. It is correct that he has not mentioned source of information in his report. He does not know for what offence section 506 PPC is attracted. Same is


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the case of offences u/s 186, 189 PPC. It is correct that sections of law were leveled by the local police. He reported the occurrence to the police who leveled the sections of law. Report was made to the SHO. He himself issued card of arrest. He has not mentioned FIR number in card of arrest. It is correct that he has not mentioned second party to the dispute in his report. He reached the spot at about 02:10 pm and murasila was handed over to constable Zar Wali at about 02:20 pm. PW-02 stated in his cross examination that he reached the spot at about 14:10 hours. He has not noted FIR number on card of arrest. He has not recorded statements of second party to the dispute. He has not placed on file any document regarding the disputed land.

Statements of PW-01 (complainant) and PW-02 (IO) contradict the record. Per record, complainant himself drafted murasila and sent the same to PS through constable Zar Wali No. 332 for registration of the case, however, in his cross examination, he stated that he reported the occurrence to SHO. He further deposed that he reached the spot at about 02:10 pm and murasila was handed over to the above named constable at about 02:20 pm. Per contents of murasila and FIR, the alleged occurrence took place at 12:00 pm, it was reported at 12:30 pm and FIR was registered at 01:30 pm. Statement of complainant shows that entire proceedings were carried out while sitting in the PS. Nothing incriminating has been recovered from possession of accused facing trial or on their pointation. Accused have not confessed their guilt before the court. No specific role has been attributed to any of the accused facing trial. There are serious contradictions in the statements of PWs. There are



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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 are acquitted from the charges leveled against them. They are on bail. Their sureties stand discharged from their liability. As application u/s 249-A Cr.PC is accepted, therefore, application of prosecution is disposed of accordingly. Case property if any, be dealt with in accordance with law.

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

Announced.
12.12.2023



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