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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 Tanab Ali 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 29	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 as per contents of the FIR No. 84 dated:22.08.2022 u/s 506/504/341/34PPC of PS Kalaya, complainant had deposed to the police that on 22.08.2022 he was present in his shop alongwith Hashmat Ullah, when at about 14:15 hours accused facing trial namely Tanab Ali s/o Nawab Ali and Mudabir Ali s/o Tanab Ali came duly armed with AK-47 and by aiming their weapons at the complainant used abusive language and further extended life threats to them. The complainant forcefully expelled them from the shop and locked his shop.</p> <p>In given circumstances, perusal of the evidence, so for recorded by the prosecution, in the instant case would</p>

(Signature)
 13.02.2024
 SYED ABBAS BUKHARI
 Civil Judge/JM-II
 Tehsil Court Kalaya

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Continued
0-29

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reveal that IO in the instant case when appeared as PW-01 had deposed in his cross examination that "no recovery has been effected from the accused facing trial. He had made no photography of the shop. He had not recorded the statement of private witnesses. It is correct that he had not given any findings about the occurrence."

It is also worth mentioning here that local police failed to record statement of any independent witness in the instant case and thus failed to comply with the mandatory provisions of section 103 Cr.P.C. Moreover, no recovery has been effected from the accused in the instant case. There is no previous criminal history of the accused available on the record. No role of firing or scuffle has been attributed to the accused rather mere role of using abusive language and aiming of weapons has been given to the accused facing trial by the complainant.

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 Tanab Ali s/o Nawab Ali and Mudabir Ali s/o Tanab 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. 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