

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

Case No.....62/2 of 2021.

Date of Institution.....14.10.2021.

Date of Decision.....22.11.2022.

State through:

SHO Shal Muhammad Khan PS Kalaya.

.....Complainant

VERSES

1. Subhan Ullah S/O Maroof Khan,
2. Amjid Khan S/O Maroof Khan,
3. Mawaz Khan S/O Walayat Khan,
4. Rustam Gul S/O Ahmad Shah,
5. Bahadar Meen S/O Syed Badshah,
6. Tariq Khan S/O Gul Wali Shah,
7. Hashmat Khan S/O Ali Khel and
8. Yousaf Khan S/O Mehmood Khan all residents of Village Lerri, Feroz Khel, Tehsil Lower, District Orakzai.

.....Accused


Case FIR No. 109, Dated: 11.09.2021, U/S 341, 347, 186, 147, 149 PPC, PS Kalaya.

JUDGEMENT

22.11.2022

Through this judgement, I am going to dispose of the instant case registered against accused Subhan Ullah and 10 others vide case FIR No. 109, Dated: 11.09.2021 U/S 341, 347, 186, 147, 149 PPC, PS Kalaya.

Brief facts of the case are that on 11.09.2021, SHO/complainant along with other police nafri was on area patrol when received information that some persons have obstructed government officials


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in discharge of their official duty at Lerri, Feroz Khel Shamilat Land measuring 4600 Marla notified vide notification No. 1831/DC dated 09.07.2021 U/S 4 of Land Acquisition Act for the purpose of Police Lines and Judicial Complex, Orakzai etc. He proceeded to the spot where accused facing trial were present. They obstructed the officials in discharge of their official duty. Negotiations were made with them but in vain. He arrested accused Subhan Ullah, Amjid Ullah, Mawaz Khan, Rustam Gul, Bahadar Meen, Tariq Khan and Hashmat Khan. He drafted Murasila at the spot and handed over it to Constable Raza Ali. On the strength of Murasila, FIR was registered against the accused. After completion of investigation, complete/supplementary challan was submitted by prosecution against the accused facing trial. Accused Zubair, Walayat Khan and Zain Ullah are absconding.


- 2.** Accused were summoned and they appeared before the court. Legal formalities under Section 241-A Cr. PC were complied with. Accused were formally indicted. They pleaded not guilty and claimed trial. Statement of search witness was recorded as SW-01 and afterwards prosecution was directed to produce its evidence. Prosecution produced five (05) witnesses to prove its case against the accused while rest of the PWs were given up by prosecution and closed its evidence.

- 4.** PW-01, is the statement of ASI Ayub Khan. He stated that on receipt of Murasila from SHO Shal Muhammad Khan through Constable Raza Ali No. 526, he incorporated contents of Murasila into FIR. Copy of FIR is Ex. PA. Copy of FIR was handed over to constable


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Raza Ali who took it to the SHO/complainant to the spot. His statement was recorded by IO U/S 161 Cr. PC.

5. PW-02, is the statement of SHO/complainant. He is complainant as well as IO of the case. He stated that he along with other police nafri was on area patrol when received information that some persons have obstructed government officials in discharge of their official duty at Lerri, Feroz Khel Shamilat Land measuring 4600 Marla notified vide notification No. 1831/DC dated 09.07.2021 U/S 4 of Land Acquisition Act for the purpose of Police Lines and Judicial Complex, Orakzai etc. He proceeded to the spot where accused facing trial were present. They obstructed the officials in discharge of their official duty. Negotiations were made with them but in vain. They were reluctant to allow the officials do their official duty. SHO/complainant drafted Murasila at the spot and handed over it to Constable Raza Ali. Murasila is Ex. PW-2/1. He received copy of FIR brought by Constable Raza Ali. He prepared site plan Ex. PB in presence of eye witnesses. As accused nominated in FIR were avoiding their lawful arrest, therefore, he vide, his applications Ex. PW-2/2 and Ex. PW-2/3 applied for warrants U/S 204 Cr. PC and proclamation notices U/S 87 Cr. PC. On 02.06.2022, He arrested accused Subhan Ullah, Amjid Ullah, Mawaz Khan, Rustam Gul, Bahadar Meen, Tariq Khan and Hashmat Khan vide card of arrest Ex. PW-2/4. Accused were produced before the court for obtaining their physical custody vide his application Ex. PW-2/5. Accused were released on bail as offences are bailable. He recorded



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statements of PWs, search witness and accused U/S 161 Cr. PC and after completion of investigation, he submitted complete and supplementary challan against the accused. Challan forms are Ex. PW-2/6 and Ex. PW-2/7.

