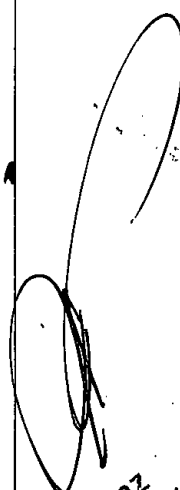


Serial No of order or proceedings	Date of Order or Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary.
1	2	3
Order No.03	05.09.2025	<p>Counsel for the parties present.</p> <p>This criminal revision petition was preferred by the petitioners against the order dated 22.04.2025 passed by the Court of learned Judicial Magistrate-II, Tehsil Court Kalaya, District Orakzai, in case No. 5/133 of 2024 whereby the complaint u/s 133 of the Criminal Procedure Code, 1898 was accepted.</p> <p>The complaint was submitted by respondents was removal of nuisance created by the petitioners in the thoroughfare at Tambe Sheikhan Ali Khel, Lower Orakzai.</p> <p>According to averments of the complaint, the petitioners had earlier created obstruction in the pathway in question whereafter the respondents submitted their earlier complaint u/s 133 of the Criminal Procedure Code, 1898. During proceedings of the complaint, the pathway was opened and the complaint was filed without further proceedings. The petitioners have again created obstruction in the same pathway by digging it through excavator; therefore, the complaint was filed.</p> <p>The learned Judicial Magistrate, after recording statements of the complainants/respondents u/s 200 of the Criminal Procedure Code, 1898, directed the SHO concerned to inquire into the complaint and submit his report before the trial Court whereafter the conditional order was issued and directed the respondents to remove the nuisance caused by</p>

  
**Haq Nawaz**  
 District & Sessions Judge  
 Orakzai at Kalaya Khela


**IN THE COURT OF DISTRICT & SESSIONS JUDGE, ORAKZAI**  
**AT BABER MELA**

Case Title: \_\_\_\_\_ VS \_\_\_\_\_

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		<p>them and the case was fixed for arguments. After hearing both the parties, the learned Court passed the impugned order and accepted the complaint on the basis of inquiry conducted by the SHO concerned. Hence, this revision was preferred.</p> <p>I have heard learned counsels for the parties and perused the record.</p> <p>The procedure for a complaint u/s 133 of the Criminal Procedure Code, 1898 is provided under Chapter X of CrPC from sections 133 to 143. It has nowhere mentioned in the said chapter that the Magistrate shall record statements of the complainants u/s 200 the Criminal Procedure Code, 1898 after receiving complaint u/s 133 CrPC rather it is provided that whenever a Magistrate of the first class considers, on receiving a police report or other information and on taking such evidence (if any) as he thinks fit may issue a conditional order to remove any obstruction or nuisance and appear before him at a time and place to be fixed by the order, and move to have the order set aside or modified in the manner provided. The person against whom such order is made shall, u/s 135 CrPC, (a) perform, within the time and in the manner specified in the order the act directed thereby; or (b) appear in accordance with such order and either show cause against the same or apply to the Magistrate by whom it was made to appoint a jury to try whether the same is reasonable and proper. Section 137 CrPC provides procedure where the</p>

**Haq Nawaz**  
District & Sessions Judge  
Orakzai at Baber Mela

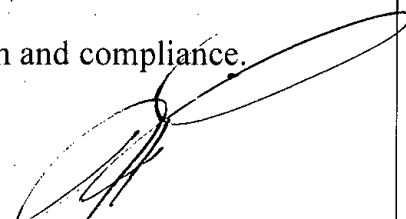
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	 <b>Haq Nawaz Z</b> <b>District &amp; Sessions Judge</b> <b>Qazai at Bader Nigla</b>	<p>person complained against appears to show cause. Under Sub-Section (1) of the said Section;</p> <p>(1) If he appears and shows cause against the order, the Magistrate shall take evidence in the matter [in the manner provided in Chapter XX].</p> <p>(2) If the Magistrate is satisfied that the order is not reasonable and proper, no further proceedings shall be taken in the case.</p> <p>(3) If the Magistrate is not so satisfied, the order shall be made absolute.</p> <p>The satisfaction or non-satisfaction of the Magistrate about reasonableness and properness of the conditional order must be drawn from the evidence taken in the matter in the manner provided in Chapter XX of the Criminal Procedure Code, 1898. The said Chapter provides procedure in trial of cases and Section 244 provides that the Magistrate shall proceed to hear the complainant (if any), and take all such evidence as may be produced in support of the prosecution, and also to hear the accused and take all such evidence as he produces in his defense. Needless to mention that Sub-Section (1) of Section 137 CrPC makes it mandatory for a Magistrate to take evidence in the matter by providing that the Magistrate shall take evidence. It was then under Sub-Sections (2) and (3) when the Magistrate shall draw his satisfaction or otherwise about reasonableness of the conditional order. However, in the present case, the learned Judicial Magistrate without taking</p>

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**IN THE COURT OF DISTRICT & SESSIONS JUDGE, ORAKZAI**  
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		<p>evidence in the matter, drawn his satisfaction from the inquiry conducted by the SHO and the conditional order was made absolute.</p> <p>In view of the above discussion, the revision petition is accepted and the impugned order is set aside. The complaint is remanded back to the Court of Judicial Magistrate to take evidence and proceed in the complaint under Chapter X of the Criminal Procedure Code, 1898. The parties are directed to appear before the Court of Judicial Magistrate on 23.09.2025. File of this Court be consigned to record room after its necessary completion and compilation. Copy of this order be sent to the trial Court for information and compliance.</p> <p><b><u>Announced:</u></b> 05.09.2025</p> <p style="text-align: right;"> <b>(HAQ NAWAZ)</b> District Judge, Orakzai at Baber Mela</p>