

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

Case No63/2 of 2022.

Date of institution.....11.10.2022.


Date of decision.....28.02.2024.

Case FIR No. 60 Dated: 13.06.2022 U/S 506,34,427,447,148,149 PPC, PS Kalaya**Order. No. 33**

28.02.2024

Accused Gul Zaman and Nisrab on bail present. Rest of the accused on bail are exempted. Complainant absent. Arguments on application u/s 249-A Cr.PC already heard and record gone through.

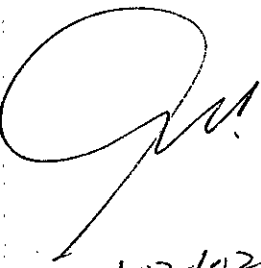
Brief facts of the prosecution's case as unfolded in the FIR are that complainant Abdul Samad Afridi reported to ASHO Muqadar Khan in PS to the effect that on 12.06.2022 at about 13:00 hours, he along with Muhammad Sair, Muhammad Ameen and Fazal Khaliq and other labors were present in coal mine situated at Chappri Feroz Khel, Margho Channa when at about 13:00 hours, the nominated accused came to the coal mine in shape of a mob led by accused Almas Khan, Niaz Bahadar, Noor Zaman, Lal Karim, Abad Gul and Tariq. Accused asked them to stop mining work. He replied that he has legal documents of lease of the coal mine. The accused party started damaging/destroying the mine machinery. The labor was ousted from the coal mine. There are civil and criminal litigations with the accused party. PW Sair Muhammad and watchman Abad Gul have also witnessed the occurrence. Report of the complainant was scribed in DD in shape of mad No. 07 dated 12.06.2022 and on the strength of which FIR Ex.PA was registered after obtaining


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legal opinion from the office of DPP, Orakzai. Motive behind the occurrence is dispute over the shares in the coal mine.

After completion of investigation, complete as well as supplementary challan was put in court against the accused facing trial and absconding co-accused. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused, 03 PWs have been examined so far.

Sub-inspector Shal Muhammad was examined as PW-01. He stated that during the days of occurrence, he was posted as SHO, PS Kalaya. Report of complainant Abdul Samad Afridi was scribed in DD vide mad No. 07 dated 12.06.2022. Inquiry was initiated to determine whether the alleged occurrence has taken place or not. Inquiry was conducted by ASHO PS Kalaya. After completion of inquiry, case file was handed over to him for preparation of final report and seeking legal opinion from the office of DPP Orakzai, he prepared final report as per which the occurrence had taken place. Final report is Ex.PW-1/1. Application for legal opinion is Ex.PW-1/2. FIR was registered against accused facing trial. On 24.06.2022, he arrested accused Gul Zaman and issued his card of arrest Ex.PW-1/3. Accused was handed over to IO for interrogation/completion of investigation. On 21.08.2022, he arrested accused Noor Zali vide card of arrest Ex.PW-1/4. Accused was handed over to IO for interrogation. After completion of investigation, he submitted complete/supplementary challan against the accused.


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Complainant, Abdul Samad, was examined as PW-02. He reproduced the story narrated in his report. He also stated that the report was read over to him and he thumb impressed the same as token of its correctness. PW Sair Muhammad also thumb impressed the report as verifier. He charged the accused for the commission of the offence.

PW-03, is the statement of Sair Muhammad. He stated that complainant Abdul Samad is his brother. He also reproduced the story narrated in the FIR in his statement. He verified his thumb impression on the report.

As per contents of FIR, the alleged occurrence took place on 12.06.2022 at 13:00 hours at coal mine situated at Chappri Feroz Khel, Lower Orakzai and it was reported on 12.06.2022 at 16:00 hours and FIR was registered on 13.06.2022 at 15:30 hours. PW-02 Abdul Samad is complainant while PW-03 Sair Muhammad (brother of complainant) is eye witness. Motive behind the occurrence is dispute over shares in coal mine. Record shows that after recording report of the complainant in shape of mad No. 7 dated 12.06.2022, inquiry u/s 157 (1) Cr.PC was initiated to dig out whether the alleged occurrence has taken place or not but there is nothing on record which could show that any permission for inquiry was obtained from the court. No site plan was prepared during inquiry. Statements of PWs were not recorded during inquiry. Report was recorded on 12.06.2022, final report without any inquiry was prepared on 12.06.2022 and FIR was registered on 13.06.2022. The inquiry officer, without collecting any supporting material concluded that accused are involved in the commission of the offence. Complainant Abdul Samad




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(PW-02) belongs to Hassan Khel, Peshawar, therefore, it does not appeal to prudent mind that he identified 46 persons with name and parentage allegedly involved in the commission of the offence. No identification parade was conducted. He stated in his cross examination that he has not provided any lease documents to the IO. He also stated that all the eye witnesses are not residence of District Orakzai which further creates doubt in identification of accused persons. Security Guard (PW Mir Wali), allegedly present at the spot was abandoned by prosecution. Coal mine manager, PW Fazal Khaliq was also abandoned by prosecution. Similarly, Sair Muhammad, brother of complainant, who deposed as PW-03, stated in his cross examination that there were CCTV cameras installed in the coal mine but no footage/recording was provided to the IO. No incriminating article has been recovered from the possession of the accused or on their pointation. There is no documentary proof regarding the motive behind the occurrence. Accused have not confessed their guilt before the court.

There are so many dents and doubts in case of prosecution benefit of which goes to the accused. 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 facing trial namely Gul Zaman, Abad Gul, Noor Zaman, Muhammad Saeed, Shal Muhammad, Muhammad Ameer, Gulam Jan, Kachkol Khan, Wrekhmeen, Zal Muhammad, Faiz Ullah, Noor Zali, Rehmat Ullah, Aman Ullah, Ismail, Lal Kareem, Wakeel, Niaz Bahadar, Ali Asghar, Mehboob, Muhammad Saeed, Alak Jan,


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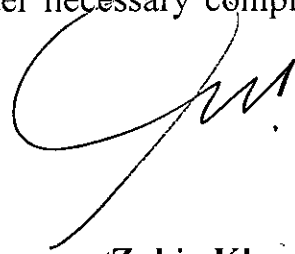
Almas Khan, Nazak Jan and Nisrab are acquitted from the charges leveled against them. They are on bail. Their sureties stand discharged from their liability.

Keeping in view the available record and statements of PWs, this court is satisfied that a prima facie case exists against the absconding accused who are intentionally avoiding their lawful arrest, hence, accused Haji Tariq, Anar Gul, Sher Dil, Fateh Muhammad, Niaz Wali, Rehman Shah, Jamal Khan, Hashim, Hashim Khan, Khanza Gul, Abdul Qasim, Fareed Khan, Khaliq Shah, Muhammad Ullah, Aziz Khan, Payo Ali, Malak Meer and Hamayoon S/O Khalid Shah are hereby declared as proclaimed offenders. Their names be entered in register/list of proclaimed offenders. Perpetual warrant of arrest be issued against them. Accused Jan Muhammad and Dawood Khan have been died therefore, proceedings against them are hereby abated. Accused Hamayoon has already been acquitted on the basis of compromise vide order date: 17.05.2023.

Case property if any, be dealt with in accordance with law.

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

Announced.
28.02.2024



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