

71

IN THE COURT OF SYED ABBAS BUKHARI
CIVIL JUDGE -II, KALAYA

Suit No.17/1 of 2023

Original Date of Institution.17.02.2022

Date of Transfer to this court.....08.03.2023

Date of Decision of the suit..... 20.12.2023

Saif Ur Rahman s/o Said Raheem resident of Qom
Mishti, Anjani Tehsil Lower District Orakzai. ...Plaintiff

Versus

1. Omer Gul s/o Noor Muhammad
2. Noor Muhammad alias Noor Sheikh s/o Noor Ahmad
residents of Qom Astori Khel Anjani Village Zango
dara Teshsil Lower District Orakzai.....Defendants

SUIT FOR RECOVERY OF RS-15,00,000/-

Counsels for plaintiff: Insaf Ali Advocate

Counsel for defendants: Sana Ullah Khan Advocate

JUDGMENT

20.12.2023

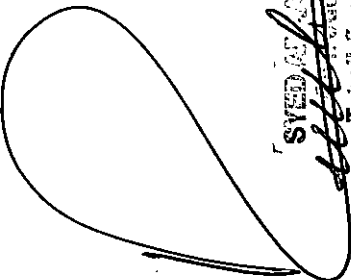
Vide this judgment I intend to dispose of suit captioned
above.

2. It is a suit from the plaintiff against defendants for the
recovery of Rs-1500000/- (Fifteen Lac Rupees).
3. Brief facts of the case as narrated in the plaint are that
plaintiff belong to a respectable and well settled family and
possess a good fame and respectable position in the society.

72

About seven years back, prior to the institution of instant suit, a bomb blast incident took place in Gul Khan area of village Sultan zai and detective dogs were brought by the residents of the locality, which entered the hujra of plaintiff. At that very time plaintiff, defendant no.1, Asmat Ullah and Shabir Khan were present in the hujra and all of them were arrested by Army for interrogation. After twenty five days of their arrest, plaintiff Saif Ur Rahman and Asmat Ullah were released while defendant no.01 confessed his guilt and was accordingly sentenced for seven years imprisonment. After his release from jail, defendant conducted 10/15 Jirgas with the plaintiff and leveled allegations that he was sentenced for seven years due to the statement of plaintiff. Plaintiff confronted a loss of about Rs-1500000/- (fifteen lac) and nothing has been proved against the plaintiff till date by defendant no.1. Due to the false accusation and allegations, plaintiff's reputation in the society was harmed and he also met fiscal loss as well. Defendants were time and again requested to make good the loss of plaintiff but they refused, hence the instant suit.

4. After institution of the suit the defendants were summoned, who accordingly appeared and submitted their written statement with legal and factual objections, raised therein.



 SYED SAIF UR RAHMAN

 Tehsil Gulistan Kalaya

 7712-2073

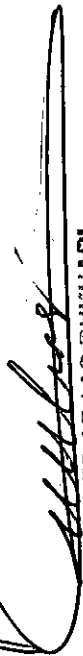
73

5. Out of controversies of the parties, as raised in their respective pleadings, this Court framed the following issues on 07.08.2023.


1. Whether plaintiff has got a cause of action? OPP
2. Whether previously the inhabitants of locality brought detective dogs in connection with bomb blast in Gul Khan area of village Sultan Zai and said dogs entered the hujra of plaintiff, where four persons namely Asmat Ullah, Shabir Khan, defendant no.1 and plaintiff were present, who were arrested by Army and after 25 days of their arrest, except defendant no.1 all the other three persons were released being innocent while defendant no.1 confessed his guilt and was accordingly sentenced with imprisonment of 07 years? OPP
3. Whether after release from jail, defendants held 10/15 Jirga with plaintiff and held plaintiff responsible for seven years imprisonment awarded to defendant no.1, due to which plaintiff was confronted with loss of Rs-15,00,000/- and his reputation and character in the society was also harmed? OPP
4. Whether all the allegations mentioned in the plaint are false and baseless? OPD
5. Whether plaintiff is entitled to the decree as prayed for? OPP

Relief.

6. Both the parties were directed to produce their evidence, which they did accordingly. Plaintiff produced as many as four witnesses including himself as PW-04 and thereafter closed his evidence with a note. Contrary to this the defendants produced as many as three witnesses and thereafter closed their evidence with a note.

