

IN THE COURT OF ZAHIR KHAN, JUDICIAL MAGISTRATE-I
TEHSIL COURTS KALAYA, DISTRICT ORAKZAI

Complaint No.....3/4 of 2023.

Date of Institution.....13.04.2023.

Date of Decision.....23.07.2024.

State through

Sub-Inspector, Shal Muhammad, SHO PS Kalaya**Complainant**

VERSES

1. Sadiq S/O Wajid Gul R/O Qaum Bar Muhammad Khel, Tappa
Khwaidad Khel, Penzari, Tehsil Lower, District Orakzai.
2. Jan Khan S/O Nazar Khel R/O Bar Muhammad Khan, Tappa Abdul Aziz
Khel, Darma, Tehsil Lower, Orakzai..... **Accused/respondents**


JUDGMENT

23.07.2024

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Civil Judge/JM
Kalaya Orakzai

Through this judgment, I am going to dispose of the instant complaint filed against accused facing trial Jan Khan and absconding co-accused Sadiq u/s 468, 471 PPC PS Kalaya.

Brief facts as per averments of the complaint Ex.PW-1/2, are that on 16.08.2022, SHO/complainant SI Shal Muhammad recovered and took into possession motorcar bearing Reg. No. 333 ICT, Islamabad, chassis No. ZZE-1220089586, Engine No. 177FE from possession of accused Sadiq and Jan Khan in connection with murder case registered vide FIR No. 77 dated: 16.08.2022 u/s 302, 311, 109/34 PPC, PS Kalaya. After corresponding with the Excise & Taxation Officer/Motor Registration Authority, Islamabad, it was held that no


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vehicle was found registered against the above mentioned chassis number. Resultantly, on the directions dated 17.02.2023, issued by DPP, Orakzai, the instant complaint u/s 468, 471 PPC was forwarded to the court against accused facing trial and absconding co-accused named above.

2. Accused were summoned and legal formalities under Section 241-A Cr. PC were complied with. Formal charge was framed against the accused to which they pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence. Prosecution produced three (03) witnesses to prove its case against the accused. PW constable Muhammad Rasool No. 1423 was abandoned by prosecution.

PW-01 is the statement of Sub-Inspector, Shal Muhammad. He is complainant of the case. He reiterated the story narrated in complaint u/s 468, 471 PPC. He took into possession the motorcar in presence of marginal witnesses vide recovery memo Ex. PW-1/1. He submitted complaint against the accused facing trial. Complaint is Ex.PW-1/2. The report of the Excise & Taxation Officer/Motor Registration Authority, Islamabad, is Ex.PW-1/3. The vehicle was exhibited as Ex.P-1. Copy of FIR of murder case is Ex.PA. Constable Abdul Sattar was examined as PW-02. He is one of the marginal witnesses to the recovery memo exhibited as Ex.PW-1/1 vide which the SHO/complainant took into possession motorcar bearing Reg. No. 333 ICT, Islamabad from possession of the accused. PW-03 is the

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statement of SI Muhammad Hanif. He is IO of the complaint in hand as well as that of murder case cited above. He stated that he had investigated the murder case. The present accused were nominated in the murder case and the vehicle was recovered and took into possession by the complainant (PW-01) from possession of the present accused. He wrote to SP, Investigation for corresponding with Excise & Taxation Officer/Motor Registration Authority, Islamabad for the verification of the vehicle. The report Ex.PW-3/1 was received as per which no vehicle was found registered against the above mentioned chassis number.

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On conclusion of prosecution evidence, statements of accused were recorded u/s 342 Cr.PC, in which they professed their innocence, however, they did not opt to record their statements on oath as envisaged u/s 340 (2) Cr.PC, and also did not opt to produce any defense witness in their favour. Later on, exemption of accused Sadiq was re-called. Sureties failed to produce him before the court, resultantly, accused named above and sureties were proceeded against u/s 512 and 514 Cr.PC accordingly.

