

**IN THE COURT OF ZAHIR KHAN CIVIL JUDGE-I, KALAYA, ORAKZAI**

Case No. ----- 2/133 Cr.PC of 2023.  
Date of Institution ----- 12.06.2023.  
Date of Decision ----- 17.04.2024.

Khayal Zaman S/O Sar Baz Ali R/O Qaum Bar Muhammad Khel, Tappa Alat  
Khel village Chamando Mela, Chazghi Pakha, Tehsil lower, District Orakzai

.....(complainant)

**Versus**

1. Askar Ali S/O Khadi Khan
2. Waris Ali S/O Askar Ali
3. Hashmat Ali S/O Daftar Ali
4. Sahar Ali S/O Bedar Ali all R/O Qaum Bar Muhammad Khel, Tappa Alat  
Khel village Chamando Mela, Chazghi Pakha, Tehsil lower, District  
Orakzai
5. Farhad Ali R/O Qaum Bar Muhammad Khel, Lower Orakzai present  
Kachai Kohat .....(Respondents)


**COMPLAINT U/S 133 Cr. P.C.**

**ORDER**  
**17.04.2024**

Complainant namely Khayal Zaman present. Respondents  
namely Hashmat Ali present. Arguments already heard and record  
perused.


Through this order, I am going to decide the instant complaint  
U/S 133 Cr.PC filed by complainant Khayal Zaman against the  
respondents Askar Ali etc.

- (1). Brief facts as per contents of complaint U/S 133 Cr.PC, are that  
complainant belongs to Qaum Bar Muhammad Khel, Tappa Alat Khel,

  
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Lower Orakzai and he has constructed a residential house on his ancestral landed property and there is a passage/pathway leading to the said house, used by him since long but recently, respondents have blocked/obstructed the said pathway by ploughing the same which has caused inconvenience to the complainant and has become a public nuisance. That respondents were asked to open the pathway but in vain, hence, the present complaint.

(2). Complaint in hand was filed on 12.06.2023. SHO concerned was directed to hold inquiry and submit report. Inquiry report was submitted by SHO concerned. Inquiry was conducted, inquiry report was submitted which is placed on file, resultantly, the court, vide order dated: 22.06.2023, passed conditional order directing the respondents to remove the obstruction and open the pathway, otherwise, show cause/file objections, if any. Respondents appeared, filed objections to the effect that there is no public passage/pathway and lastly, it is requested that complaint be dismissed accordingly.



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(4). Thereafter, parties were directed to produce their desired evidence. During course of recording evidence, complainant produced three witnesses while respondents opted not to produce evidence. Inquiry Officer, sub-inspector Aftab Ahmad was examined as CW-01.

(5). PW, Salman Ali appeared and deposed as PW-01, Muhammad Sajid as PW-02. Copies of their CNICs are Ex.PW-1/1 and Ex.PW-2/1 respectively. They supported the contention of complainant. Complainant Khayal Zaman himself appeared and deposed as PW-03. He reiterated the averments of the complaint. He produced

pictures showing the pathway in question which are Ex.PW-3/1 (03 pictures) and Ex.PW-3/3 (04 pictures). Copy of his CNIC is Ex.PW-3/2. Thereafter, evidence of complainant was closed.

- (6). Respondents opted not to produce evidence in defense. Sub-inspector Aftab Ahmad, ex-SHO, PS Kalaya was summoned as CW, who appeared and deposed as CW-01. He stated that he has conducted inquiry in light of the directions of the court. During inquiry, he inspected the spot, collected information, prepared site plans Ex.CW-1/1 and Ex.CW-1/2 and recorded statements of the parties and witnesses. Statement of complainant is Ex.CW-1/3, final report is Ex.CW-1/4. He was cross examined by both the parties.
- (7). After completion of evidence, arguments of the learned counsels for the parties were heard and record of the case file was gone through with their valuable assistance.
- (8). Chapter X of Cr. PC deals with the public nuisances. The law clearly stipulates every step which the Magistrate has to take when an information regarding public nuisance is placed before him. Section 133 Cr. PC gives the power to Magistrates for removal of a nuisance including the power to prohibit the conduct of any trade or occupation or the keeping of any goods or merchandise which is injurious to health, physical comfort of the community and also gives the power for the removal of such trade or occupation and obstruction. Section 133 Cr. PC is attracted only in cases of emergency and imminent danger. The idea behind the section is that the danger complained of should be such that if the Magistrate does



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not take action under this section and directs the public to have recourse to the ordinary courts of law, irreparable damage would be done.

- (9). As stated above, complainant Khayal Zaman is claiming that respondents have obstructed/blocked way leading to his house constructed on his ancestral property. Per averments of complaint and evidence produced by complainant, the pathway leading to the house of complainant is a private one and it passes right in middle of the cultivatable portion of the agriculture land owned and possessed by the respondents. The pictures Ex.PW-3/1 (03) and Ex.PW-3/3 (04) show that the way in question is part and parcel of the agriculture land of the respondents. There is nothing on record which could show that the path in question is a public thoroughfare used by general public since long. PWs have admitted that the pathway is in the land owned and possessed by the respondents. Ex.CW-1/1 and Ex.CW-1/2 also show that the path in question is part and parcel of the agriculture land of respondents. Per record, the pathway is not a public thoroughfare or a public road. None from the public/village appeared before the court to support the claim of complainant. No elder/Malak of the area was produced as witness. Evidence on record suggests that there is no public road/public thoroughfare at the spot. Per record, there is a long-standing dispute between the parties in respect of the pathway in question which indicates that there is no such emergency or imminent danger to the public interest. Therefore, action cannot be taken under section 133



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Cr. PC. Proceedings U/S 133 Cr. PC are not intended to settle private disputes between members of public or to be used as a substitute to settle civil disputes. When there is no public way/road, the question of public nuisance within the meaning of section 133 Cr.PC would not arise.

(10). For, what has been discussed above, proceedings are hereby dropped. Complaint stands dismissed.

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

**ANNOUNCED**  
**17.04.2024**



**Zahir Khan**  
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