

State Vs Syed Ijaz Hussain and others

Order...17

12.02.2024

Present:

Sr.PP for the state.

Accused are absent.

Complainant absent.

Today the case was fixed for arguments on an application u/s 249-A Cr.P.C but proceedings are adjourned due to non-availability of accused and his counsel.

NBWA be issued against accused for next date.

File to come up for arguments on instant application on 20.02.2024.**Sami Ullah**Judicial Magistrate-I,
Orakzai (at Baber Mela)Order...18

20.02.2024

Present:

Sr. PP for the state.

Accused namely Syed Ameer Jan on bail in person alongwith counsel.

Accused namely Syed Ijaz Hussain, Muhammad Syedian, Syed Muhammad Sajidian, Syed Hamid Hussain and Syed Shah Gul are represented by his co-accused namely Syed Ameer Jan.

Complainant absent.

NBWA was issued against the accused namely Syed Ameer Jan on previous date. In this respect, he submitted an application for cancellation of the same. The application is accepted on the grounds mentioned in the application and NBWA stands cancelled.

Arguments on an application u/s 249-A Cr.P.C by counsel for the accused and learned Sr. PP are heard.

File to come up for order on above-mentioned application on 29.02.2024.**Sami Ullah**Judicial Magistrate-I,
Orakzai (at Baber Mela)

State Vs Syed Ijaz Hussain and others

Order...19

29.02.2024

Present:

Sr.PP for the state.

Accused namely Syed Muhammad Ameer Jan on bail in person.

Accused namely Syed Ijaz Hussain, Muhammad Syedian, Syed Muhammad Sajidian, Syed Hamid Hussain and Shah Gul Hussain are represented by his co-accused namely Syed Ameer Jan.

Complainant absent.

1. Accused namely Syed Ijaz Hussain, Syed Muhammad Ameer Jan, Muhammad Syedian, Syed Muhammad Sajidian, Syed Hamid Hussain and Shah Gul Hussain are charged in case FIR No. 21, dated 18.06.2023, U/S 380/427/147/149-PPC of PS Kuriz Boya, District Orakzai.
2. Brief facts as per FIR are that complainant namely Syed Amjid Hussain on 01.03.2023 at 09:30 hours, reported to the local police through daily dairy/ Naqalmad No.09 that on dated 27.02.2023 when they (complainant) under the supervision of police officials were coming to their house for taking out good from the same. They find out that one motorcycle CD-70 CC Bearing No.4662 black in color, one battery of 200 Volt, one solar 170 Watt, 04 Drums, one Teapot, one Sewing Machine, one Washing Machine, one Generator, four pieces of Quilt, 04 cauldrons (cooking pots), one UPS, 03 pedestal Fans, one stabilizer, one submersible machine, 05 tola Gold ornaments were stolen from their dwelling house while one plastic water tank, linen box and a cupboard were caused damaged by stones and axes. That he was convinced that the said theft and damage caused to the abovementioned things were committed by the accused namely Syed Ijaz Hussain, Syed Muhammad Ameer Jan, Muhammad Syedian, Syed Muhammad Sajidian, Syed Hamid Hussain and Shah Gul Hussain. The said complaint was later on converted into FIR No.21 dated 18.06.2023 upon acceptance of their petition u/s 22-A Cr.P.C.

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 Civil Judge/JM-I
 Orakzai (Babar Mela)

18

State Vs Syed Ijaz Hussain and others

Order..19
Continued.
29.02.2024

3. After completion of investigation, challan was put in court and the accused were summoned. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed U/S 380/427/147/149-PPC, to which the accused did not plead their guilt and claimed trial, therefore, the prosecution was called to produce evidence in support of their case.
4. The prosecution has produced six witnesses and their statement were recorded. Furthermore, prosecution has also abandoned two witnesses being unnecessary witnesses in the instant case. Thereafter, counsel for accused filed application U/S 249-A Cr. PC for acquittal of the accused.
5. Arguments from the counsel for accused and learned Sr. PP already heard and record perused.
6. Record would show that the alleged occurrence took place on 27.02.2023 and the complainant recorded compliant in shape of daily dairy No.09 dated 01.03.2023 at PS Kuriz Boya, Lower Orakzai, which shows that there is unexplained delay of two days in setting the criminal law in motion. It is pertinent to mention here that as per contents of FIR, police officials were accompanying the complainant to their house when the complainant found out about the alleged occurrence, however, he has not promptly recorded his complaint to the police.
7. This is unseen occurrence and the complainant has charged the accused directly in his complaint. The source of information has not been disclosed in the investigation. Moreover, there is no on the spot arrest of the accused in the instant case. Furthermore, accused have not confessed their guilt before the court.
8. No recovery of any of the articles were affected by the police. Moreover, no receipt of any of the articles allegedly stolen were produced by the complainant to the investigation officer.

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Orakzai (Babar, Mela)

Order...19
Continued.
29.02.2024

9. Moreover, it was revealed in investigation that there is previous enmity between the complainant and accused party. Furthermore, the complainant remained absent despite summons and issuance of NBWA against him. Perusal of summons transpires that complainant has left the area and were properly served through male members of his family.
10. Perusal of the evidence recorded in the instant case also transpires material discrepancies in the statement of prosecution witnesses. PW-01 recorded in his cross examination that no receipt or any documents regarding the stolen property were shown to him. He also stated that no eye witness of the alleged occurrence came forward in the investigation. PW-02 recorded in his statement that at the time of occurrence the house was already vacated by the complainant and his house members alongwith their household articles. The IO in his statement as PW-05 stated that stolen articles has not been recovered in the instant case.
11. Thus, keeping in view, the above discussion, there is no probability of conviction of the accused in the instant case as there are so many dents and doubts in the prosecution case.
12. The trial court can acquit accused U/S 249-A Cr. PC at any stage of the proceedings. Keeping in view the available record, if it is held that there is no probability of conviction of accused. Recording of full prosecution evidence would be a futile exercise and wastage of precious time of the court.
13. Resultantly, application is **Allowed**. Accused facing trial are acquitted in terms of Section 249-A Cr. PC from the charges leveled against them in case FIR No. 21 Dated: 18.06.2023 U/S 380/427/147/149-PPC registered at PS Kuriz Boya, District Orakzai. Accused are on bail. Bail bonds stands cancelled and sureties are

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Sami Ullah
Civil Judge III-I
Orakzai (Babar Pota)

20


State Vs Syed Ijaz Hussain and others

Order..19
Continued.
29.02.2024

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

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

Announced:
29.02.2024


Sami Ullah
Judicial Megistrate-1,
Orakzai at Baber Mela.