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IN THE COURT OF JUDICIAL MAGISTRATE-I, KALAYA, ORAKZAI

Case No69/2 of 2023.

Date of institution.....01.11.2023.

Date of decision.....29.06.2024.


FIR No. 87 dated 29.08.2023 u/s 506, 186, 189, 427, 148, 149 PPC, PS Kalaya

Order No. 12

29.06.2024

APP for the state present. Accused Awal Hassan, Shabeer, Muqadar and Nisan Hassan on bail along with counsel present. Accused Mintaj Ali is absconding. Rest of the accused are exempted. Complainant Muhammad Fayaz Tehsildar, HC Intikhab Ali Muharrir and SI Murtaza present. Their statements recorded as PW-01 to PW-03 respectively. Arguments on application u/s 249-A Cr.PC heard and record gone through.

Brief facts of the prosecution's case as unfolded in the FIR are that on 29.08.2023, complainant/Muhammad Fayaz Tehsildar received information regarding obstruction in the construction work of Govt; Primary School which was approved for up-gradation. He rushed to the spot where accused facing trial were present. They were not allowing the labors to continue construction work. Tractors of contractor were also punctured at the spot. He arrested the accused namely Nisan Hassan, Wajid Ali, Awal Hassan, Zameer Hassan and Shabeer Hassan on the spot and issued their card of arrest Ex.PW-1/1. Rest of the accused decamped from the spot. Murasila Ex.PW-1/2 was


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drafted at the spot. On the strength of murasila, the instant case was registered against the accused facing trial vide FIR Ex.PA.

After completion of investigation, complete challan was put in court against accused. Provisions of Section 241-A Cr. PC were complied with. Formal charge was framed. Accused pleaded not guilty and claimed trial. Prosecution was allowed to produce evidence against accused. So far, 03 PWs have been examined.

Muhammad Fayaz (complainant) was examined as PW-01. Head Constable Intikhab Ali and Sub-Inspector Murtaza (IO) were examined as PW-02 and PW-03 respectively. Site Plan prepared by IO on the pointation of complainant is Ex.PB. Recovery memo in respect of tractors is Ex.PW-3/1. Application for physical remand of the accused is Ex.PW-3/2. Application for warrant u/s 204 Cr.PC in respect of absconding accused is Ex.PW-3/3. Application for judicial remand of the arrested accused is Ex.PW-3/4. Card of arrest of accused Tajamal Hassan and Imam Faqeer is Ex.PW-3/5. Application for judicial remand of accused Tajamal Hassan and Imam Faqeer is Ex.PW-3/6. Application for proclamation notices in respect of accused Mintaj Ali is Ex.PW-3/7. Photographs in respect of damaged tractors are Ex.PW-3/8 to Ex.PW-3/12.

Perusal of record transpires that the alleged occurrence took place on **29.08.2023** at **14:35** hours at village Terai situated at Mani Khel Lower, Orakzai and it was reported on 29.08.2023 at 15:00 hours and FIR was registered on 29.08.2023 at 15:40 hours. Muhammad Fayaz Tehsildar, Lower Orakzai (PW-01), is complainant of the case.

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He stated in his cross examination that he does not know about the sections of law leveled in the murasila. Accused were not known to him prior to the present occurrence and even on the day of his statement in court, he was unable to identify any of the accused. He also admitted that he has not mentioned source of information regarding names and parentage of the nominated accused. He further stated that he visited the spot on the directions of AC, Lower Orakzai but this fact is nowhere mentioned in the murasila. Statement of PW-01 suggests that entire proceedings were carried out while sitting in the PS. Similarly, SI Murtaza (PW-03), who is IO of the case, stated in his cross examination that sections of law were leveled in the murasila by complainant which contradicts PW-01 (complainant). He also deposed that he has not recorded statement of any independent eye witness. Nothing incriminating was recovered from the possession of accused or on their pointation. Statement of the contractor or his clerk was not recorded by the IO. Source of information regarding involvement of accused in commission of the offence has not been disclosed. Accused have not confessed their guilt before the court. The site plan Ex.PB does not support the case of prosecution.

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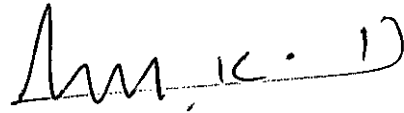
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CIVIL JUDGE (M)
Kalaya Orakzai

Case of prosecution is full of dents and doubts benefit of which goes to the accused as of right. There is no probability of accused being convicted. Further proceedings would be a futile exercise and wastage of precious time of the court, therefore, application U/S 249-A Cr. PC is accepted and accused facing trial namely Nisan Khan, Wajid Ali, Awal Hassan, Zameer Hassan, Shabeer Hassan, Muqadar Hassan,

Tajamal Hassan, Ajeeb Hassan, Imam Faqeer and Fayaz Ali are acquitted from the charges leveled against them. They are on bail. Their sureties stand discharged from their liability. Accused Mintaj Ali is absconding, hence, he is hereby declared as proclaimed offender. His name be entered in register/list of proclaimed offenders. Perpetual warrant of arrest be issued against him.

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

Announced.
29.06.2024



(Zahir Khan)
Judicial Magistrate-I,
Tehsil Kalaya, Orakzai