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**IN THE COURT OF BAKHT ZADA, SENIOR CIVIL JUDGE/JM,
DISTRICT ORAKZAI**

Case No.....08/02 OF 2023.

Date of Institution.....06.02.2023.

Date of Decision.....24.05.2024.

State through:

*Noor Janan S/O Yar Muhammad, R/O Village Kharki, Tappa Charkhela,
Upper Orakzai*

.....**Complainant**

VERSES

1. *Kameen Gul,*
2. *Mastan Akbar both sons of Shana Gul,*
3. *Wazir Akbar,*
4. *Shakeel Khan both sons of Eid Akbar, all residents of Qaum Mula
Khel, Tappa Charkhela, Tehsil Upper, District Orakzai.*

.....**Accused facing trial**

Case FIR No. 25, Dated 22.11.2022, U/S 506, 447, 427/34 PPC, PS Dabori

JUDGEMENT

24.05.2024

Through this judgement, I am going to dispose of the instant case registered against accused named above vide case FIR No. 25, Dated 22.11.2022, U/S 506, 447, 427/34 PPC, PS Dabori.

I. Brief facts of the case as alleged in the FIR are that complainant namely Noor Janan S/O Yar Muhammad submitted an application to DPO, Orakzai on 01.11.2022 for registration of FIR against accused

1. Wazir Akbar, 2. Shakeel Khan both sons of Eid Akbar, 3. Kameen Gul Akbar and 4. Mastan Akbar both sons of Shana Gul. He alleged in the application that he has owned property and house at Kharkai, District Orakzai and is permanently residing there. That the property

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of the complainant at Kharkai is consisted of 08 fields along with ground and mountain wherein the trees have been cultivated and that complainant and his brothers are ancestral owners of the same for the last 200 years. That the above-named accused few days back went there and started interference by entering his property from Southern and Northern side about 50/60 feet and damaged the forest by cutting the trees. That when the complainant restrained them, they flared up and started threatening him. The occurrence took place on 15.10.2022 at 09:30 am and the cut trees are present on the spot. The application of the complainant was marked to SHO Dabori through proper channel for necessary action. Inquiry u/s 157(i) Cr.P.C was initiated after incorporating the application, dated: 01.11.2022 of the complainant into Naqalmad No. 12, dated: 20.11.2022. The IO visited the spot and prepared the site plan of the place of occurrence on 20.11.2022 and thereafter on 22.11.2022, the above-mentioned FIR was registered against the accused facing trial.

2. After completion of investigation, complete challan followed by interim challan was submitted by prosecution against the accused facing trial:

Accused were summoned and formalities under Section 241-A Cr. PC were complied with on 21.02.2023. Formal charge against the accused was framed to which they pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.

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4. Prosecution produced as many as four (04) witnesses to prove its case against the accused facing trial while rest of the PWs were given up by prosecution and closed its evidence.
5. **Imtiaz Khan, SHO PS Ghiljo deposed as PW-01.** He stated that he was present in the PS on 20.11.2022 at about 14:00 hrs. He received application of the complainant Noor Janan regarding the occurrence through routine post from DPO Orakzai. He incorporated its contents in the shape of Naqalmaid No. 12, Dated: 20.11.2022. After drafting Naqalmaid, he conducted inquiry in the instant case vide Naqalmaid Ex.PW-1/1. He proceeded to the spot and prepared the site plan Ex. PB on the pointation of the complainant. Similarly, he also registered FIR No. 25, Dated: 22.11.2022, U/S: 506/447/427/34 PPC which is Ex.PA. He also arrested the accused namely Wazir Akbar and Kameen Gul and issued their card of arrest which is Ex.PW-1/2. He handed the accused and case to the I.O for further proceedings. After completion of investigation of the instant case, he submitted interim challan against the accused facing trial and later on he submitted complete challan against the accused facing trial which are Ex.PW-3 and Ex.PW-1/4 respectively.

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PW-02, is the statement of Head Constable Abdullah: He is one of the marginal witnesses to the recovery memo. The I.O took into possession approximately one tractor trolley of the cut trees/bushes during spot inspection through recovery memo which is Ex.PW-2/1. his statement was recorded by the I.O on the spot U/S 161 Cr.P.C.

