

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

Case No. 1/3 of 2021

Case FIR No. 126 Dated: 14.12.2020 U/S 56 Khyber Pakhtun Khwa Mineral Sector
Governance Act, 2017,
PS Kalaya


Order. No. 17

10.10.2022

APP for the state present. Accused on bail along with counsel present. PWs absent. Counsel for accused 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 lease holder namely Muhammad Shaheen made a complaint to the complainant namely Muhammad Ishaq who is a Mineral Guard posted at Kohat to the effect that the said Muhammad Shaheen is a lease title holder. His lease file No. is 343/316. Accused namely Zahoor Shah and Muhammad Ayaz obstructed and created hinderance in the operation/excavation in the leased area situated at Chappar Mishti, Lower Orakzai and thereby committed an offence punishable U/S 56 of Khyber Pakhtun Khwa (Mines and Mineral) Act, 2017. Murasila was drafted by Muhammad Ishaq, Mineral Guard, Kohat on the basis of which case FIR No. 126, dated 14.12.2020, U/S 56 of Khyber Pakhtun Khwa (Mines and Mineral) Act, 2017 was registered against the accused.

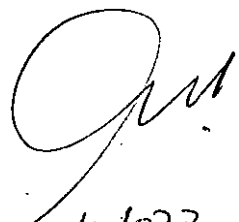
Accused were formally arrested and after completion of investigation, complete challan was put in court against accused. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused.


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Complainant, Muhammad Ishaq, Sub Inspector, Office of Assistant Director Minerals, Kohat was examined as PW-01. Murasila was exhibited as Ex. PW-1/1.

Muhammad Shaheen, appeared and deposed as PW-02. He is lease title holder.

As stated above, accused/petitioners are charged for interference and obstruction in the mining operation conducted by mineral title holder in the leased area at Chappar Mishti, Lower Orakzai. As per Section 56(5) of the Khyber Pakhtun Khwa (Mines and Mineral) Act, the offences specified in sub section 1 of Section 56 of the Act shall be cognizable and non-bailable and information in respect of an offence shall be reported to the respective police station by the licensing authority or an officer authorized by him in this behalf for registration of the case against the accused. In the instant case, the occurrence was reported to the local police by Mineral Guard through Murasila. He is not the licensing authority. There is nothing on record which could show that he was authorized by the competent authority to report an offence to the local police. There is violation of Section 56(5) of the Act *ibid*. More so, complainant Muhammad Ishaq, the then Mineral Guard, in his cross examination, admitted that the application submitted before him by lease holder namely Muhammad Shaheen is not placed on file. After receiving the alleged application, accused were called to the office, however, this fact has not been mentioned in the Murasila. Similarly, the lease holder namely Muhammad Shaheen, who deposed as PW-02, stated in his cross examination that he has not mentioned the mode and manner of obstruction and hinderance allegedly caused by accused in the operation of mining. He



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further admitted that the application submitted by him to the authorities does not bear any date. There is no date and time of occurrence in the application. He also stated that the local police inspected the spot five days after submission of application. The application was allegedly written on 23.11.2020. FIR was registered on 14.12.2020. Site plan was prepared on 16.12.2020. There are material contradictions in this regard in the statement of PWs and record before the court.

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 on bail. Their sureties stand discharged from their liability.

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

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

Announced.
10.10.2022



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