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FORM "A"
FORM OF ORDER SHEET

IN THE COURT OF SYED ABBAS BUKHARI, CIVIL JUDGE/JUDICIAL MAGISTRATE/CJ-II, KALAYA ORAKZAI
Case Title: State Vs Muzaffar etc

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order 27	13.02.2024	<p>APP for the state present. Accused facing trial present. Complainant present.</p> <p>Vide this order I intend to dispose of instant application filed u/s 249-A Cr.P.C.</p> <p>Arguments already heard and record perused.</p> <p>Now on perusal of the available record and valuable assistance of the learned counsels for the parties and learned APP for the stated, this court is of the humble view that accused petitioners through instant application allege that a series of contradiction exist in the statements of PWs and furthermore, there are serious dents in the evidence so for recorded by the prosecution, which make the case of prosecution one of further inquiry. Hence there is no probability of conviction of accused at later stage after recording of entire/remaining evidence of prosecution. Contrary to this learned counsel for the complainant and APP for the state vehemently opposed the instant application and argued that accused have been directly charged in the instant case. They further argued that there exist no dent in the prosecution evidence and furthermore, the application in hand is pre-mature, hence the prosecution may kindly be allowed to produce their remaining evidence in order to bring home the charge against accused facing trial.</p> <p>In given circumstances perusal of the available record would reveal that instant FIR#73 is cross version of Mad no.12. It is further worth mentioning here that the present complainant is has been cited as accused in mad no.12 and today he has been acquitted u/s 249-A Cr.P.C. In present mad no.13 dated: 22.07.2022, which was later on converted into instant FIR#73 dated: 29.07.2022, the petitioner allege that on the day of occurrence he was present near his house when he saw accused Muzaffar Ali and Waseem Ali, his co-villagers, were grazing their cow in his field situated at Zaridar. He sent Mastaj Ali towards the field to tell the accused facing trial to oust the cow from the field. Upon this the accused became angry and started to beat Mastaj</p>

[Handwritten Signature]
 13-02-2024
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 Civil Judge/JM-II
 Kalaya Orakzai

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Ali and also hit him with knife. When he rushed to the spot to patch up the matter, one accused Safeer Ali s/o Marjan Ali came and started to hit him with the knife and resultantly he fell to the ground. Thereafter the accused started to beat them with clubs.

In given circumstances, perusal of the evidence, so far recorded by the prosecution, in the instant case would reveal that PW-01, carrier of injury sheet from PS to Hospital, had deposed in his examination in chief that he took the injuries sheets of both the injured to the hospital and subsequently from hospital to PS. However perusal of the injury sheet and medical report of injured Junaid Ali would reveal that same was handed over to one constable Ashkar Ali and not to PW-01. Moreover, PW-01 has further deposed in his cross examination that he does not know that when his statement was recorded by the IO.

As for as recovery in the instant case is concerned, PW-02, IO, was produced and examined as one Mehdi Hassan, who deposed in his cross examination that he conducted investigation only to the extent of accused Muzaffar and had further deposed that neither he arrested the accused nor recovered anything. Furthermore, PW-04 Muhammad Hanif, OII, also deposed in his cross examination that nothing was recovered from the possession of arrested accused. In given circumstances, it is pertinent to mention here that as no recovery has been effected from the accused in the instant case, hence case of prosecution is one of further inquiry.

It is also worth mentioning here that as stated earlier, instant case is cross version of Mad no.12 dated: 22.07.2022. Furthermore, present complainant is accused in said mad no.12, who has been acquitted today by this court u/s 249-A Cr.P.C. Hence being cross version case, the fate of instant case would be the same as that of other case. Moreover, in cross version cases it is not possible to ascertain that who was aggressor and who was aggressed upon.

Moreover, no independent witness has been cited as witness in the instant case and thus prosecution failed to comply with the mandatory provisions of section 103

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Tehsil Courts Kalaya

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Cr.P.C.

Hence, in the light of above discussion, I am of the opinion that case of prosecution is full of dents and is one of further inquiry. Furthermore, there exist vast contradiction in the statements of PWs. Hence there is no probability of the conviction of accused facing trial at later stage after recording of entire prosecution evidence rather it would be a futile exercise and would be wastage of precious time of this court. Accordingly the application filed u/s 249-A Cr.P.C. is hereby allowed and accused facing trial namely Muzaffar Ali and Waseem Ali sons of Liaqat Ali are hereby acquitted U/S 249-A Cr.P.C from the charges levelled against them. Their bail bonds stand cancelled and sureties are discharged from the liability of bail bonds. Case property, if any, be kept intact till period of appeal. Prima facie case exists against absconding co-accused namely Safer Ali S/O Meer Majan, who intentionally avoiding his lawful arrest, hence, accused is named above is hereby declared as proclaimed offender. His name be entered in register/list of proclaimed offender. Perpetual warrant of arrest be issued against him. Copy of this order alongwith perpetual warrant be sent to the District Police Officer, Orakzai for compliance. File be consigned to the record room after its necessary completion and compilation.

Announced

13.02.2024

Syed Abbas Bukhari
Judicial Magistrate-II
Tehsil Courts, Kalaya, Orakzai