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MUHAMMAD HAMAS ETC VS STATE

Case No. 02/10, FIR No. 06 | Dated: 31.01.2023 | U/S 420/471/468/34, | Police Station: Mishti Mela

IN THE COURT OF BAKHT ZADA
ADDITIONAL SESSIONS JUDGE-I, ORAKZAI
(AT BABER MELA)

CASE NO. : 02/10 OF 2025
DATE OF INSTITUTION : 16.04.2025
DATE OF DECISION : 19.04.2025

1. MUHAMMAD HAMAS S/O SYED JAMAL KHAN,
 2. LUQMAN KHAN S/O GUL RAHEEM, BOTH RESIDENTS OF SYED
KHEL, DOMAIL, DISTRICT BANNU
-(APPELLANTS/CONVICTS)

-VERSUS-

1. THE ADDITIONAL DEPUTY COMMISSIONER, ORAKZAI.
 2. THE STATE
- (RESPONDENTS)

JUDGEMENT
19.04.2025

Appellants (1). Muhammad Hamas S/O Said Jamal Khan and (2). Luqman Khan S/O Gul Raheem both residents of Syed Khel, Domail, District Bannu have filed the instant appeal against the impugned judgement and order dated 10.04.2025, whereby the learned Judicial Magistrate-II, Kalaya, District Orakzai has convicted the appellants/convicts in case FIR No. 6, dated 31.01.2023, U/S 420/471/468/34 PPC of PS Mishti Mela, Orakzai-and sentenced them for six months simple imprisonment with fine of Rs. 50,000/- each and thereafter, the said conviction was converted into probation on the ground that the appellants/convicts are previous non convict. It is prayed that the impugned order of the learned trial court may be set aside and the appellants/convicts may be acquitted of the charges in the instant case being innocent.

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(2). Brief facts of the case are that letter No. 140, dated 26.01.2023 was received to SHO PS Mishti Mela from the complainant Deputy Commissioner, District Orakzai through Tehsildar Central for registration of FIR against the appellants/convicts wherein it is alleged that the appellants/convicts have used fake/forged documents and signed the domicile certificates illegally on behalf of the officers of District Administration, Orakzai for taking admission in MBBS against the reserved seats. The said letter was converted into FIR.

(3). The appellants/convicts were arrested and after completion of investigation, complete challan was submitted against them. The learned trial court after procuring attendance of the appellants/convicts and compliance of section 241-A Cr. PC framed charge against the appellants/convicts. After recording the prosecution evidence i.e., statements of PWs Rasool Muhammad, Naseer Khan, ASI Muhammad Ayub Khan as IO, Yasin Tehsildar, Lower Orakzai, Muhammad Younas SHO and Muhammad Shahbaz Khan Khattak ADC as PW-01 to PW-06 respectively. Statements of appellants/convicts U/S 342 Cr. PC were recorded. Arguments of the learned APP for the state and leaned defence counsel were heard, whereafter the learned trial court convicted the appellants/convicts and sentenced them as mentioned above.

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- (4). Being aggrieved from the impugned judgement and order dated 10.04.2025 passed by the learned Judicial Magistrate-II, Kalaya, Orakzai, learned counsel for the appellants/convicts filed the instant appeal for setting aside the impugned judgement and order and prayed for acquittal of the appellants/convicts on the grounds that the impugned order is against law, facts and evidence on record. That the learned trial court has misread and misinterpreted the prosecution evidence and arrived at erroneous conclusion. That there are material contradictions in the initial report, statement of PWs and there is no site plan available on the case file at all. That it is alleged that appellants/convicts have neither taken admission on the basis of alleged fake domicile certificates, nor they used the same to be genuine and as such no offence U/S 420/471/468 PPC made out. That the original domicile certificates have not been recovered and are not available before the court in original form. The copies of the alleged domiciles were produced before the Additional Deputy Commissioner and the letter was drafted by Deputy Commissioner for legal action, but later on Additional Deputy Commissioner was made complainant and the name of Deputy Commissioner was deleted by making amendment in the name of complainant in the relevant column of FIR without legal justification. The statements of PWs are suffering from

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dishonest improvements and none of the PWs are witnesses of the fact that the alleged domicile certificates were prepared by the appellants by committing forgery and that they have submitted the same along with admission form to Khyber Medical University for securing admission on reserved seats.

- (5). Arguments heard and available record perused which shows that the learned trial court has convicted the appellants by sentencing them for six months simple imprisonment and imposing fine of Rs. 50,000/- upon each appellants/convicts vide impugned judgement and order dated 10.04.2025, but the perusal of record shows that the original list of domicile certificate holders sent by the Home & Tribal Affairs Department, Khyber Pakhtunkhwa is neither exhibited during the course of evidence, nor the same is available on the case file in order to prove that whether the names of the appellants/convicts were included in the same. It is also worth mentioning here that the prosecution was duty bound to prove that the said domicile certificates were used as genuine or they have made an attempt to use the same as genuine against the reserved seats of KMU, but the admission forms submitted for admission in the said university by the appellants/convicts have neither been brought on record, nor the same have been exhibited from the proper custodian of record of the KMU rather it was

