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IN THE COURT OF MUHAMMAD JUNAID ALAM,

Judicial Magistrate-II, Tehsil Courts, Kalaya Orakzai

CASE NO. : 7/2 OF 2024

DATE OF INSTITUTION : 14.02.2024

DATE OF DECISION : 18.11.2024

STATE THROUGH AHMAD SHAH SON OF AZAM SHAH,
RESIDENT OF QOM MALIA KHEL, KANDI MISHTI, DISTRICT
ORAKZAI

------(Complainant)

VS

1. MOMIN KHAN SON OF GUL WAZIR,
2. NOOR MAT KHAN SON OF HAKEEM KHAN, BOTH
RESIDENTS OF QOM MISHTI, KANDI MISHTI, DISTRICT
ORAKZAI

------(Accused Facing Trial)

Present: Nisar Ahmad, Assistant Public Prosecutor for
complainant.
: Sana Ullah Khan Advocate, for accused facing trial.

ORDER

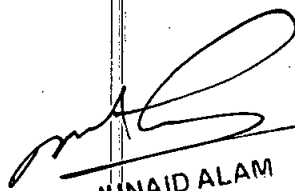
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1. Accused facing trial, Momin Khan and Noor Mat

Khan present they are charged in case FIR no. 52
dated 20.12.2023 under sections 506/341/186/189
PPC of PS Mishti Mela for criminal intimidation
and threatening complainant of dire consequences to
leave the area.

2. Briefly stated factual background of the instant

case is that the complainant Ahmad Shah, reported
the matter to ASHO Mishti Mela in the shape of
Naqal Mad no. 08. That he is residing in his


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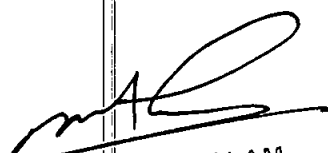
personal house situated at village Kandi Mishti, Tehsil Upper District Orakzai since long. Few days ago prior to the occurrence, he received threats from mischief mongers who also to the complainant to leave residency/locality and further threatened him for dire consequences in case of not quitting the residency/locality. Furthermore, accused facing trial also restricted him from using the public way.

3. The complainant also reported to the local police that the accused had obstructed the construction work of the local government primary school.

4. Upon which, the instant case was registered at Police Station Mishti Mela, Orakzai on 20.12.2023 vide FIR. No. 52.

5. After completion of the investigation, the complete challan was submitted on 14.02.2024 to this court. The accused on bail were summoned. The accused on bail appeared and the provisions of 241-A Cr.P.C were duly complied with. The formal charge against the accused facing trial was framed on 21.03.2024, to which the accused pleaded not guilty and they claimed trial.

6. Prosecution was given ample opportunity to adduce its evidence as it desired. Prosecution

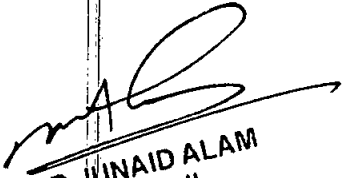

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produced five (05) witnesses to prove its case against the accused facing trial.


7. PW-01, is Khaista Nab Si In-Charge PP Kandi Mishti. Stated on oath that during the day of occurrence, I was posted as In-charge PP Kandi Mishti. On 02.12.2023, Naqal Mad no. 08 dated 02.12.2023 was handed over to me for conducting inquiry in the instant case. I proceeded to the spot and prepared the site plan which is Ex. PB on the pointation of complainant. I recorded statements of complainant, Muhammad Khalid, Hakeem Badshah and Seraj u/s 161 Cr. PC. Similarly, I also prepared the final report which is Ex. PW-1/1 on 15.12.2023. I drafted an application to DPP Orakzai for obtaining legal opinion vide my application, is Ex. PW-1/2. On 20.12.2023, I received Naqal Mad alongwith other relevant documents from DPP Orakzai and I register the instant case against the accused facing trial, FIR is Ex. PA. Today I have seen the above relevant documents which are correct and correctly bear my signatures.


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8. PW-02, Ahmad Shah is the complainant in instant case. Stated on oath that I drafted an application to District Police Officer, Orakzai regarding taking

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legal action against the accused namely Momin Khan and Noor Mat Khan. I am residing in my personal house situated at village Kandi Mishti, Tehsil Upper, District Orakzai since long. Few days ago prior to the occurrence, I received threats from mischief mongers, and also stated that to leave residence/locality and further threatened me of dire consequences in case of not quitting residence/locality. Furthermore, the accused have also restricted me from using the public way and also apprehension to my life and property from the accused. On 02.12.2023, the inquiry officer recorded my supplementary statement at Kandi Mishti. I charge the accused facing trial for the commission of offence. The inquiry officer made site plan on my pointation. Today I have seen my report which is correct.


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9. Hakim Badshah son of Phalawan Shah, deposed as PW-03. Stated on oath that Government Primary School for upgradation to Middle School by the provincial government which is situated in the land of complainant Ahmad Shah. The accused facing trial forcibly stopped the public road/way for construction materials and they also stated to the complainant to leave residence/locality and further


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threatened to complainant of dire consequences in case of not quitting residence/locality. My statement was recorded.

10. Naseeb Khan OII PS Ghiljo was examined as PW-04. Stated that during the days of occurrence, I was posted as SHO at PS Mishti Mela. After completion of investigation, I submitted complete challan against the accused. Today, I have seen the challan form which correctly bears my signature. Challan form is Ex. PW-4/1.