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5. The scanning of the record shows that the vehicle in question was recovered and taken into possession by complainant (PW-01) in connection with the above cited murder case. After verification from the authorities concerned, it was held that no vehicle was found registered against the above mentioned chassis number. PW-01; SI Shal Muhammad is the complainant while PW-03, SI Muhammad

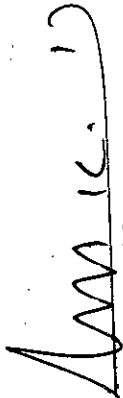
Hanif is IO of the case. Per complaint Ex.PW-1/1, accused are charged for offences u/s 468 and 471 PPC. Section 468 PPC deals with the offence for forgery intending that the documents forged shall be used for the purpose of cheating while section 471 PPC provides for offence of fraudulently or dishonestly using as genuine any document which the accused knows or has reason to believe to be a forged document. Prosecution was duty bound to establish that the document is forged by the accused and that he intended that the forged document would be used for the purpose of cheating. In order to bring home the charges against the accused, prosecution produced 03 witnesses. As mentioned above, PW-01, SI Shal Muhammad is complainant of the case. He has taken into possession the motorcar in question from possession of the accused. He stated in his cross examination that it is correct that in the FIR Ex.PA, it is nowhere mentioned that who was driving the vehicle/motorcar at the relevant time. Same is the case of complaint Ex.PW-1/2. It is correct that he has not specifically named accused in the recovery memo which could show possession of accused. Per record, there is no application for corresponding with Excise & Taxation Officer/Motor Registration Authority, Islamabad through DPO, Orakzai. He also stated that it is correct that in the recovery memo, he has not mentioned the spot from where the vehicle was recovered. Extract/copy of DD report is not placed on file. It is correct that in the report of the Excise & Taxation Officer/Motor Registration Authority, Islamabad, engine number of the vehicle is not

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mentioned. No letter from IO to SP Investigation or DPO, Orakzai for corresponding with Excise & Taxation Department is placed on file. Till date, no one has claimed ownership of the vehicle. There is no eye witness who had seen the accused facing trial in the vehicle at the relevant time. He has not placed on file acquittal order of accused in the murder case. He has not mentioned color of the vehicle in the complaint and FIR. He also deposed that he has not mentioned source of information in his complaint. PW-02, who is one of the marginal witnesses to the recovery memo Ex.PW-1/1, stated in his cross examination that his statement was not recorded by IO in connection with the complaint in hand. He does not remember who was driving the vehicle at the relevant time. PW-03, SI Muhammad Hanif, who is IO of the murder case as well as complaint in hand, stated in his cross examination that he has not recorded statements of accused in connection with the complaint in hand. There is nothing in the complaint which could show that who was driving the vehicle at the relevant time. Self-stated this fact is mentioned in the record of murder case as per which absconding co-accused Sadiq was driving the motorcar at the relevant time. No driving license was recovered from the accused. It is correct that there is nothing on record which could show ownership of the accused in respect of the vehicle. No ownership documents are annexed with the complaint. There is nothing on record which could show that the accused had purchased the vehicle from someone.

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6. While going further through record available on file, it is noticed that prosecution version qua the recovery of the motorcar from possession of the accused Jan Khan has not been established. He has not confessed his guilt before the court. There is no criminal history of accused facing trial. There are serious contradictions in the statements of PWs. The necessary documents in shape of letters for corresponding with the Excise and Taxation Department are not placed on file. Statements of PWs have not been recorded in connection with the present complaint. The IO did not bother to examine the accused u/s 161 Cr.PC in connection with the instant complaint. The evidence on record does not connect the accused named above with the commission of the offence. The evidence produced by the prosecution is not worth of reliance to convict the accused named above.

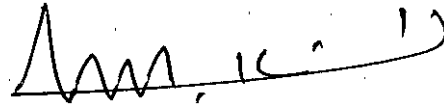
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As prosecution failed to prove its case against the accused beyond reasonable doubts, therefore, accused namely Jan Khan is hereby acquitted from the charges leveled against him. He is on bail. His bail bonds stand cancelled. Sureties are discharged from their liability. A prima facie case exists against the absconding accused Sadiq who is intentionally avoiding his lawful arrest, hence, accused Sadiq is hereby declared as proclaimed offender. His name be entered in register/list of proclaimed offenders. Perpetual warrant of arrest be issued against him. Case property be kept intact till arrest/trial of the absconding accused.

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

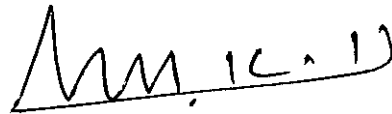
Announced
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Judicial Magistrate-I
Tehsil Courts, Kalaya, Orakzai

CERTIFICATE

It is certified that this judgment consists of 07 pages. Each page has been dictated, read, corrected and signed by me.



Zahir Khan
Judicial Magistrate-I
Tehsil Courts, Kalaya, Orakzai