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

Criminal Revision No. 08/10 of 2024

Date of institution: 15.07.2024

Date of decision: 19.10.2024

Date of consignment:

Maqbali Khan son of Juma Gul resident of Tambi Sheikhan Ali Khel, Lower Orakzai, District Orakzai and three others (petitioners/complainants)

Versus

Wazir Jaffar son Noor Jaffar resident of Tambi Sheikhan Ali Khel, Lower Orakzai, District Orakzai and one other (respondents)

CRIMINAL REVISION AGAINST JUDGMENT AND ORDER  
DATED 11.06.2024 PASSED IN CASE NO. 01/133 of 2023 OF THE  
COURT LEARNED JUDICIAL MAGISTRATE-II, KALAYA ORAKZAI

JUDGMENT

1. Concise facts of the case are that petitioners were law abiding citizens of the locality; that there was a public path, the suit path, in the locality, which had been used by the public since the time of their predecessors including female folks, who used to travel on it to collect the wood from the adjacent hills; that the elders of the locality had consented to declare the suit path as public passage but few days ago, respondents without any lawful justification had made pits/holes in it, which caused nuisance to the woman folks of the locality; therefore, prayed that on passing a conditional order, an order for the removal of obstructions/nuisance may be passed in the larger interest of public.
2. On the 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 inquiry, who submitted his detailed report.

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3. Consequently, learned trial court passed conditional order requiring the respondents to remove the nuisance from the suit path caused through digging out the pits/holes in it and if they object so to do, to appear before him and move to have the order set-aside.
4. The respondent turned up and filed their objections *inter-alia* with assertions that the suit path still exists in its original state since the long time and they have not dug any pit/hole in it rather petitioners had blocked the suit passage by planting trees and narrowing down the road. Resultantly, the learned trial court felt the need to direct the SHO concerned to visit the spot and inquire into the matter as per directions contained in order sheet no. 33 dated 27.05.2024 of the learned trial court. As a result thereof, the SHO concerned submitted his report.
5. The learned trial court after hearing the arguments from both sides reached to conclusion that the complaint in hands is not worth merit; therefore, dismissed the complaint on 11.06.2024.
6. The petitioner feeling aggrieved from the dismissal order of the learned trial court, impugned herein the judgment and order of the learned trial court dated 11.06.2024 with assertions that judgment and order of learned trial court is against the rules and regulations, whereas, he has not properly appreciated the available material on record. He argued that impugned order is against the law and facts, which was passed in haphazard manner; therefore, not tenable in the eyes of law thus on accepting this revision, the impugned order may be set-aside, case in hands be remanded to the learned trial court with direction to appoint a fresh local commission to unearth the real facts and decide the case afresh as per law.

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7. On contrary, learned counsel for the respondents has refuted the arguments advanced by learned counsel for petitioners and stated that learned trial court has properly appreciated the evidence available on file and has committed no illegality in dismissing the complaint; therefore, prayed for dismissal of appeal.
8. Arguments heard and record perused.
9. In view of valuable assistance rendered by learned counsel for the parties and evidence available on file, it is held that petitioner has filed this complaint against the respondents mainly on ground that the latter had dug pits/holes in the suit path causing inconvenience to public and women folks to make access to the other side of the suit path, whereas, the respondents while denying the above facts alleged that petitioners had blocked the suit path by planting trees over there and narrowing down the road. Record shows that earlier on 05.02.2023, an inquiry officer filed report that respondents had dug the pits/holes in the suit path but later on when learned trial court passed a conditional order, the police submitted the report on 23.12.2023 that none of the parties had blocked the suit path. The learned trial court, however, while declaring the report to be beyond jurisdiction, passed fresh direction to remove the nuisance from suit path, whereat, inquiry officer visited the spot and on 12.03.2024 filed a report that there were no obstructions in suit path; therefore, the learned court on hearing the parties again directed the SHO concerned to visit the suit path and submit a detailed report in the light of directions passed in order sheet no. 33 dated 27.05.2024. This time, the report was received on 11.06.2024 and the learned trial court while agreeing with the report, dismissed the complaint.

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10. Be that as it may, para no. 2 & 3 of complaint explicitly provides that the suit path was not a public path rather elders of the locality had consented to declare it a path as public path, which was used by villagers and women folks of the locality since long, which ensue that it was a private path and elders of locality had settled it to be used by them for their access to other side through walk.
11. Besides above, the final report of SHO dated 09.06.2024 further clarifies that the suit path, consisting of four feet width, was used by villagers jointly and as per statements of the villagers it was a *kacha* path spared for pedestrians and not suitable for construction of road; however, respondent no. 2 demanded to demolish the old constructions of petitioner no. 1 so as to construct a metaled road to lead the same to his house, which is not logical. On the other side, there exists a separate road, which leads to the house of respondent no. 2 and can be used by him/them conveniently for trafficking and transportation purposes. The police report did not point any hurdle or obstructions or digging of holes/pits in the suit path, which is also evident from the reports dated 21.12.2023 and 11.03.2024; therefore, this can safely be hold that when there is no obstructions/hurdles/pits/ holes etc. in the suit path, then, making further proceedings is just a wastage of time and futile exercise. More so, if any party to the case feels invasion to his rights, he can recourse to the civil court to establish his civil rights/liabilities.
12. In the backdrop of my above findings and the material available on file, it is held that the learned trial court has committed no illegality or irregularity in passing the impugned order; therefore, judgment and order dated 11.06.2024 of the learned trial court is upheld and criminal revision petition in hands dismissed being bereft of merits.

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13. 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.



**Announced**  
19.10.2024

**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.



**Announced**  
19.10.2024

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