

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

Case No. 3/3 of 2022

Case FIR No. 29 Dated: 07.09.2021 U/S 15AA,
PS Mishti Mela

Order. No. 13

03.10.2022


APP for the state present. Accused on bail along with counsel present. PW constable Saleem Khan present. His statement recorded as PW-04. Counsel for accused/petitioner filed application U/S 249-A Cr.PC. Arguments on application U/S 249-A Cr. PC heard and record gone through.

Brief facts of the case are that on 07.09.2021, ASHO/complainant along with other police nafri were on area patrol when received information that accused Fazal Rafique wanted in case FIR No. 28, dated 06.09.2021, U/S 324, 427/34 PPC, PS Mishti Mela is present in his Hujra situated at Masood Pakha. On this information, ASHO/complainant rushed to the spot and raid was conducted. Accused Fazal Rafique was present at the spot duly armed with pistol. He was unarmed and one pistol 30 bore without number along with a fixed charger containing 03 cartridges of the same bore was recovered from the possession of accused. On the strength of Murasila, FIR was registered against the accused. The recovered pistol was taken into possession as weapon of offence in the attempted murder case as well.

Accused was 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


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pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused.


Aman Ullah, ASHO was examined as PW-01. He has submitted complete challan against the accused.

ASI Shabir Khan, PS Kurez Boya deposed as PW-02. He has registered FIR Ex. PA against the accused.

Complainant, Khan Muhammad, the then ASHO PS Mishti Mela was examined as PW-03. Recovery memo is Ex. PW-3/1. Murasila is Ex. PW-3/2. Card of arrest of accused is Ex. PW-3/3. Site plan is Ex. PB.

Constable, Saleem Khan appeared and deposed as PW-04. He is marginal witness to the recovery memo Ex. PW-3/1.

Khan Muhammad, the then ASHO PS Mishti Mela, who deposed as PW-03, stated in his cross examination that he is illiterate. He cannot read and write. All the documents were prepared on his dictation by Moharrir of PS. He admitted that he has not mentioned this fact of dictation to Moharrir in the Murasila, recovery memo, card of arrest and site plan etc. PW-03 is complainant as well as IO of the case. If the Murasila, card of arrest, recovery memo etc are reduced into writing by Moharrir of the PS then it means that all the papers were prepared while sitting in the PS. There is nothing on record which could show that Moharrir accompanied the complainant to the spot at the relevant time. As per contents of FIR, the recovered pistol was taken into possession as weapon of offence in case FIR No. 28, dated 06.09.2021, U/S 324, 427/34 PPC, PS Mishti Mela but no FSL report is placed on file which could corroborate the version of prosecution. Case property was neither produced by complainant nor by the marginal witness at the time of recording their evidence.


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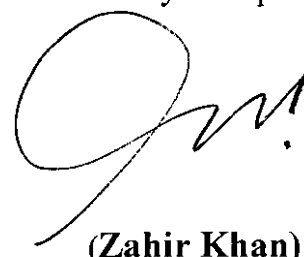
Constable, Saleem Khan who appeared before the court today, was examined as PW-04. He is marginal witness to the recovery memo. He, in his cross examination, stated that they returned to PS after 01:00PM. The IO reached the spot at 12:30 PM. Asif Wazir is IO of the case. Record shows that the alleged occurrence took place at 15:00 hours and it was reported at 15:20 hours. FIR was chalked out at 15:40 hours. As stated earlier, Khan Muhammad, the then ASHO PS Mishti Mela is complainant as well as IO of the case but PW-04 stated that the IO reached the spot at 12:00PM. SI Asif Wazir investigated the case which is not supported by the record. There are so many dents and doubts in case of prosecution. Statements of PWs are full of contradictions. APP for the state apprised the court that accused facing trial has already been acquitted in case FIR No. 28, dated 06.09.2021, U/S 324, 427/34 PPC, PS Mishti Mela.

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 is acquitted from the charges levelled against him. He is on bail. His sureties stand discharged from their liability.

Case property i.e., one 30 bore pistol without number along with a fixed charger containing 03 cartridges of the same bore be dealt with in accordance with the law.

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

Announced.
03.10.2022



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