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STATE VS PEERA SHAH ETC.

**FIR No. 44 | Dated: 07.06.2024 | U/S: 5 of the Khyber Pakhtunkhwa
Elimination of Custom of Ghag Act, 2013 | Police Station: Kalaya**

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

CASE NO. : 2/3 OF 2024
DATE OF INSTITUTION : 14.10.2024
DATE OF DECISION : 13.03.2025

STATE THROUGH NADIR KHAN S/O ZAR KHAN, R/O CASTE
QAMAR KHEL, KHWAIDAD KHEL, DISTRICT ORAKZAI

------(Complainant)

VS

1. ISMAIL ALIAS PEERA SHAH S/O MEERAN SHAH, AGED ABOUT 48
YEARS, R/O CASTE STORI KHEL, TAPA MALA KHEL, PO TAZI
KHEL, TARKHO SAM, TEHSIL LOWER, DISTRICT ORAKZAI

------(Accused Facing Trial)

2. MASAWAT KHAN S/O JALEEL KHAN, R/O CASTE QAMBAR KHEL,
KHWAIDAD KHEL, DISTRICT ORAKZAI

------(Absconding Accused)

Present : Umar Niaz, District Public Prosecutor for the state.
: Abdullah Shahab Advocate for accused facing trial.
: Asad Khan & Aziz Ur Rehman Advocates for complainant.

JUDGEMENT

13.03.2025

The aforementioned accused faced trial for the
offence u/s 5 of the Khyber Pakhtunkhwa Elimination of
Custom of Ghag Act, 2013 vide FIR no. 44, Dated
07.06.2024 of Police Station Kalaya.

- (2). The case of the prosecution is that: the complainant,
Nadir Khan, vide Daily Diary No. 19 of 29.05.2024 made
a report to the police to the fact that that his daughter lived
with the fugitive accused Masawat Khan for seven years
after they were married; that his daughter had been
divorced from Family Court Kohat by an Order dated
January 24, 2023; and that the absconding accused

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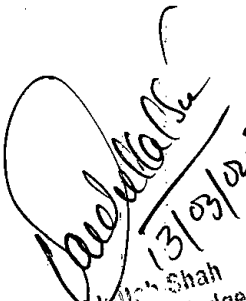
Masawat Khan, with the help of the accused facing trial Peera Shah alias Ismail, was preventing his daughter from getting married to another person and threatening to kill them. The matter was inquired by the SHO and the accused facing trial and the absconding accused were charged u/s 5 of the Khyber Pakhtunkhwa Elimination of Custom of Ghag Act, 2013.

(3). After completion of investigation, complete challan was submitted and accordingly accused was summoned. Upon his appearance, the proceedings were initiated against him by providing copies of the case u/s 265-C Cr.P.C and he was charge sheeted to which he pleaded not guilty and claimed trial. Subsequently, the witnesses were summoned and their testimonies were recorded. The gist of the evidence is as follows;

I. PW-1 is Muqadar Khan ASHO. He has registered the FIR Ex. PA against the accused.

II. Mst. Shazia Bibi appeared in the witness box as PW-2. She asserted about the solemnization of her marriage to accused Masawat Khan, her divorce from him, and the threats she received from the accused facing trial and absconding co-accused.

III. PW-3 is the statement of complainant Nadir Khan. He reiterated the same story as narrated


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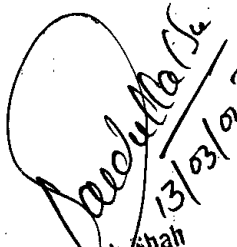
in the FIR Ex. PA. He has charged the accused
facing trial for commission of offence.

IV. Shal Muhammad SHO was examined as PW-4.

He has conducted the inquiry in the instant case
and submitted his final report Ex. PW 4/1. He
has submitted interim complete challan Ex. PW
4/3 and complete challan Ex. PW 4/4.

V. Lastly, statement of Murtaza Khan IO, was
recorded as PW-5, who has conducted
investigation in the instant case. He has
proceeded against the absconding accused,
issued notice of correction of the name of
accused Peera Shah and recorded his statement
u/s 161 CrPC.

