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IN THE COURT OF ABDUL BASIT
ADDITIONAL SESSIONS JUDGE-II, ORAKZAI

Case No. 02/10 Cr.R of 2023

Date of institution: 06.12.2023

Date of decision: 20.12.2023

Date of consignment:

The State through District Public Prosecutor, Orakzai (petitioner)

Versus

Mir Ahmad son of Eid Badshah and six others all residents of Orakzai (respondents)

CRIMINAL REVISION U/S 439 (A) Cr.PC

Judgment

1. Through this judgment I shall decide criminal revision petition filed by petitioner against respondents whereby impugned the judgment and order dated: 17.10.2023 of the Court of Judicial Magistrate-I, Orakzai.
2. Concise facts giving rise to instant criminal revision petition are that Saifoor Khan, complainant, on receipt of information has charged Muhammad Zubair, to be referred accused, for stoning to death Pirbat Khan, whereupon, an FIR No. 17 dated 29.04.2022 under section 302 PPC in Police Station Mishti Mela, Orakzai was registered; that later on accused has applied for bail before arrest, wherein, alleged compromise, however, the compromise was incomplete, thus, his bail before arrest application was dismissed and ad-interim bail allowed to him was recalled; that accused was arrested and he has applied for post arrest bail before the court of learned Sessions Judge, Orakzai, which was also dismissed on 28.09.2023, however;

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the learned District & Sessions Judge, Orakzai has observed that at bail before arrest stage, the list of legal heirs of deceased prepared by investigation officer, names of legal heirs told by jirga members, father and son of the deceased were incomplete since names of daughters (major and minors) of deceased were not brought on record; therefore, he directed the DPO, Orakzai to initiate criminal proceedings against all concerned persons including the jirga members for the offences attracted to the facts of the case; that on 02.03.2023, local police submitted a complaint before the court of learned Judicial Magistrate-I, Kalaya, Orakzai, who summoned accused/respondents but on 12.08.2023, learned counsel for accused/respondents has filed application for dismissal of complaint being not maintainable; that after hearing the arguments on 17.10.2023, the learned Judicial Magistrate hold that sections 166 (ii) and 201 PPC did not attract to facts and circumstances of the case, whereas, he cannot proceed with the trial of the accused/respondents for sole reason that section 195 CrPC being mandatory in nature has not been followed & returned the complaint to prosecution. Feeling aggrieved from order, petitioner impugned the order of learned court dated 17.10.2023 by filing this criminal revision by asserting it same to be wrong, illegal, against the law and being result of non-exercise of jurisdiction vested in it, thus, prayed for setting aside the order of learned trial court and to remand the case to the learned Judicial Magistrate-I, Kalaya, Orakzai for taking cognizance and disposal of case on merits.

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4. Arguments heard and record perused.
5. Viewing the arguments advanced by learned counsel for parties and record before the court, it is evident from record that accused had applied for bail before arrest before the court of learned Sessions Judge, Orakzai on 16.07.2023, who had granted him ad-interim bail and noticed the prosecution, however, on 27.07.2022, complainant, father, son and elders of the locality appeared before the court of learned Sessions Judge and submitted compromise proforma etc. confirming the fact that legal heirs of deceased have forgiven the accused and got no objection on confirmation of his bail before arrest petition or acquittal. To this effect their statements were also recorded but since, deceased was also survived by a widow namely Mst. Muzafar Khela; therefore, the complainant sought time for her production. The court allowed him the time but due to summer vacations, the bail before arrest petition being an urgent matter was placed before the court of learned Addl. Sessions Judge-II, Orakzai for disposal. On 18.08.2023, application for recording the statement of widow of deceased was moved, which was allowed and the local commissioner was appointed, who visited the widow but she has refused to record statement in favour of accused; therefore, the compromise being incomplete was not considered and bail before arrest petition of the accused was dismissed and his ad-interim bail granting order was recalled by learned Addl. Sessions Judge-II, Orakzai on 07.09.2022. Accused of the case was arrested, who then moved application

