IN THE COURT OF BAKHT ZADA,
SCJ/JM, ORAKZAI AT BABER MELA

CASE NO.	:	20/2 OF 2023
DATE OF INSTITUTION	:	04.10.2023
DATE OF DECISION	:	26.06.2024

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STATE THROUGH: MUHAMMAD ISLAM S/O KHYAL BAHADUR, QOUM RABIA KHEL, KHAI KADA, DISTRICT ORAKZAI.

----------(Complainant)

VS

1. Zaliman Shah s/o Gulman Shah
2. Nazeer Man Shah s/o Gulman Shah
3. Pehlawan s/o Zaliman Shah
4. Eid Shireen s/o Gul Shireen

All R/O Qoum Rabia Khel, District Orakzai

----------(Accused Facing Trial)

ORDER
26.06.2024

Accused Zaliman Shah s/o Gul Man Shah and 03 others are facing trial in case FIR No. 17, Dated: 16.08.2023, u/s 506/341/352/384/34 PPC of PS Ghiljo, U/Orakzai.

Facts of the case as alleged in the FIR are that complainant Muhammad Islam s/o Khyal Bahadur submitted written application on 22.06.2023 to DPO Orakzai which was incorporated into Madd No. 09, Dated: 09.08.2023 whereupon the legal opinion of the learned DPP Orakzai was obtained and accordingly order for FIR was issued. According to FIR, the application dated: 09.08.2023 at 15:40 hrs sent by SDPO U/Orakzai vide Dairy No: 79/R, Dated: 22.06.2023. According

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to the application, the complainant has alleged that he is owner of one lease bearing No. (1461) 2021; wherein, the complainant has started work in accordance with law. The complainant has spent an amount of Rs. 50,000/- on machinery and construction etc of 02 mines. That the complainant was forcefully restrained from mining by one Zaliman Shah, Nazeer Man Shah sons of Gulman Shah, Eid Shireen s/o Gul Shireen. They threatened the labourers to stop mining. One Pehlawan who is son of Zaliman Shah and is police official also went to mine in police uniform. That by stopping the mining work, the accused are damaging the police exchequers and the labourers are also suffering. That the above-mentioned accused are demanding to extort money. It is prayed that stern legal action be taken against them, hence, the instant FIR was registered after inquiry and getting legal opinion of the learned DPP Orakzai.

After completion of the investigation, complete challan was submitted against the accused on 04.10.2023. The accused were summoned, who appeared before the court on 10.10.2023 and formalities U/S 241-A Cr. PC were complied with. Formal charge against the accused were framed on 24.10.2023, whereafter the prosecution was asked to produce PWs.

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The prosecution produced and recorded statements as many as 06 PWs. The gist of statements of prosecution witnesses are as follows;

PW-01 is the statement of Abdul Malik, OII, PS Ghiljo, Upper Orakzai. He stated that he was handed over the file by Muharrir of the PS on 16.08.2023. He prepared the site plan at the pointation of the complainant which is Ex.PW-1/4. That on 17.08.2023, after recording the statement of Momin Khan u/s 161 Cr.P.C, he applied for adding of section 506/341/352, the report of which is Ex.PW-1/2. He prepared formal card of arrest of the accused facing trial which is Ex.PW-1/3. That he received the CDR of phone number 0333-5515558 which belongs to Momin Khan and phone number 0334-8586186 belongs to accused Zaliman Shah. That he also prepared the recovery memo on 25.08.2023 in this respect which is Ex.PW-1/4. CDR data which consists of 06 pages is Ex.PW-1/5. His statement was cross examined by the counsel for accused.

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PW-02 is the statement of Muhammad Hanif, constable, PS Ghiljo. He stated that on 25.08.2023, the IO took CDR Ex.PW-1/5 consisting of 06 pages vide recovery memo already exhibited as Ex.PW-1/4 in his presence.

PW-03 is the statement of Muhammad Naseem Khan, SI, CP Samana, Orakzai. He stated that on 25.08.2023, he has

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written down the final inquiry report Ex.PW-3/1 in respect of the report vide Naqalmad No. 09, DD: 09.08.2023 and submitted it for legal opinion before the District Public Prosecutor, Orakzai. The application for legal opinion is Ex.PW-3/2. That he registered the FIR Ex.PW-3/3 against the accused. That complainant produced USB, Sony, 16GB which he took into possession and sealed into parcel No. 01 vide recovery memo Ex.PW-3/4. That after completion of investigation, he submitted complete challan Ex.PW-3/5, against the accused on 27.08.2023.

