

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

Case No .....14/2 of 2024.

Date of institution.....02.05.2024.

Date of decision.....24.07.2024.

FIR No. 04 dated 18.02.2024 u/s 506/34 PPC, PS Mishti MelaOrder 09  
24.07.2024

Accused Noor Muhammad and Hayat Ullah on bail along with Mr. Asad Ijaz Advocate present. None present for the state despite service of notice of the application u/s 249-A Cr.PC filed by accused/petitioners. Arguments on application u/s 249-A Cr.PC heard and record gone through.

ZAHIR KHAN  
Civil Judge/JM  
Kalaya Orakzai

Brief facts of the prosecution's case as unfolded in the FIR are that on 18.02.2024, complainant/SI Shabeer Khan, PS MM received information regarding firing at Qaum Mishti, village Sar Koti, Orakzai and he rushed to the spot where, he came to know that party No. 1 accused Noor Muhammad and party No. 2, accused Hayat Ullah have made aerial firing at each other for criminally intimidating each other. The motive behind the occurrence is land dispute. Murasila was drafted at the spot. On the strength of murasila, the instant case was registered against the accused facing trial.

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

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and claimed trial. Prosecution was allowed to produce evidence against accused. So far, 05 PWs have been examined.

Shah Munawar Khan was examined as PW-01. Constable Muhammad Saeed (Muharrir) was examined as PW-02. Constable Muhammad Umar deposed as PW-03. Sub-Inspector Muhammad Ayub (IO) and Head Constable Fazal Shah were examined as PW-04 and PW-05 respectively. Site Plan prepared by IO on the pointation of complainant is Ex.PB. Recovery memo in respect of 04 empties of 30 bore recovered from the points of accused is Ex.PW-4/1. Recovery memo in respect of 30 bore pistols is Ex.PW-3/1. Application for confessional statements u/s 164/364 Cr.PC of the accused is Ex.PW-4/2. Application to FSL, Peshawar is Ex.PW-4/3. Road permit certificate is Ex.PW-4/4. Extract of register No. 19 is Ex.PW-2/1. Report of FSL regarding the crime empties and 30 bore pistols is Ex.PW-4/5.

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Perusal of record transpires that the alleged occurrence took place on **18.02.2024** at **14:00** hours at village Sar Koti situated at Mishti, Orakzai and it was reported on 18.02.2024 at 15:00 hours and FIR was registered on 18.02.2024 at 15:30 hours. As per Ex.PA (copy of FIR), SHO/complainant received information regarding the occurrence, he proceeded to the spot where he came to know that aerial firing was made by accused facing trial. SHO/complainant has not disclosed source of information regarding involvement of accused in commission of the offence. There is no eye witness to the occurrence. Accused have not charged each other for the commission

of the offence. There are serious contradictions in the statements of PWs. PW-01 stated in his cross examination that firing was going on when they reached to the spot. He also deposed that he has not seen the accused facing trial making firing. He further stated that murasila was handed over to him at 14:00 hours which he handed over to Muharrir at 15:00 hours. Record shows that the occurrence took place at 14:00 hours and it was reported at 15:00 hours. When the occurrence took place at 14:00 hours, then how PW-01 was handed over murasila exactly at 14:00 hours. Similarly, PW-03, who accompanied the SHO/complainant to the spot, stated in his cross examination that accused facing trial tried to escape the spot which contradicts the murasila and FIR. He also stated that he has not heard any fire shot at the spot. SI Muhammad Ayub, who is IO of the case, stated that accused made firing from their houses which mean that no one has witnessed the accused while making firing. Fazal Shah, HC, who deposed as PW-05, stated in his cross examination that he has not seen accused facing trial while making the alleged firing. He also deposed that the police party proceeded to the spot from PS whereas, in the murasila, it is stated that they were on area patrol when received information regarding the occurrence. Furthermore, formal charge was farmed on 16.05.2024 and despite repeated summons/notices to the complainant; he did not bother to appear before the court for recording his statement as PW. Accused have not confessed their guilt before the court. Case against accused u/s 15-AA has already been disposed of.

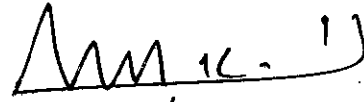
ZAHIR KHAN  
Civil Judge/JM  
Kalaya Orakzai

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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 Noor Muhammad and Hayat Ullah are acquitted from the charges leveled against them. They are on bail. Their sureties stand discharged from their liability. Case property be dealt with in accordance with law.

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

**Announced.**  
24.07.2024



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