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Or.....35
16.06.2022

APP for the state present. The one PW Sajjad Khan, re-examined as PW-03. The complainant through his brother present, who stated at the bar that the complainant is abroad and cannot arrive in the near future. The counsel for the accused submitted an application u/s 249-A Cr.P.C, which is placed on file and noticed to the state.

File is to come up for arguments 29.06.2022.


(Rehmat Ullah Wazir)
Senior Civil Judge/JM,
Orakzai (at Baber Mela)

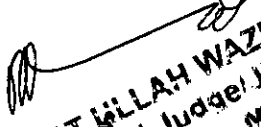
Or.....36
29.06.2022

APP for the state present. Accused produced in custody. No one for the complainant present. Counsel for the accused also present.

My this order is to dispose off application u/s 249-A Cr.P.C. Counsel for the accused present and argued that as the statements of the main PWs in the shape of SHO, OII, Muharrir of the PS and other relevant PWs are recorded and as per the statements of the PWs, there is no probability of the accused being convicted of the offence and the charge is groundless. Further that it is an admitted fact that the complainant has never bothered to appear even on single date before the court and since the registration of FIR, he has gone abroad and he is not interested in the pursuance of the instant case. That there is no probability of the arrival of the complainant in the near future and the present case cannot be kept pending and the accused behind the bars for indefinite period and the same would be result less and futile exercise. At the end, requested for the acquittal of the instant accused.

On the other hand, Learned APP for the stated opposed the application and argued that there is sufficient evidence against the instant accused, therefore, the application should not be accepted at this stage.

I have heard both the sides and came to the conclusion that it is an admitted fact that the complainant has never ever appeared before the court since the submission of challan.
Continue


REHMAT ULLAH WAZIR
Senior Civil Judge/JM,
Orakzai at Baber Mela

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State Vs Muhammad Zubair (FIR. 18, PS: Ghiljo)

Or.....36
continued
29.06.2022

Sometimes, he has marked attendance through his brother, who stated at the bar that the complainant is residing in Gulf and there is no prospect of his arrival in the near future. Further, initially the time of occurrence is unknown and the report has been made after unexplained delay of more than 12 hours. The accused has been charged firstly on doubt but the prosecution has not explained the source of information and confirmation of the accused being involved the commission of the offence. Further, the recovery has not been properly established because allegedly the same were recovered from the Betak of some third person with whom nothing is on record that he was the relative of the accused. Also no second witness of the recovery memo has been produced and no statements of these witnesses u/s 161 Cr.P.C have been recorded by the I.O. The I.O in his re-examination as PW-03 has admitted that the recovered articles were found properly placed in the shop from which it can be presumed that no offence has been committed inside the shop and further stated that the lock was not recovered through recovery memo.

Thus, in the light of the aforesaid findings, it is established that there is no probability of the accused being convicted of the offence. Therefore, the application in hand is accepted and the accused Muhammad Zubair s/o Hashim Gul is acquitted from the charges levelled against him. The accused is in custody. He be released if not required in any other case.

Case property be dealt according to law.

File be cosigned to the record room after its necessary completion and compilation.

Announced
29.06.2022

REHMAT ULLAH WAZIR
Senior Civil Judge JM,
(Rehmat Ullah Wazir)
SCJ/JM,
Orakzai (at Baber Mela)