PW-04 is the statement of Abdul Manan, MHC, PS Ghiljo. He stated that he received an application from SHO and incorporated the same into Naqalmad No. 09 Ex.PW-4/1, DD: 09.08.2023. That he handed over the same to SHO for further proceedings. That he is the marginal witness to the recovery memo already Ex.PW-3/4 in which the complainant produced Sony USB (16GB) and the same was taken into possession by the SHO which was sealed into parcel No. 01 already Ex.P-1 duly stamped with the monogram of GJ. That the recovery memo is correct and correctly bears his signature.

PW-05 is the statement of Muhammad Islam s/o Khyal Bahadur, Complainant. He deposed and describe the same story as alleged in the FIR and charged the accused facing trial

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for commission of offence. He exhibited the attested copy of order u/s 22-A Cr.P.C as Ex.PW-5/1. He was cross-examined by the counsel for the accused.

PW-06 is the statement of Momin Khan s/o Alam Gul, R/O Mardo Khel Banda, Hangu. He stated that he is coal mine contractor/partner of the complainant, in the mines situated at Sor Baghal, Upper Orakzai and supported the story alleged by the complainant against the accused facing trial.

Learned DPP for the state abandoned the statement of PW Habib Khan, constable on 28.03.2024 being unnecessary and closed the prosecution evidence.

Statement of accused U/S 342 Cr. PC were recorded on 12.06.2024. They neither wished to produce any evidence in defence nor wished to be examine on oath.

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

The allegations against the accused facing trial are that complainant Muhammad Islam s/o Khyal Bahadur reported the matter to the local police that he is lease owner of coal mine situated at Ghoz Garh, Sor Baghal, Upper Orakzai. His coal mine lease No. is (1461) 2021 issued by Minerals Department in his name. He started excavation on the said coal mine at the cost of Rs. 50 lacs which was spent on machinery and

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construction materials of two coal mines. On 21.06.2021, accused facing trial came there and asked him to stop excavation and threatened his labourers. He further alleged that one of the accused Pehlawan is a police official, who went there in police uniform and threatened the labourers.

The complainant Muhammad Islam has recorded his statement as PW-05; wherein, he has categorically stated that he started excavation of coal mine through contractor Momin Khan and the elders of the locality permitted them to carry out the excavation work. He alleged in his statement that the accused facing trial went to the mines duly armed with deadly weapons and restrained the work on the said coal mines and also threatened his partner/contractor Momin Khan through phone. He added that the accused

From above it is held that accused Zaliman Shah demanded an amount of Rs. 1.5 lacs from his partner Momin Khan and accused Pehlawan criminally intimidated the labourers and contractor, but the statement of his partner/contractor Momin Khan is recorded as PW-06 is silent about the visit of the accused facing trial to the mines. He has not uttered a single word about the demand of Rs. 1.5 lacs by the accused from him. He also has not mentioned about any threat or criminal intimidation made by any of the accused

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facing trial at the spot. There is material contradiction between the statements of the complainant and the eye-witness. Furthermore, statement of any labourer or watchman of the mine has not been recorded to further corroborate the statement of the complainant and his partner Momin Khan. The statement of complainant recorded as PW-05 and the statement of eye-witness recorded as PW-06 are also silent about the role of accused facing trial Nazeer Man Shah and Eid Shireen and no special role has been attributed to them. The site plan has been prepared at the pointation of the complainant Muhammad Islam and his presence has been shown at point No. 01 and during his statement as PW-05, he has stated that one of the accused facing trial namely Pehlawan criminally intimidated the labourers and contractor, but the site plan Ex.PW-1/1 is silent about the presence of PW-06 Momin Khan at the place of occurrence. The application submitted to DPO Orakzai for legal action is also silent about the alleged demand of Rs. 1.5 lacs made by the accused from partner of the complainant namely Momin Khan as mentioned by the complainant in his examination-in-chief as PW-05. Similarly, PW-06 Momin Khan has also not uttered a single word in his statement as PW-06 about alleged demand of Rs. 1.5 lacs made by the accused from him. During cross-examination, PW-06 admitted

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that accused Zaliman Shah stopped him from excavation of coal mine through jirga and that he has seen no accused at the place of occurrence who has threatened him or has told him to stop excavation.

These contradictory statements are fatal to the prosecution case and creates doubts about the alleged occurrence; therefore, by extending benefit of doubt, I hereby 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 filing revision/appeal.

Case file be consigned to the record room after its completion and compilation.

Announced
26.06.2024

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CERTIFICATE

Certified that this order consists of eight (08) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated:26.06.2024

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