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the presiding officer of the trial court who pointed out to the IO after conclusion of the case to bring the said forms on the case file, which he placed on file at the order of the court, but no opportunity has been offered to the appellants/convicts to cross examine the witness who has brought the such admission forms on the case file, therefore, its availability on the case file at the order of the court holds no legal grounds and the same cannot be used as evidence against the appellants/convicts. The fact that the alleged domicile certificates were used by the appellants/convicts as genuine cannot be proved until and unless the custodian of the admission forms of the KMU is produced before the court along with the original forms for cross examination. So, the very foundation of complaint against the appellants/convicts is erroneous and simple complaint of the Deputy Commissioner who is neither sent the copy of domicile certificates by the concerned university, nor the letter of the said university for verification of the domicile certificates and even they have not produced and exhibited the letter of the Home & Tribal Affairs Department for verification of domicile certificates of the appellants/convicts. The investigation officer has not brought on record during the course of investigation that from where the appellants/convicts have prepared the official seals of the Assistant Political Agent. The signatures of Assistant Political Agent, Orakzai,

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Political Agent Orakzai and Political Tehsildar/Naib Tehsildar, Orakzai have not been verified from the then Political Tehsildar, Assistant Political Agent and Political Agent concerned. The present Deputy Commissioner of Orakzai cannot declare the said signatures and domicile certificates as forged one rather he can only declare or verify the same to the extent that whether the record of the said domicile certificates exist in their office or not and declaring the same as forged without verification of the signatures of the concerned was not his domain. The case file further shows that the covering letter dated 27.01.2023 wrote in Urdu to the SHO PS Mishti Mela is written by Naib Tehsildar, but prior to the same letter No. 140/DC.ORK/DN/MD-Cat verification dated 26.01.2023 available on the case file as Ex. PW-6/4 is addressed to Assistant Commissioner, Lower Orakzai by the Additional Deputy Commissioner, Orakzai for registration of FIR, but initially Deputy commissioner orakzai is mentioned as complainant in the case, later on word "additional" has been added in the relevant column of FIR with another pen which shows that from Naib Tehsildar to Assistant Commissioner, from Assistant commissioner to Additional Deputy commissioner and from Additional Deputy commissioner to Deputy commissioner, the real complainant of the case was not known to the Police and the IO, which is also obvious from the complete challan

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form of the case, wherein, in the first instance the SHO has made Deputy commissioner as complainant of the case, later on word "Assistant" is added which is again deleted by making cross with the pen and thereafter, word "Additional" is added with the Deputy commissioner and at the end statement of Additional Deputy commissioner is recorded as PW-05, who admitted that he himself has not conducted the inquiry. He also admitted that his statement u/s 161 Cr.PC was not recorded by the IO during the course of investigation. PW-04, Yaseen Naib Tehsildar Lower Orakzai, during his cross examination stated that he was inquiry officer of the case and the domicile certificates prepared and used by appellants/convicts were found fake and bogus, therefore, he wrote to SHO PS Mishti Mela for registration of the case vide his application Ex. PW-4/7, but despite of making him complainant, ADC is shown complainant of the case in the relevant column. No original record has been obtained in shape of the admission form of the appellants/convicts from the KMU. Inquiry officer PW-04 also admitted that his statement U/S 161 Cr. PC was not recorded by the IO. Inquiry officer also admitted that he has not traced the original domicile certificates. He has not recorded statements of the then Tehsildar, APA and PA. He also has not recorded statements of "Malakan" who allegedly attested the domicile certificates. This fact

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has not known to the inquiry officer that whether the appellants/convicts succeeded to get the admission in KMU on the basis of said domiciles. Today, the appellants/convicts are before the court who stated at the bar that they were not given any admission in the said university. In absence of the letter of the KMU and duly exhibited admission form submitted by the appellants/convicts duly supported by the copy of alleged fake domicile certificates of the appellants/convicts and its production from the proper custody, as well as exhibition of the letter and list sent by the Home & Tribal Affairs Department, KPK coupled with the confusion of the police regarding the complainant of the case, non-recording of the statement of complainant and inquiry officer U/S 161 Cr. PC are all the grounds without proving of which case against the appellants/convicts cannot be proved beyond shadows of any doubt. At present, there is no evidence to the effect on the case file that the forgery is actually committed by the appellants/convicts or the alleged copies of the domicile certificates have been brought on record by the District Administration of District Orakzai for registration of criminal case against the appellants/convicts because it is also not mentioned anywhere that who submitted those copies of domicile certificates to the District

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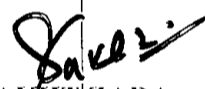
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Administration and the whole case file is silent to this effect.

- (6). Keeping in view the above facts and circumstances and in absence of direct evidence, the learned trial court has misread and misinterpreted the evidence on record, therefore, the impugned judgement and order dated 10.04.2025 being devoid of merits is hereby set aside. Appellants/convicts are acquitted from the charges levelled against them. Their probation order also stands dismissed. Their sureties are discharged from the liability of the bail bonds. They be released forthwith if not cited as accused in any other case.

- (7). Case file be consigned to the record room after its necessary completion and compilation.

Announced:
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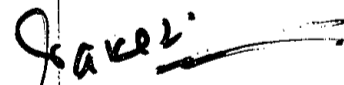


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CERTIFICATE

Certified that this judgment consists of nine (09) pages.

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



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