11. Shal Muhammad SI was examined as PW-05.

Stated that during the days of occurrence, I was posted as OII at PS Mishti Mela. Copy of FIR and other relevant documents were handed over to me for investigation. On 22.12.2023, I arrested the accused and issued their card of arrest which is Ex. PW-5/1. On 23.12.2023, I drafted an application before Illaqa Magistrate for three days police custody vide my application is Ex. PW-5/2. Similarly, the sections of law levelled against accused wereailable and they were released accordingly. I recorded statements of accused facing trial under section 161 Cr. PC. After completion of investigation in the instant case. I handed over the case file to SHO for onward


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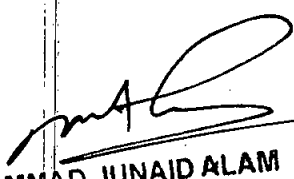
proceedings.

12. Thereafter, on 05.08.2024, the learned APP for the state closed the evidence on behalf of the prosecution.

13. Statement of accused under sections 342 Cr.P.C was recorded wherein he neither opted to be examined on oath u/s 342(2) of the Cr.P.C nor he wanted to produce any defence evidence in their defence.

14. Thereafter arguments were heard from both the sides.


15. Record shows that the alleged occurrence took place on 29.11.2023 at unknown time. It was reported on 02.12.2023 at 09:30 hours and FIR was registered on 20.12.2023 at 09:30 hours. Naqal Mad is Ex. PA/1 and FIR is Ex. PA. Ahmad Shah is the complainant. Motive behind the occurrence is not mentioned in the report. Accused were arrested on 22.12.2023 by the concern police station. Site plan Ex. PB was prepared by IO on 02.12.2023 on the pointation of complaint. Final report is Ex. PW4/1. Although, accused facing trial are directly and by name charged in the FIR, however, there is un-explained delay of about 18-days in lodging the FIR. This un-explained delay


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in report creates a reasonable doubt which goes in favour of the accused facing trial.

16. Upon perusal of the record, the evidence produced by prosecution and valuable assistance of APP for the state and counsel for the accused that as for as instant case is concerned, the alleged occurrence took place on 29.11.2023 and it was reported to the local police on 02.12.2023. The reason for delay in lodging of report i.e., to save honor and search actual culprits is not plausible and not sufficient. Complainant, who deposed as PW-02 did not explain this delay in his statement. There is no eye-witness to the occurrence. Source of information regarding involvement of accused in the commission of the offence has not been disclosed by the complainant. Accused have not confessed their guilt before the court. No recovery whatsoever has been effected either from possession of the accused facing trial or on their pointation. There is no criminal history of the accused facing trial.

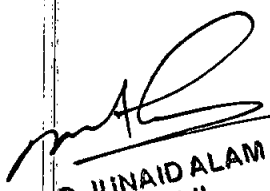

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17. Complainant appeared as PW-02 in the instant case and deposed in his cross examination that he submitted an application to DPO, Orakzai regarding the occurrence, but the same is not

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available on case file. Moreover, the complainant could not explain that why he approached the higher forum directly, while the concerned forum of local police station was available to him.

As for as the police officials, accompanying inquiry officer for the spot proceedings, are concerned, inquiry officer (PW-01) in the instant case had deposed in his cross examination that I proceeded to the spot alongwith constable Hazrat Ullah while PW-02 complainant in the instant case had deposed in his cross examination that I with inquiry officer alongwith two other police officials went to the spot.


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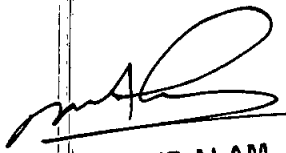
As for as name of the IO in the instant case is concerned, the complainant (PW-02) had deposed in his cross examination that he did not know that who conducted the investigation in the instant case. The inquiry report is not credible as the Inquiry Officer said in his cross examination that "I am illiterate and I cannot read and write. The site plan was prepared by the Constable Hazrat Ullah on my direction". Further said "I do not know about inquiry under section 157(i) Cr. PC.

Furthermore, as for as arrival and departure of Inquiry officer to the spot is concerned,

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Complainant (PW-02) in the instant case had deposed in his cross examination that inquiry officer visited the spot at about 09:00 am while the one Hakim Badshah (PW-03) in the instant case had deposed in his cross examination that inquiry officer came to the spot at afternoon.

18. In light of the evidence produced by the prosecution to establish its case against accused facing trial, it has been noticed that there exists a vast contradiction in the statements of PWs and furthermore, the witnesses have contradicted in material particulars. Hence the prosecution miserably failed to bring home the charge against the accused facing trial.


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19. Furthermore, no government official has been presented before the Court, whose duty has been obstructed by the accused, to prove offence of 186 PPC against the accused. It is very astonishing that the allegedly offence of obstruction of public servant has been reported by a private complainant.

20. The prosecution failed to prove its case against the accused beyond any shadow of doubt, therefore, the accused facing trial namely Momin Khan and Noor Mat Khan, they are hereby acquitted from the

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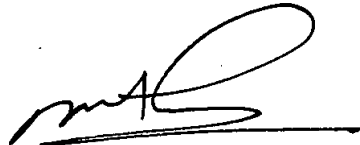
charges levelled against them. Moreover, the Court is of the opinion that false information has been given by the complainant with intent that the public servants (local police and the Magistrate) may use their lawful authority to cause injury to another person. Therefore, the accused may recourse to the section 182 PPC against the complainant if they desire so.

21. As the accused are on bail, bail bonds forfeited and their Sureties are discharged from the liability of bail bonds.

22. Case property be dealt with accordance with law.

23. Case file be consigned to District Record room, Orakzai after its completion and necessary compilation.

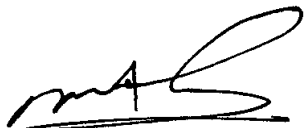
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CERTIFICATE

Certified that this order consists of ten (10) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated: 18.11.2024


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