(4). After closure of the prosecution evidence by learned
DPP for the State assisted by counsel for the complainant,
statement of the accused was recorded u/s 342 CrPC but he
neither wished to be examined on oath nor opted to
produce any evidence in defence. Accordingly, arguments
of learned DPP for the state assisted by counsel for the
complainant and counsel for the accused facing trial heard
and case file perused.


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Orakzai at Baber Mel (5).

Before rendering the judgment, it is important to
note that Ghag, which literally translates to "a voice; a
pronouncement, a declaration, a warning," is a deplorable

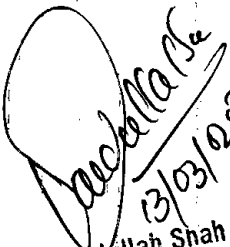
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social practice that involves a young man, typically single, publicly announcing his preference for a young unmarried woman's hand in marriage. In other words, it serves as a warning to the targeted woman, her family, and the general public to refrain from marrying her to anyone else. The act is both unconstitutional and un-Islamic. In our male-dominated society, it has terrible repercussions for women and breaches fundamental and human rights. It deprives a woman of her basic freedom to choose her own spouse. This egregious violation of human rights leaves lasting scars, perpetuating cycles of trauma and oppression.

According to the prosecution case, it has been alleged that the accused facing trial and the absconding co-accused are restraining the daughter of the complainant from marrying someone else; as a result, they are allegedly charged of engaging in an unlawful and un-Islamic practice. Notably, the accused facing trial has submitted an affidavit Ex. PW 3/x-2 asserting that he is the mediator of a jirga between the complainant's daughter and the absconding accused Masawat Khan, and he has no objection to the complainant's daughter getting married. Besides, the complainant as PW-3 and Mst. Shazia Bibi as PW-2 corroborated the fact that the accused facing trial


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served as a jirga. She has also admitted that, as a sign of assent, she had thumb impressed the said deed of the jirga.

In addition, both the aforesaid witnesses have testified that the accused facing trial has threatened them regarding second marriage of Mst. Shazia Bibi but they have not provided any written or verbal evidence to confirm this stance. Moreover, the complainant, the father of Mst. Shazia Bibi, has reported the matter to the local police through an application he filed; however, nothing is on file to bridge the gap of what prevented the complainant's daughter from filing a report on her own.

The IO has failed to collect any proof regarding involvement of the accused facing trial in the commission of offence. He also failed to produce any independent witness to strengthen the version of the complainant.

- (6). Thus, in light of the above discussion, it is held that the prosecution failed to martial their troops in a right way for conclusion of trial in their favour and the evidence led in the case is not confidence inspiring and have failed to prove the case against the accused facing trial beyond any shadow of doubts. Hence, benefit of doubt so cropped up must be extended in the favour of accused facing trial. Accordingly, while extending the benefit of doubt, accused facing trial, **Ismail alias Peera Shah** is acquitted of the charges levelled against him through the FIR in


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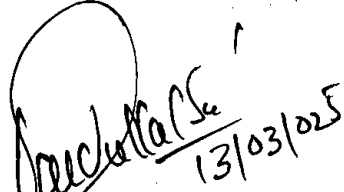
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question. Accused is on bail. His bail bonds stand cancelled and his sureties be discharged of the liabilities of the bail bonds.

As a prima facie case is made out against the absconding accused **Masawat Khan**; hence, he is declared proclaimed offender. Perpetual warrant of arrest be issued against him and DPO, Orakzai is directed to enter his name in the register of proclaimed offenders. All the legal course be adopted for his arrest and he be brought before the court as and when arrested.

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

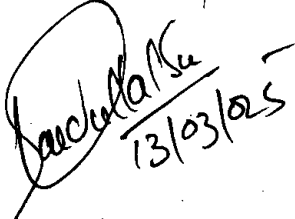
Dated: 13.03.2025


(SYED OBAIDULLAH SHAH)
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CERTIFICATE

Certified that this judgment consists of six (06) pages. Each page has been read, corrected wherever necessary and signed by me.

Dated: 13.03.2025


(SYED OBAIDULLAH SHAH)
Sessions Judge, Orakzai,
at Baber Mela