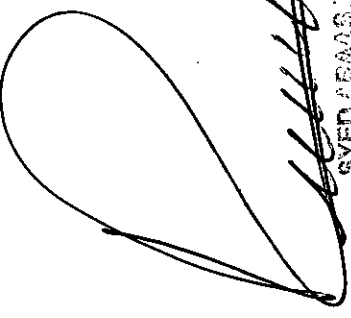

 SYED ASMAT ULLAH
 20/08/2023
 Tehsil Courts Malaya

7. Thereafter arguments were heard. Learned counsel for the plaintiff opened the case and argued that plaintiff belong to a respectable and well settled family and possess a good fame and respectable position in the society. About seven years back, prior to the institution of instant suit, a bomb blast incident took place in Gul Khan area of village Sultan zai and detective dogs were brought by the residents of the locality, which entered the hujra of plaintiff. At that very time plaintiff, defendant no.1, Asmat Ullah and Shabir Khan were present in the hujra and all of them were arrested by Army for interrogation. After twenty five days of their arrest, plaintiff Saif Ur Rahman and Asmat Ullah were released while defendant no.01 confessed his guilt and was accordingly sentenced for seven years imprisonment. After his release from jail, defendant conducted 10/15 Jirgas with the plaintiff and leveled allegations that he was sentenced for seven years due to the statement of plaintiff. Plaintiff confronted a loss of about Rs-1500000/- (fifteen lac) and nothing has been proved against the plaintiff till date by defendant no.1. Due to the false accusation and allegations, plaintiff's reputation in the society was harmed and he also met fiscal loss as well. Defendants were time and again requested to make good the loss of plaintiff but


 SAIF UR RAHMAN
 75-12-1883
 Toba Tek Singh (Malakwal)

75

they refused, hence the instant suit was filed. He further adduced that the plaintiff succeeded to prove his stance through his evidence and furthermore nothing in rebuttal or contradictory is available on the record. Hence prayed that the suit in hand may kindly be decreed in favour of plaintiff and against the defendants for the relief as claimed for.


SYED ABAS KHAN
2017/12/11/11
Tehsil Council College

8. Contrary to this learned counsel for the defendants argued that the plaintiff had not approached this court with clean hands. He further adduced that plaintiff has filed a false and baseless suit against the defendants with the intention to grab money from them. He further added that neither defendant no.1 was present in the hujra of plaintiff nor he was arrested by the army or subsequently imprisoned for seven years. He further argued that no Jirga was arranged by defendants and thus no question of monetary loss to the plaintiff arise. He adduced that plaintiff failed to prove his case through cogent, convincing and reliable evidence while on the other hand the defendants succeeded to produce evidence in light and support of their previous stance alleged in the written statement. Hence, prayed that as plaintiff failed to prove his case, hence the suit in hand may kindly be dismissed with costs.

- 76
9. Now on perusal of record, available evidence and valuable assistance of both the learned counsels for the parties my issue wise findings are as under.

ISSUE NO. 2:

Whether previously the inhabitants of locality brought detective dogs in connection with bomb blast in Gul Khan area of village Sultan Zai and said dogs entered the hujra of plaintiff, where four persons namely Asmat Ullah, Shabir Khan, defendant no.1 and plaintiff were present, who were arrested by Army and after 25 days of their arrest, except defendant no.1 all the other three persons were released being innocent while defendant no.1 confessed his guilt and was accordingly sentenced with imprisonment of 07 years? OPP

Plaintiff in his plaint had alleged that previously a bomb blast occurred in Gul Khan area of village Sultan Zai and accordingly the people of locality brought detective dogs, which entered the hujra of plaintiff and at that very time besides plaintiff one Asmat Ullah, Shabir Khan and defendant no.01 were also present, who were accordingly arrested by the army and after 25 days of their arrest three persons were released while defendant no.1 confessed the crime and was sentenced to imprisonment for a period of seven years. To prove his stance plaintiff produced one Aafil Rahman s/o Muhammad Rafique as PW-01 but he failed to utter a single word regarding the issue in hand and thus deviated from the previous stance of plaintiff alleged in the plaint.

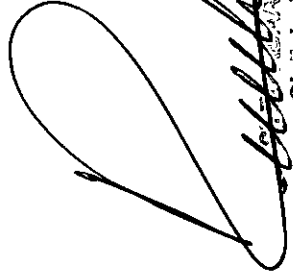
PW-02 was produced and examined as one Noorab Khan s/o Haji Said Jamal, who deposed on oath in light and support of

the stance of plaintiff. During cross examination he deposed that at the time of reporting of the matter to army he was not personally present. He does not remember the date, month or year in which army had brought detective dogs.

PW-03 was produced and examined as one Zareem Gul s/o Agha Jan, who stated on oath in light and support of the stance of plaintiff. During cross examination he deposed that he does not know the date on which blast was occurred. He also does not know the date on which detective dogs were brought.

Plaintiff personally appeared as PW-04 in the witness box and deposed on oath in light and support of his previous stance. During cross examination he deposed that the date on which the detective dogs were brought is not mentioned in the plaintiff as well as in his statement. The date on which bomb blast was occurred is also not mentioned in the plaint. He does not know the exact location, where the blast was occurred.

