

29 (24)

IN THE COURT OF ABDUL BASIT  
ADDITIONAL SESSIONS JUDGE-II, ORAKZAI

Criminal Revision No. 03/10 of 2024

Date of institution: 24.04.2024

Date of decision: 10.09.2024

Date of consignment:

Khayal Zaman son of Sarbaz Ali resident of Quom Bar Muhammad Khel Tappa Alatkhel, Tehsil Lower, Distirct Orakzai (petitioner/complainant)

Versus

Askar Ali son of Khadi Khan resident of Quom Bar Muhammad Khel Tappa Alatkhel, Village Chamandu Mela, Tehsil Lower District Orakzai and fourt others (respondents)

CRIMINAL REVISION AGAINST JUDGMENT AND ORDER  
DATED 17.04.2023 PASSED IN CASE NO. 02/133 of 2023 OF THE  
COURT LEARNED JUDICIAL MAGISTRATE-I, KALAYA ORAKZAI

JUDGMENT

1. Concise facts of the case are that petitioner had constructed a house in his ancestral property situated at Quom Bar Muhammad Khel Tappa Alat Khel Village Chamandu Mela Chazghi Pakha Tehsil Lower Orakzai and resided there with family; that there was a sole passage that led to his house (the suit passage), which he was using for the last more than twenty years, however, respondents no. 1-4 in connivance with respondent no. 5 had ploughed the suit passage on gunpoint and obstructed access to his house, which is a crime; that due to this act of respondents, no transport can access to his house nor his children can go to school; that this act of respondents apprehend imminent danger to the peace and also causes public nuisance affecting the society at large; that he has made a report but of no avail; therefore, petitioner has prayed for removal of the public nuisance from the suit passage and to punish the respondents as per law.

ayy /  
Ull  
10/09/2024  
Abdul Basit  
Addl. District & Sessions Judge-II  
Orakzai at Baber Mela,  
Hangu

2  
36 25

2. On receipt of complaint, the learned trial court recorded the statement of complainant under section 200 CrPC and marked the complaint to the SHO concerned for the inquiry, who submitted his detailed report dated 22.06.2023, whereat, the learned trial court passed a conditional order for the removal of obstructions and open the suit passage else to show cause/submit the objections, if any, to appear before him and move to have the order set-aside.
3. The respondents turned up and submitted objection alleging that there was no public passage existed there. Resultantly, the learned trial court felt the need to record the pro and contra evidence to decide the matter; therefore, parties were directed to lead the evidence. As a result thereof, petitioner recorded the statements of as many witnesses as he wished, whereas, respondents did not opt to record the evidence in defence.
4. The learned trial court after hearing the arguments from both sides reached to conclusion that the complaint in hands is not worth merit; therefore, dropped the proceedings and dismissed the complaint on 17.04.2024.
5. The petitioner feeling aggrieved from the dismissal order of the learned trial court, impugned herein the judgment and order dated 17.04.2024 with assertion that judgment and order of the learned trial court is against the law and facts. He reiterated facts of the complaint and argued that learned trial court has decided the case in haste without appreciating the evidence on file; therefore, prayed that on accepting the petition, set-aside the judgment and order of the learned trial court and pass a direction for removal of public nuisance from the area.

any  
19/09/2024  
Abdul Basit  
Addl. District & Sessions Judge-II  
Orakzai at Bahar Mela,  
Hangu

2/26

6. On contrary, learned counsel for respondents refuted the argument advanced by learned counsel for petitioner and stated that learned trial court has properly appreciated the evidence available on file and has committed no illegality in dismissing the complaint in hands; therefore, prayed for dismissal of criminal revision petition.
7. Arguments heard and record perused.
8. In view of valuable assistance rendered by learned counsel for the parties and evidence available on file, it is held that the main plea of the petitioner is that the suit passage was not only a public passage but the only passage that led to his house, however, respondents have collusively obstructed the same by ploughing through tractor and now by constructing walls on it, which is causing nuisance to the public at large; therefore, prayed that direction may be issued for the removal of obstructions from the suit passage. Before making discussion the merits of the case, I would like to mention that Chapter X of The Criminal Procedure Code, 1898 relates with the public nuisance and this has no concern with the private disputes; therefore, whenever, any issue pertaining to public nuisance shall be agitated, it must affect the public at large and not an individual. The complaint in hands is though filed under section 133 CrPC; however, it nowhere provides that the nuisance was of a public nature. It, rather, speaks about the fact that respondents have no concern with the suit passage, which the petitioner was using for the last more than twenty years having availed the fact that he intends to establish his title to the suit passage by exercising his easement right over it. Even, the evidence and the witnesses produced by petitioner in his favour did not utter a single word in their statements that the suit passage was public passage or

my  
10/09/2024  
Abdul Basit  
Dist. & Sessions Judge-II  
Orakzai  
Hangu

2  
3P (27)

the land over which the suit passage existed did not belong to the respondents. Contrary to this, in reply to a question Muhammad Sajid (PW-2) deposed that he did not know that what was cultivated by Khayal Zaman, the respondent, in his lands, whereat, the alleged suit passage existed and blocked by respondents, which in absence of contrary on file transpire that the suit passage was the ownership of Khayal Zaman. Even, otherwise, there is nothing on record to show that suit passage was a public property and respondents have blocked it. Salman Ali (PW-1) had not visited the suit passage nor did go to the house of petitioner for the last more than one year nor he has witnessed that respondents have obstructed/blocked the suit passage but strange enough he has still deposed that respondents have blocked the suit passage, which is unbelievable and makes his whole statement untrustworthy.

9. In similar manner, petitioner admitted that there existed the passage in the field he has exchanged, whereas, added that the suit passage was earlier existed in the Sajjad's field, which further elaborates that the suit passage is not a public property but private property, however, petitioner intends to establish his easement right over it; therefore, the learned trial court has rightly held that proceedings of section 133 CrPC cannot be substitute to settle a civil dispute, for which a separate forum is available.

10. Keeping in mind the above facts and evidence led by parties, it is held that the learned trial court has committed no illegality or irregularity in passing the impugned, hence, judgment and order dated 17.04.2024 of the learned trial court is upheld and the criminal revision petition dismissed being bereft of merits.

10/09/2024  
Abdul Basit  
Addl. District & Sessions Judge-II  
Orakzai, Balochistan  
Hunzu

23 28

11. Copy of this order be placed on file of the learned trial court for record, where after, the requisitioned record be returned to the head-quarter concerned and file of this court consigned to record room after completion and compilation.

ayy  
lll

**Announced**  
10.09.2024

**Abdul Basit**  
Addl. Session Judge-II, Orakzai

**CERTIFICATE**

Certified that my judgment consist of five (05) pages. Each page is signed by me after necessary corrections, where needed.

ayy  
lll

**Announced**  
10.09.2024

**Abdul Basit**  
Addl. Session Judge-II, Orakzai