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for post arrest bail on 15.09.2022, which was, also dismissed by learned Sessions Judge, Orakzai on 28.09.2023, however, he noted that father (Mir Ahmad), son (Asmatullah) of deceased and jirga members (Din Muhammad and Habib Nazar) had submitted affidavits, compromise proforma, affidavit about the list of legal heirs of deceased and certificate in the bail before arrest petition no. 82/4 of 2022, wherein, their statements were recorded and they had deposed that the deceased had no other legal heirs except Mir Ahmad (father), Asmatullah (son) and Mst. Muzafar Khela (widow). In this respect their statements were also recorded except the statement of widow, however, when the accused had applied for his post arrest bail before the learned Sessions Judge, Orakzai, there Mst. Muzafar Khela (widow) also appeared and not only denied the compromise but also revealed that beside them, the deceased was also survived by daughters, whose names were intentionally hidden as some of the daughters were also minors and they intended to deprive them from payment of their shares in *diyat* amount to favour the accused; therefore, the learned Sessions Judge, Orakzai concluded that this intentional false information amounted to giving false evidence, fabricating false evidence, using evidence known to be false, issuing or signing a false certificate, false statement made in a declaration, using the same as true and giving false information to screen out the offender etc. and sent copy of that order to the DPO, Orakzai for initiating criminal proceedings against all concerned persons including the jirga

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members for the offences attracted to the facts of the case; that the local police on receipt of copy of Court order, applied to DPP, Orakzai for legal opinion, who reported that the act of respondents constitutes an offence u/sections 166 (2), 193, 196, 201 PPC and suggested the police to lodge a complaint against all those persons, who have given false evidence; that the local police submitted complaint before learned Judicial Magistrate-I, Kalaya, Orakzai on 02.03.2023, who summoned accused/respondents but on 12.08.2023, learned counsel for accused/respondents filed application for dismissal of complaint being not maintainable; that after hearing arguments on 17.10.2023, the learned Judicial Magistrate hold that sections 166 (ii) and 201 PPC did not attract to facts and circumstances of the case, whereas, he cannot proceed with trial of accused/respondents for sole reason that section 195 CrPC being mandatory in nature has not been followed and returned the complaint to the prosecution.

Here, I would like to reproduce the section 195 (1) (b) CrPC, which reads as follow;

"195 (1) (b): No Court shall take cognizance of any offence punishable under any of the following sections of the same Code namely sections 193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211 and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, except on the complaint in writing of such Court or of some other Court to which such Court is subordinate."

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Bare reading of the reproduced section clearly provides that when any of the offences pertaining to given sections has been committed in or in relation to any proceedings in any court, then, the only way with the court to take cognizance of any such offence would be moving of the complaint in writing by such court or of some other court to which such court is sub-ordinate. To be more specific, if the offence pertaining to any sections of law is committed before the court of Addl. Sessions Judge, then, the court shall take cognize only when that Addl. Sessions Judge or the High Court to whom said Addl. Sessions Judge is sub-ordinate has made a written complaint.

7. In view of above facts, it is held that learned Judicial Magistrate-I, Kalaya Orakzai has committed no error in passing the impugned order and judicially exercised the powers vested in it, hence, order dated 17.10.2023 of the learned Judicial Magistrate-I, Kalaya Orakzai is upheld and revision petition being bereft of merits is **dismissed**.

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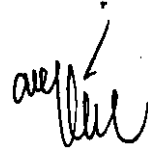
Abdul Basit
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8. It is, however, added that investigation officer has submitted the list of legal heirs of deceased, whereas, the statements of legal heirs of deceased (except the statement of widow and daughters), and elders of the jirga members in bail before arrest application of accused were recorded before the court of learned Sessions Judge, Orakzai, which was later on entrusted to my predecessor in office, who has dismissed the application and recalled the ad-interim bail granting

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order; therefore, it is to be deemed that both courts above could have moved the complaint; therefore, in order to achieve the ends of justice, copy of this order along with original record is forwarded to learned Judicial Magistrate-I, Kalaya Orakzai with direction to treat it as complaint against respondents and proceed against them as per law.

9. File of this court consigned to record room after necessary completion and compilation.



Announced
20.12.2023

(Abdul Basit)
Additional Session Judge-II,
Orakzai

CERTIFICATE

Certified that my judgment consist of seven (07) pages. Each page is signed by me after necessary corrections, where needed.



Announced
20.12.2023

(Abdul Basit)
Additional Session Judge-II,
Orakzai