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7. **PW-03, is the statement of SI, Saif Ur Rehman.** He is IO of the case. He stated that after registration of the FIR, investigation was handed over to him. He visited the spot and took into possession shrubs/bushes from the place of occurrence. The quantity of the shrub was searched which can be gathered in a single tractor trolley. He prepared recovery memo Ex. PW-2/1 in the presence of marginal witnesses. Whereas, the shrubs/bushes are Ex. P1. Photos of the same are Ex. PW-3/1. He applied for Judicial remand of accused Kameen Gul and Wazir Akbar. Accused were committed to judicial lock-up. On 25.11.2022, accused Mastan Akbar and Shakeel Khan produced their ad-interim pre-arrest bail order. I formally arrested them and issued their card of arrest Ex. PW-3/3. Later on, their BBA was recalled. He produced the accused through his application Ex. PW-3/4 before Judicial Magistrate for obtaining their Judicial remand. Accused were committed to Judicial lock-up. He recorded the statements of PWs U/S 161 Cr. PC.
8. **PW-04, is the statement of Complainant Noor Janan.** He stated that he submitted an application to DPO Orakzai on 01.11.2022 for registration of FIR against accused 1. Wazir Akbar, 2. Shakeel Khan both sons of Eid Akbar, 3. Kameen Gul Akbar and Mastan Akbar both sons of Shana Gul which is Ex.PW-4/1 for interfering in his property while damaging and cutting forest trees. Copy of Naqalmad is already exhibited as Ex.PW-1/1. SHO PS Dabori prepared the site plan on 20.01.2022 which is Ex.PB and the FIR is Ex.PA. Complainant is permanent resident of District Orakzai and owner of

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landed property at Kharki in shape of 08 fields along with plain and mountainous area wherein, forest have been grown since his forefathers and is under overuse for the last 200 years. That accused named above interfered in his property from both sides about 50 to 60 feet and have damaged the same by cutting trees and on restraining them, they flared up and started threatening him.

9. PW Constable Muhammad Ismail and private PW namely Bilawar Gul were abandoned by prosecution and closed its evidence.

10. Afterwards, statements of accused U/S 342 Cr. PC were recorded and the accused neither wished to be examined on oath nor they wanted to produce evidence in defense.

11. Arguments of the learned Sr. PP for the state and counsel for accused facing trial heard and available record perused.

12. It is the case of prosecution that complainant owned ancestral property at Kharkai, District Orakzai which is consisted of 08 fields, open ground and forest of trees. That the accused facing trial on 15.10.2022 at 09:30 am interfered in the suit property by cutting the trees and they have entered the forest from Southern and Northern

side to the extent of 50/60 feet and they damaged the property of the complainant by cutting the said trees. The complainant in order to lodge FIR approached the District Police Officer, Orakzai by submitting an application, the copy of which is Ex.PW-4/1, which was marked to the SHO PS Dabori through proper channel. The SHO concerned after receiving the application incorporated the same into Naqalmaid No. 12, dated: 20.11.2022 and thereafter he initiated

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inquiry u/s 157(i) Cr.P.C. On 20.11.2022, he visited the place of occurrence on the same day and prepared site plan. The perusal of record shows that neither the original application of the complainant is available on the case file nor the final report of inquiry u/s 157(i) Cr.P.C has been made part of the case file and without explaining the facts and circumstances, he after 02 days i.e 22.11.2022 registered the instant FIR. The complainant has alleged in his application that the occurrence has taken place on 15.10.2022 at 09:30 am, but a single word has been uttered by the complainant to explain the delay of about 15/16 days because the application to DPO Orakzai was submitted on 01.11.2022. Complainant Noor Janan during his cross-examination has categorically admitted that the accused facing trial owned property adjacent to the property of the complainant. He also admitted that no demarcation of boundary has taken place between him and the accused facing trial, which makes the case of prosecution suspicious because how the complainant reached to the conclusion that the accused facing trial have interfered into his property to the extent of 50/60 feet by cutting trees. The complainant was duty bound to have had conducted demarcation of boundary with the adjacent owners i.e the accused facing trial but no such demarcation has been conducted. The statement of alleged eye-witness namely Bilawar Gul was abandoned by the prosecution without any justification. The record is silent that whether he was not available or there was apprehension of damage to the case of prosecution if his statement was recorded and thus, they have violated Article 129(g)

of the Qanoon-e-Shahadat Order 1984. Complainant during his examination-in-chief as PW-04 has admitted that before submitting application against the accused facing to DPO Orakzai, he has made consultation with his family members. He further admitted that no independent eye-witness of the occurrence is available with him and that no other person was present at the place of occurrence when the accused facing trial extended threats and abused him. The perusal of site plan Ex.PB shows that no point of presence has been allocated to accused Kameen Gul in the site plan. PW-01, SHO Imtiaz Khan being inquiry officer has prepared the site plan Ex.PB and in the site plan point "A" has been given for the presence of the cut trees but during cross-examination, PW-01 categorically admitted that he has not taken any cut trees on recovery memo from the place of occurrence.

- 13.** The non-availability of any independent eye-witness, non-taking of the cut trees on recovery memo, non-determination of boundaries, non-exhibition of case property in the court during trial, unexplained delay of 15 days in lodging the report are all fatal grounds to the case prosecution. the prosecution badly failed to bring home charges against the accused facing trial through confidence inspiring evidence, I therefore acquit the accused facing trial from the charges levelled against them. They are on bail. Their sureties are discharged from the liability of their bail bonds. Case property if any, be kept intact till the expiry of period provided for the revision/appeal.

14. Case file be consigned to Record room after its completion and necessary compilation.

Announced

24.05.2024

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CERTIFICATE

It is certified that this judgment consists of 08 pages. Each page has been dictated, read, corrected and signed by me.

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