

(52)

Cr. Revision No. 1/10-R Oof 2024
HAFIZ NAIMAT ULLAH ETC.
VS
MUHAMMAD TAYYAB ETC.

IN THE COURT OF SYED OBAIDULLAH SHAH,
SESSIONS JUDGE, ORAKZAI (AT BABER MELA)

CRIMINAL REVISION NO. : 1/10-R OF 2024
DATE OF INSTITUTION : 05.09.2024
DATE OF DECISION : 08.10.2024

1. HAFIZ NAIMAT ULLAH S/O SAID NOOR SHAH, R/O CASTE MAMOZAI, TAPA ABDUL RAHIM KHEL, UPPER ORAKZAI
 2. NOOR SALEEM S/O GOHAR SHAH, R/O CASTE MAMOZAI, TAPA ABDUL RAHIM KHEL, UPPER ORAKZAI
- (PETITIONERS)

-VERSUS-

1. MUHAMMAD TAYYAB S/O ABDUL GHAFOOR
2. MUHAMMAD RAUF S/O LAL MIR SHAH
3. GHAZI SHAH S/O GHANI SHAH
4. SEFAT SHAH S/O NOOR BADSHAH
ALL R/O CASTE MAMOZAI, TAPA ABDUL RAHIM KHEL,
SALMA BAZAR, UPPER ORAKZAI
5. SHO POLICE STATION GHILJO


..... (RESPONDENTS)

Present: Khursheed Alam Advocate for petitioner.
: Abid Ali Advocate of respondents no. 1 to 4.
: DPP, Umar Niaz for the State.

JUDGMENT
08.10.2024

Impugned herein is the judgment dated 25.07.2024 of learned Senior Civil Judge/Judicial Magistrate, Orakzai vide which complaint u/s 133 CrPC of the petitioner has been dismissed.

- (2). The petitioners through a complaint u/s 133 CrPC before the court of learned Senior Civil Judge/Judicial Magistrate, Orakzai asserted that their residence is situated between the houses of respondents no. 1 and 2, and that an agreement regarding the disputed thoroughfare was executed by them on 16.03.2010. The petitioners further contended that the thoroughfare is being used by them since their forefathers


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but several months ago, the respondents constructed a wall in front of their main entrance, thereby obstructing their access to the main road and completely blocking the pathway. Despite a Jirga being convened in the presence of the SHO, the respondents are alleged to be persistent in their malicious intent to engage in disputes and forcefully evict the petitioners, thereby compelling them to sell their property. The petitioners had requested the learned trial court for issuance of direction to the SHO for removal of the wall.

The parties were given opportunity to produce their evidence. Accordingly, petitioner no. 1 appeared in the witness box as PW-1 besides produced Noorbat Khan, Ayyub Khan, Jahangir Shah, Hafiz Khalil Ur Rehman and petitioner no. 2 Noor Saleem as PW-2 to PW-6 respectively. On the other hand, respondents have not produced any witness and among the respondents a sole witness i.e., SHO of the Police Station Ghiljo, Ibrahim Khan was examined as CW-01.

After having heard the arguments, the learned trial court dismissed the complaint of petitioners. Being aggrieved of the impugned judgment, petitioners filed the instant criminal revision petition.

- (3). Arguments heard and record gone through.
- (4). Perusal of the case file reveals that the respondents



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have obstructed the disputed thoroughfare by constructing a

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wall, a fact which has been corroborated by the statement of the SHO/CW-1. It is further evident that a written agreement Ex. PW 1/2 regarding the fate of the dispute has been executed between the parties. The petitioner in his statement as PW-1 acknowledged that they have been residing in Peshawar since 2009, and their house has remained vacant since that time. He further conceded that although the respondents have blocked the thoroughfare, but he also affirmed that there are no other residences situated along the thoroughfare, except the petitioner's property. Moreover, the statements of the witnesses indicate that the parties are closely related and have been using the thoroughfare for personal purposes. All these facts clearly suggest that the thoroughfare in question is not a public path rather it has been disputed between the parties. The complaint filed under section 133 of the Criminal Procedure Code (CrPC) is specifically designed to protect the general public from inconvenience; however, the present matter appears to be a private dispute of a civil nature and a civil suit is also pending adjudication between the parties in respect of the disputed thoroughfare before the court of learned Senior Civil Judge, Orakzai.

- (5). Hence, in view of what is discussed above, it is held that there is a private dispute between the parties over a thoroughfare and there is no public road or thoroughfare on


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the spot. The learned trial court has rightly held that no action can be taken u/s 133 CrPC in the circumstances. Hence, the instant criminal revision petition is dismissed being devoid of merits.

Judgment announced. File of this court be consigned to record room after its necessary completion and compilation while record be returned.

Dated: 08.10.2024



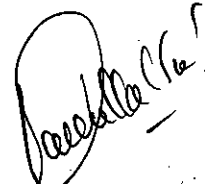
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CERTIFICATE

Certified that this judgment consists of four (04) pages.

Each page has been read, corrected wherever necessary and signed by me.

Dated: 08.10.2024



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