

IN THE COURT OF ZAHIR KHAN,
JUDICIAL MAGISTRATE, TEHSIL KALAYA, ORAKZAI

Case No. 38/2 of 2022

Case FIR No. 19 Dated: 06.06.2022 U/S 457, 380, 411/34 PPC
PS Misthi Mela

Order. 04
18.08.2022

APP for the state present. Accused Shafique and Zareen produced in custody. Counsel for accused present. Complainant also present. Statement of complainant recorded as PW-01, statement of IO Abdul Manaf ASI recorded as PW-02 and statement of ASHO Akhtar Muni- recorded as PW-03.

Counsel for accused submitted application for acquittal of accused U/S 249-A Cr. PC. Arguments heard and record gone through.

Brief facts of the case are that complainant Pir Badshah reported to the local police that, on the night of occurrence, he along with other family members were asleep in their house and in the morning, the women folk informed him that two cows have been stolen from the house. FIR was registered against unknown accused. Later on, accused facing trial were arrested by the local police of PS Mishti Mela along with stolen cows.

Accused were formally arrested. 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. Prosecution was allowed to produce evidence against accused.

Complainant, Pir Badshah deposed as PW-01. He stated that he is complainant of the case in hand registered against accused Shaḥīque and Zareen. On the night of occurrence, he along with other family members

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were asleep in their house. In the morning, the women folk informed him that two of his cows were stolen from the house. On the 06.06.2022, he reported the matter to the local police and charged unknown accused for the commission of the offence. Report was read over to him and he thumb impressed the same as token of its correctness. His report was verified by Walayat Khan. FIR is Ex. PA. Later on, accused facing trial were arrested by the local police along with stolen cows, resultantly, he charged accused Shafique and Zareen for commission of theft of cows from his house. He pointed out the spot to IO who prepared site plan on his pointation. The recovered cows were handed over to him on Superdari. Now, he has affected compromise with accused facing trial and he has got no objection if accused facing trial are acquitted from charges levelled against them.

ASI Abdul Manaf deposed as PW-02. He stated that, after receiving copy of FIR, he proceeded to the spot and prepared site plan Ex. PB at the instance of complainant. He was informed by ASHO Akhtar Munir regarding arrest and recovery of stolen cows. He returned to the PS where accused and cows were present in the PS. He interrogated the accused. He applied for physical custody of accused vide application Ex. PW-2/1 which was accepted and two days custody was granted. Accused confessed their guilt before him. They led him to the spot for spot pointation. They pointed out the spot. Pointation memo is Ex. PW-2/2. Recovery sketch is Ex. PW-2/3 which was prepared at the instance of ASHO/recovery officer. He recorded statement of PWs and accused U/S 161 Cr. PC. Accused were produced before the court for recording their confessional statement vide his application Ex. PW-2/4 but accused refused to confess their guilt before the court. Accused were committed to the Judicial Lock-up. Identification

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memo in respect of recovered cows was prepared. The same is Ex. PW-2/5. After recovery of stolen cows, Section 411/34 PPC was added in the record.

ASHO Akhtar Munir deposed as PW-03. He stated that, on 06.06.2022, the stolen cows were recovered from possession of accused vide recovery memo Ex. PW-3/1. Complainant was called to the spot for identification of the recovered cows. He identified the cows. Accused were arrested vide card of arrest Ex. PW-3/2. He informed IO about the same. He also pointed out the spot to the IO where recovery was affected. His statement was recorded by IO U/S 161 Cr. PC.

Complainant Pir Badshah stated in his cross examination that he has affected compromise with accused facing trial and he has got no objection if they are acquitted by the court. He further stated that his statement U/S 164 Cr. PC was not recorded. He also stated that soon after the recovery of the stolen cows, FIR was registered against the accused facing trial. Abdul Manaf ASI also stated that statement of complainant U/S 164 Cr. PC was not recorded. He further stated that accused have no criminal history. Similarly, Akhtar Munir ASHO stated in his cross examination that both the witnesses cited on recovery memo are police officials despite the fact that private persons were present at the time of recovery at the spot.

Complainant has affected compromise with accused facing trial and

he has got no objection on the acquittal of the accused. Cross examination of complainant shows that FIR was registered after recovery of stolen cows but case FIR number, date and Sections of law are mentioned on the recovery memo. There is no eye-witness to the occurrence. Source of information regarding involvement of accused in the commission of the

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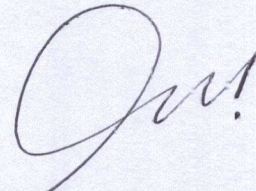
offence was not disclosed by complainant. Accused are not charged in any statement before the court U/S 164 Cr. PC. Accused have not confessed their guilt before the court. There is no criminal history of accused facing trial. Mandatory provisions of Section 103 Cr. PC have not been complied with at the time of alleged recovery of stolen cows. There are so many doubts and doubts in case of prosecution.

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 are acquitted from the charges levelled against them. They are in custody. They be released, if not required in any other case.

Case property i.e., two cows have already been handed over to complainant on Superdari.

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

Announced.
18.08.2022



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