

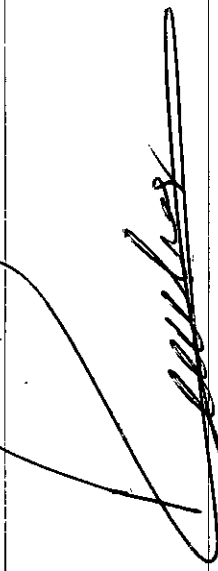
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FORM "A"

FORM OF ORDER SHEET

IN THE COURT OF SYED ABBAS BUKHARI, CIVIL JUDGE/JUDICIAL MAGISTRATE/CJ-II, KALAYA ORAKZAI

Case Title: State Vs Lajbar Khan 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
<p>Order 29</p> 	<p>06.03.2024</p> <p>06.03.2024</p> <p>SYED ABBAS BUKHARI Civil Judge/JM-II Tehsil Courts Kalaya</p>	<p>None present for the state. Accused facing trial present. Complainant present through one socha Gul.</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 evidence, so for recorded by the prosecution, in the instant case would reveal that PW-01, the inquiry officer, had deposed in his examination in chief that he took in to possession 08 bonds/trees while in his cross examination he had admitted that complainant had mentioned 04 trees in his report. He further admitted in his cross examination that in site plan he has shown 04 trees at point no.04. This statement of PW-01 make the recovery doubtful. Furthermore, he also stated in his cross examination that it is correct that he prepared site plan on 07.08.2022 i.e. one month prior to the alleged occurrence. He further admitted that he has made addition in the site plan on 23.11.2022 with the red ink. He</p>

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SYED ABBAS BUKHARI
Civil Judge/JM-II
Tehsil Courts Kalaya

further admitted that he had not mentioned the names of police officials in the site plan, who accompanied him on the spot. He further admitted that he had not recorded the statement of any independent witness on the spot.

PW-03 had deposed in his cross examination that elders of complainant party came to the PS at 12:00PM while on the other hand perusal of Mad no.10 dated: 07.09.2022 would reveal that complainant visited police station at about 12:30PM. PW-03 further deposed in his cross examination that they left the PS at 01:00PM alongwith ASHO(PW-01) and reached the spot at 01:30PM while PW-01 had deposed in his cross examination that case file was handed over to him for inquiry at 12:30PM and thereafter he reached the spot in 15 minutes. PW-03 further deposed in his cross examination that when police party reached the spot no one was present on the spot except the complainant party while PW-01 had deposed in his cross examination that when he reached the spot accused were already present on the spot. PW-03 further stated that ASHO had not recorded statement of any person on the spot. He further admitted that on recovery memo his signature is in urdu while in his CNIC same is in English.

PW-04, Moharrir of PS, had deposed in his examination in chief that complainant came to the PS for lodging the report on 13.09.2022 while mad no.10 was registered on 07.09.2022 by PW-04. This statement of PW-04 make the case of prosecution one of further inquiry.

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 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


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<p>Continued order-29</p>	<p>06.03.2024</p>	<p>Lajbar Khan s/o Fazal Khan, Gul Raif Khan s/o Walayat Shah, Meer Hassan Shah, Khan Afzal sons of Lal Mat Shah and Malak Ameen s/o Gul Khameen 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.</p> <p>Announced 06.03.2024</p> <p> <u>Syed Abbas Bukhari,</u> Judicial Magistrate-II Tehsil Courts, Kalaya, Orakzai</p>
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