

IN THE COURT OF JUDICIAL MAGISTRATE-I, KALAYA, ORAKZAI

Case No4/2 of 2024.
Date of institution.....14.02.2024.
Date of decision.....04.03.2024.


Case FIR No. 49 Dated: 11.12.2023 U/S 379/34 PPC, PS Mishti Mela

Order. No. 05

04.03.2024

None present for the state. Accused Lal Rehman and Sarteeb Khan on bail along with counsel present. Arguments on application u/s 249-A Cr.PC heard and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that complainant SI Naseeb Khan along with constables Murad Gul No. 1264, Muhammad Sadiq No. 1352 and driver HC Sami-ul-Haq No. 1349 were on area patrol when received information that two unknown persons with stolen cows are proceedings towards Kada Bazar Kalaya. On this information, complainant along with other police nafri laid barricade at Sheikhan Meer Karam and in the meanwhile two unknown persons along with stolen cows came and were stopped, who disclosed their names as Lal Rehman S/O Muhammad Ghani and Sarteeb Khan S/O Roman Khan both R/O Qaum Sheikhan, Naka Mela, Orakzai. Both the persons disclosed that they have stolen the cows from the house of one Fazal Khaliq on 07.12.2023. Accused were arrested at the spot. The stolen cows were taken into possession. Murasila was drafted at the spot and was sent to PS for registration of the case through constable Murad Gul No.


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1264. On the strength of murasila, the instant case was registered against the above named accused.

After completion of investigation, complete challan was put in court against accused. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Counsel for accused/petitioners filed application u/s 249-A Cr.PC for acquittal of the accused on the basis of compromise and available record.

On 22.02.2024, Fazal Khaliq (owner of the cows) appeared and stated that he has patched up the matter with the accused/petitioners outside the court and he has got no objection if accused/petitioners are acquitted from the charges leveled against them. His statement was separately recorded which was duly thumb impressed by him as token of its correctness. Copy of his CNIC is Ex.PA.

Perusal of record transpires that the alleged occurrence took place on 07.12.2023 at unknown time, near the house of owner of cows (Fazal Khaliq) situated at Qaum Sheikhan, Naka Mela, Orakzai and FIR was registered on 11.12.2023. There is unexplained delay in report. From 07.12.2023 to 11.12.2023, no report was made regarding the occurrence. When there was no report regarding stealing of cows then how the complainant came to know that the accused persons are taking stolen cows to Kada Bazar Kalaya. Owner of cows was not present with the complainant at the time of alleged recovery. There is no eye witness to the occurrence. Source of information regarding involvement of accused in commission of the offence has not


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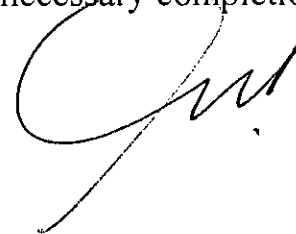
been disclosed by the complainant. Complainant has not charged accused/petitioners for the commission of the offence in his 161 Cr.PC statement. Accused/petitioners have not confessed their guilt before the court. There is no criminal history of accused/petitioners. Furthermore, Fazal Khaliq (owner of cows) has patched the matter with accused/petitioners outside the court and he is no more interested in prosecution of the accused/petitioners. He has got no objection on the acquittal of the accused/petitioners. Although, the offence is non-compoundable, however, in plethora of judgments of Apex Superior Courts, compromise may be considered even in non-compoundable offences. In the newly merged districts (the Erstwhile FATA), most of the civil and criminal disputes are resolved through Jirgas.

There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused/petitioners are acquitted from the charges leveled against them. They are on bail. Their sureties stand discharged from their liability.

Case property be dealt with in accordance with the law.

File be consigned to record room after necessary completion and compilation.

Announced.
04.03.2024



(Zahir Khan)
Judicial Magistrate-I,
Tehsil Kalaya, Orakzai