- 6. PW-03**, is the statement of Raza Ali. He stated that he was present with SHO/complainant. Accused facing trial obstructed government officials in discharge of their official duty present at the spot in connection with land survey for Judicial complex at Lerri, Feroz Khel. Murasila was handed over to him by SHO/complainant and he took it to PS and handed over it to Moharrir. After registration of the FIR, copy of FIR was handed over to him and he took it to the spot and handed over to SHO/complainant. His statement was recorded by IO U/S 161 Cr. PC.
- 7. PW-04** is the statement of SHO Muhammad Shafique. He arrested accused Yousaf Khan and issued his card of arrest Ex. PW-4/1. He handed over the accused to SI Minhaz Hussain. He submitted challan Ex. PW-4/3 against accused Yousaf Khan.
- 8. PW-05**, is the statement of Mihhaz Hussain. He stated that accused Yousaf Khan was arrested by SHO Muhammad Shafique and was handed over to him for interrogation/investigation. He recorded statement of accused U/S 161 Cr. PC. Accused was produced before the court for judicial remand vide his application already exhibited as Ex. PW-4/2. Accused was released on bail as offences are bailable.


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9. Afterwards, statements of accused U/S 342 Cr. PC were recorded wherein they pleaded not their guilt and did not wish to be examined on oath. They opted not to produce defence evidence.
10. Record transpires that SHO/complainant Shal Muhammad Khan, who deposed as PW-02 stated in his cross examination that he is acquainted with the area of Lerri, Feroz Khel which is a vast area. He knows the accused by name present in the court. He does not remember the exact number of workers present at the spot. He again stated that there were 10 to 15 workers at the spot. He did not record the statement of any worker U/S 161 Cr. PC. He does not mention the workers by name in the site plan. No specific point has been allotted to the workers. It is correct that accused were not arrested at the spot. It is also correct that accused did not confess their guilt before the court.
11. Raza Ali, who deposed as PW-03, stated in his cross examination that he does not remember name of the department whose officials were present at the spot. There were 11 workers at the spot. He is acquainted with the area Lerri, Feroz Khel. He cannot tell name of the owner of field where work was carried out. The accused persons were 11 in number. He cannot tell their names. It is correct that he has not stated in his 161 Cr. PC statement that he took Murasila to PS and after registration of FIR, copy of FIR was handed over to IO.
12. Record transpires that the alleged occurrence took place on 11.09.2021 at 10:00AM at Shamilat situated at Lerri, Feroz Khel. It was reported through Murasila at 10:30AM and FIR was registered



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at 11:00AM. Per contents of Murasila and FIR, government officials were present at the spot in connection with acquisition of land within the meaning of Section 4 of the Land Acquisition Act for the purpose of establishment of Police Lines etc but it has not been mentioned in the Murasila that who were the workers and government officials. Their names and designations have not been mentioned in the Murasila. Statements of workers and government officials allegedly present at the spot were not recorded U/S 161 Cr. PC. They have not been shown in the site plan. Source of information regarding involvement of accused has not been disclosed by SHO/complainant. Accused were not arrested at the spot. Accused have not confessed their guilt before the court. No private person was associated by SHO/complainant. There are so many dents and doubts in the case of prosecution.

13. Prosecution was bound to prove its case against the accused beyond any shadow of doubt but there are so many dents and doubts in the prosecution case benefit of which goes to the accused facing trial. Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt.

As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Subhan Ullah, Amjid Khan, Mawaz Khan, Rustam Gul, Bahadar Meen, Tariq Khan and Hashmat Khan and Yousaf Khan are hereby acquitted from the charges leveled against them. They are on bail. Their bail bonds stand


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cancelled. Sureties of accused discharged from their liability. Case property, if any be dealt with in accordance with law.

- 15.** Prima facie case exists against absconding co-accused namely Zubair, Walayat Khan and Zain Ullah who are intentionally avoiding their lawful arrest, hence, accused named above are hereby declared as proclaimed offenders. Their names be entered in register/list of proclaimed offenders. Perpetual warrant of arrest be issued against them.
- 16.** Case file be consigned to Record room after its completion and necessary compilation.

Announced
22.11.2022



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Judicial Magistrate-I
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CERTIFICATE

It is certified that this judgment consists of 07 pages. Each page has been dictated, read, corrected and signed by me.



Zahir Khan
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