In light of the above evidence produced by the plaintiff to prove the issue in hand, it has been noticed that although PW-02 to PW-04 to some extent deposed in support of the stance of plaintiff, yet they all stated in their examination in chief that the detective dogs were brought by army while plaintiff has previously stated in his plaint that the detective dogs were brought by the inhabitants of locality. On the other hand as for as the date


ABDUL HUSSAIN
22/12/2023
TENCH COURT KADAYA

77

78

of blast is concerned, all the PWs failed to specifically mention the same rather in their respective cross examinations they have deposed that they do not know said date. Similarly plaintiff when personally appeared as PW-04 had deposed in his cross examination that he does not know the exact location where the bomb blast incident took place, which is quiet strange and does not appeal to a prudent mind. It is also pertinent to mention here that plaintiff was supposed to have specifically mentioned the date, place, time and year on which the alleged incident of bomb blast took place. Moreover, he was also supposed to have produced the eye witnesses of the said occurrence and should have produced and exhibited all the official record including FIR etc before the court in support of his stance.

In light of my above findings as plaintiff failed to prove the issue in hand through cogent convincing and confidence inspiring evidence, hence accordingly the issue in hand is hereby decided in negative against the plaintiff and in favour of defendants.

ISSUE NO. 3:

Whether after release from jail, defendants held 10/15 Jirga with plaintiff and held plaintiff responsible for seven years imprisonment awarded to defendant no.1, due to which plaintiff was confronted with loss of Rs-15,00,000/- and his reputation and character in the society was also harmed? OPP

Plaintiff in his plaint has alleged that after release from jail, defendant no.1 arranged 10/15 Jirgas with the plaintiff and held plaintiff responsible for the seven years imprisonment awarded to

SYED ARBAG BILALARI

20/11/23

29

him, due to which plaintiff suffered a loss of Rs-15,00,000/-. To prove his stance plaintiff produced one Aafil Rahman s/o Muhammad Rafique as PW-01 who deposed on oath that to some extent in light of the stance of plaintiff previously alleged in the plaint but he failed to utter a single word regarding the monetary loss confronted by the plaintiff. During cross examination he deposed that he is not in possession of the original statements of parties to the Jirga recorded during Jirga proceedings. Self-stated that same will be in possession of plaintiff. Ex-PW1/1 does not contain the signatures of defendants. It is correct that Ex-PW1/1 does not bear name and signature of Omer Gul. He does not know who has written the deed.

PW-02 was produced and examined as one Noorab Khan s/o of Haji Said Jamal, who deposed on oath in light and support of the stance of plaintiff. During cross examination he deposed that in his presence plaintiff had not paid any amount to any one during Jirgas as he was not present there. It is correct that Ex-PW1/1 neither contain his name nor he was present there.

PW-03 was produced and examined as one Zareem Gul s/o Agha Jan, who deposed in support of the stance of plaintiff. During his cross examination he deposed that it is correct that neither he is Jirga member nor he is witness of any Jirga.

80

Plaintiff personally appeared as PW-04 in the witness box and deposed in light and support of his previous stance alleged in the plaint. During cross examination he deposed that he is not in possession of any official record pertaining to APA court. It is correct that it is nowhere mentioned in his plaint or statement that where and in which Jirga how much loss was incurred to him. It is correct that he is not in possession of any receipt regarding the payment of money. Self-stated that he has got oral evidence in this regard. It is correct that in his plaint the name of Malik is not mentioned and it is also not mentioned to which Malik how much payment was made by him.

In light of the above evidence produced by the plaintiff to prove the issue in hand, it has been noticed that the whole case of plaintiff rests upon the proof or disproof, as the case may be, of Ex-PW1/1. However plaintiff failed to produce the persons whose names are mentioned in Ex-PW1/1. He also failed to produce the scriber of the same. Furthermore, the original deed was not produced before the court for perusal rather the photocopy was exhibited in absence of the original as secondary evidence without any valid reason or prior permission of this court. Furthermore, from the available record it could not be ascertained that when, where and to whom plaintiff had previously made payment and for what reason he spent huge amount of Rs-15,00,000/-. PW-02

SYED AHMED
 20/12/2023

81

and PW-03 are not Jirga members nor in their presence was any payment made. Similarly no official record of APA court in respect of said Jirgas was produced by the plaintiff. Furthermore, plaintiff has deposed in his cross examination that he has got oral evidence regarding the payment of money but he also failed to produce the same before this court. In given circumstances, this court is of the view that mere assertion of a fact does not amount the same to be proved rather the party asserting the same has to prove it through cogent and confidence inspiring evidence.

