

FORM "A"
FORM OF ORDER SHEET

IN THE COURT OF SYED ABAAS BUKHARI, CIVIL JUDGE/JUDICIAL MAGISTRATE/CJ-II, KALAYA ORAKZAI
Case Title: _____ Vs _____

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order 32	24.04.2024	<p>None present for the State. Accused namely Negar Hussain, exempted through counsel present. Complainant through cousin present.</p> <p>Vide this order I intend to dispose of instant application filed u/s 249-A Cr.P.C.</p> <p>Arguments already heard and record perused.</p> <p>Now on perusal of the available record and valuable assistance of the learned counsels for the parties and learned APP for the state, this court is of the humble view that accused petitioners through instant application allege that a series of contradiction exist in the statements of PWs and furthermore, there are serious dents in the evidence so far recorded by the prosecution, which make the case of prosecution one of further inquiry. Hence there is no probability of conviction of accused at later stage after recording of entire/remaining evidence of prosecution. Contrary to this learned counsel for the complainant and APP for the state vehemently opposed the instant application and argued that accused have been directly charged in the instant case. They further argued that there exist no dent in the prosecution evidence and furthermore, the application in hand is pre-mature, hence the prosecution may kindly be allowed to produce their remaining evidence in order to bring home the charge against accused facing trial.</p> <p>In given circumstances perusal of the available record would reveal that as per contents of the Mad no.09, the complainant narrated to the police in the PS that on 25.03.2022 at about 14:00 hours that he was busy in cleanliness of the shrine of Baba Syed Payanda Shah, when the accused facing trial duly armed with deadly weapons to the shrine and forcefully expelled him from the shrine and also used abusive language as well as extended life threats to him. Motive for the occurrence was pendency of case before the court of Judicial Magistrate-I between the parties.</p> <p>In given circumstances, perusal of the evidence, so far</p>

24.04.2024
SYED ABAAS BUKHARI
Civil Judge/JM-II
Tehsil Courts Kalaya

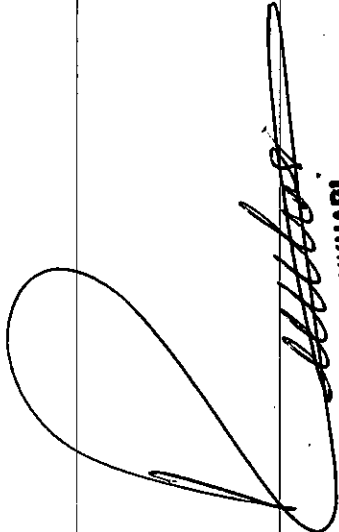
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<p>Continued Order 32</p>	<p>24.04.2024</p>	<p>recorded by the prosecution, in the instant case would reveal that IO in the instant when appeared as PW-01, had stated in his cross examination that <i>"he left the PS for spot inspection on 30.03.2022"</i> while on the other hand the alleged occurrence had taken place on 25.03.2022. He further deposed in his cross examination that <i>"no one was present at the spot once he reached to the place of occurrence. He had not recorded the statements of any person nor prepared any document etc on the spot"</i> while in his examination in chief he had deposed that <i>"when he reached the spot, complainant was already present on the spot"</i>. It is also pertinent to mention here that during cross examination of PW-01, the witness subsequently deposed that <i>"complainant was present on the spot when he reached there"</i>. These contradictory statements of PW-01 create serious dents and doubts in the prosecution case and make the same one of further inquiry.</p> <p>PW-02, Moharrir of PS, when appeared in the witness box had admitted in his cross examination that <i>"it is correct that there is difference in signature of moharrir over Ex-PW2/1 and Ex.PA"</i>.</p> <p>Complainant in the instant case when appeared as PW-03 had deposed in his cross examination that <i>"it is correct that I have mentioned accused Negar Hussain and Sakhawat Ali alongwith other unknown accused persons but their names were not mentioned in his report. It is correct that later on he got knowledge of the names of other accused (unknown accused but he did not charged them)"</i> while on the other hand eye witness of the occurrence when appeared as PW-05 in the witness box, had deposed in his cross examination that <i>"the unknown accused are not known to him till date and that is why I do not charge them for the commission of offence"</i>. In given circumstances this court is of the view that complainant deposed that he had got knowledge of the names of unknown accused but do not charge them while eye witness deposed that till date the names of unknown accused are not known to him due to which he does not charge them. In circumstances the question arise that who amongst the complainant and eye witness is deposing true story before the court. Furthermore, the question also arise</p>
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Civil Judge
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<p><i>Continued Order 32</i></p>	<p>24.04.2024</p>	<p>that when the names of unknown accused came into the knowledge of complainant why he did not disclosed the same before the police and further did not charged them without any valid reason or sufficient cause. Moreover, same role has been attributed to all the accused including unknown accused in the FIR.</p> <p>As for recovery of case property in the instant case is concerned, no incriminating article has been recovered from the possession of accused and thus no recovery has been effected in the instant case. Similarly no private person was involved in the instant case by prosecution and thus they failed to record the statement of any person regarding the alleged occurrence. Furthermore, this fact has also been admitted by SHO when he appeared as PW-04 in the witness box. In circumstances local police failed to comply with the mandatory provisions of Section 103 Cr.P.C.</p> <p>It is also pertinent to mention here that complainant has also patched up the matter with one of the accused namely Sakhawat Ali and this fact has also been narrated by complainant in his cross examination as PW-03.</p> <p>Hence, in the light of above discussion, I'am of the opinion that case of prosecution is full of dents and is one of further inquiry. Furthermore, there exist vast contradiction in the statements of PWs. Hence there is no probability of the conviction of accused facing trial at later stage after recording of entire prosecution evidence rather it would be a futile exercise and would be wastage of precious time of this court. Accordingly the application filed u/s 249-A Cr.P.C. is hereby allowed and accused facing trial namely Negar Hussain S/O Noor Hassan is hereby acquitted U/S 249-A Cr.P.C from the charges levelled against him. His bail bonds stand cancelled and sureties are discharged from the liability of bail bonds. Case property, if any, be kept intact till period of appeal. File be consigned to the record room after its necessary completion and compilation.</p> <p><u>Announced</u> 24.04.2024</p> <p>Syed Abbas Bukhari Judicial Magistrate-II Tehsil Courts, Kalaya, Orakzai</p>
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