In light of the above findings as plaintiff failed to prove the issue in hand through cogent convincing and confidence inspiring evidence, hence accordingly the issue in hand is hereby decided in negative against the plaintiff and in favour of defendants.

ISSUE NO. 4:

Whether all the allegations mentioned in the plaint are false and baseless? OPD

The defendants in their written statement have alleged that the allegations asserted by the plaintiff in his plaint are false and baseless. To prove their stance defendants produced defendant no.1(special attorney for defendant no.02) as DW-01, who deposed on oath in light and support of the stance of defendants previously alleged in the plaint. During cross examination nothing such contradictory has been brought on the record.


 H. H. HAN
 20/10/2023
 Tehsil Courts Malakwal

DW-02 and DW-03 were produced and examined as one Muqarab Khan s/o Ayub Khan and Nazeef Khan s/o Said Amin respectively. Both of them deposed in light and support of the stance of defendants previously alleged in the plaint and furthermore, during cross examination nothing in rebuttal or contradictory has been brought on the record.

In light of what has been discussed above, as defendants succeeded to prove the issue in hand through cogent, convincing and reliable evidence, hence accordingly the issue in hand is hereby decided in positive in favour of defendants and against the plaintiff.

ISSUE NO. 1

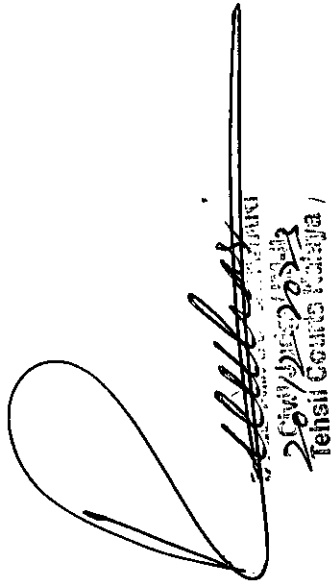
Whether plaintiff has got a cause of action? OPP

In wake of issue wise findings above, the plaintiff has got no cause of action, hence accordingly the issue in hand is hereby decided in negative against the plaintiff and in favour of defendants.

ISSUE NO.5:

Whether plaintiff is entitled to the decree as prayed for? OPP

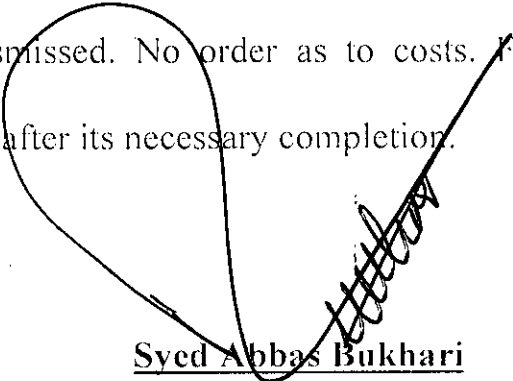
In wake of my issue wise findings above, plaintiff is not entitled to the decree as prayed for, hence accordingly the issue in hand is hereby decided hence accordingly the issue in hand is hereby decided in negative against the plaintiff and in favour of defendants.

A large, stylized handwritten signature in black ink is written over a circular stamp. The stamp contains the text '26/07/2023' and 'Tehsil Courts Kohala /'. The signature is written in a cursive, flowing style.

Relief:

As nutshell of my detailed discussion upon various issues, the suit of plaintiff is hereby dismissed. No order as to costs. File be consigned to record room after its necessary completion.

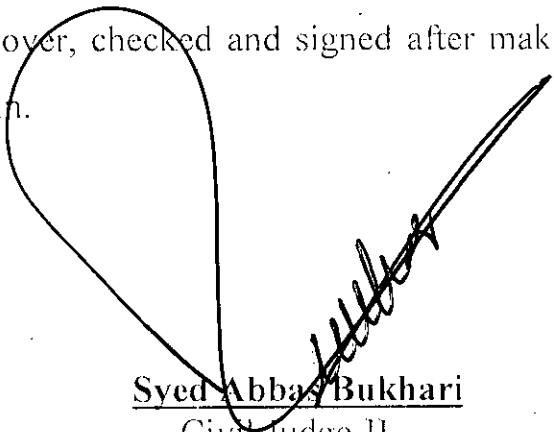
Announced.
20.12.2023


Syed Abbas Bukhari
Civil Judge-II,
Tehsil Courts, Kalaya, Orakzai

C E R T I F I C A T E

Certified that this judgment consist of thirteen (13) pages. Each page has been read over, checked and signed after making necessary correction therein.

Dated: 20.12.2023


Syed Abbas Bukhari
Civil Judge-II,
Tehsil Courts, Kalaya, Orakzai