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IN THE COURT OF IJAZ MAHSOOD, SCJ/JM,
ORAKZAI AT BABER MELA, HANGU

CASE NO.	**:**	**12/02 OF 2024**
DATE OF INSTITUTION:		**15.12.2023**
DATE OF TRANSFER IN:		**21.05.2024**
DATE OF DECISION:		**29.01.2026**

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STATE THROUGH: Shah Nawaz s/o Khushdil Khan R/O Qoum Sheikhan, District Orakzai.

----------*(Complainant)*

VS

1. Sher Khan s/o Akbar Shah R/O Qoum Chapper Mishti, District Orakzai.

----------*(Accused Facing Trial)*

2. Imran s/o Safdar Khan R/O District Shangla Swat.

----------*(Absconding Accused)*

JUDGMENT
29.01.2026.

This order is to decide instant criminal case filed against Mr. Sher Khan, and one other, as the accused persons, upon complain of Mr. Shah Nawaz Khan, with State as the principal and lead prosecutor.

Reported Facts:

The matter as derived from FIR NO 43 of 27/10/23, which is based on Madh report no 09 of 06/09/23, reads as

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follows. Complainant, who claims to be owner/lease-holder of minefield no 07 at Khawno Saam, reports that in the night of 04/09/23 accused persons Mr. Sher Khan and Mr. Imran, stole mining equipment including 01 Halich engine, 600 ft track, 02-C engine, 01 compressor, 02 fans, 02 submersible motors and 01 exhaust etc. No motive has been attributed for the alleged offence. The Madh report was converted into an FIR No 43 on 27-10-23.

Charge:

The accused persons were charged with the offence of theft as defined under section 379 read with section 34 of the Pakistan Penal Code for the items listed above.

Witnesses/Exhibits:

Prosecution produced and examined eight witnesses, including Mr. Khail Hussain constable, Mr. Asmat Ali Moharrir, Mr. Muhammad Younas SHO, Mr. Altaf Ali ASHO, Mr. Raimin Ali, Mr. Syed Shah Agha, Mr. Shah Nawaz complainant and Mohsin Ali IO. They have exhibited the following documents;

i. Site plan as Ex.PW-1/1.

ii. Site plan of recovered article as Ex.PW-1/2.

iii. Recovery Memo as Ex.PW-1/3.

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iv. Warrant u/s 204 Cr. PC as Ex.PW-1/4.

v. Proclamation notices as Ex.PW-1/5.

vi. The copy of Register No. 19 as Ex.PW-2/1.

vii. Challan as Ex.PW-3/1.

viii. Naqalmad report as Ex.PW-4/1.

ix. Application for legal opinion as Ex.PW-4-2.

x. Opinion of DPP as Ex.PW-4/3.

xi. FIR as Ex.PA.

xii. Site plan on the pointation of complainant as Ex.PW-8/1.

xiii. Site plan of the recovered article as Ex.PW-8/2.

xiv. Recovery memo as Ex.PW-8/3, (land Patri Ex. P-1, 01 drill Ex. P-2, 02 peaks Ex. P-3, 01 battery generator charger Ex.P-4).

xv. Application for Zamima "Bay" as Ex. PW-8/4.

xvi. Application for physical custody as Ex.PW-4/5.

xvii. Copy of DD as Ex.PW-8/6.

After the prosecution had recorded and closed its evidence, the accused was confronted under Section 342 CrPC with incriminating evidence/material produced against him

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during trial. He denied the charge and rebutted the evidence as false.

The probative worth, consistency or otherwise of the testimonies of the witnesses is appraised as follows.

Reasoning:

Being a criminal case, the onus to prove the charge naturally fell on the prosecution. It produced 08 witnesses to establish the essential elements of the charge. The merits and probative worth, or lack thereof shall be examined in the section below:

- Principal witnesses for the prosecution, in addition to the investigation officer and the complainant, were Mr. Raimin Ali, and Syed Shah Agha; the former is the alleged vendee of the goods from the accused persons, and the latter claims to have transported these to the minefield of vendee, and to have witnessed the sale.
- The narrative drawn by the prosecution reads in paraphrase that the accused persons stole the items, transported these in the truck of PW-06 to the minefield of Mr. Raimin Ali, who purchased it for a total price of Rs. 146,000/-. The items were allegedly recovered from the vendee.

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- The standard of proof in a criminal case is the principle of *proof beyond reasonable doubt*. Reasonable doubt, simply stated, is a doubt that would cause a reasonable person to hesitate about the proof of a fact/charge. It also includes a scenario where the court is rendered undecided by an equally plausible explanation of the case material by the defence.
- A single substantial doubt about the elements of the charge i.e. its principal ingredients, tends to render the prosecution's account of it unreliable. The court shall first comb the case record for damaging or fatal doubts, and next advert to the merits of prosecution's case.
- A substantial discrepancy, or variance, floating on the surface of the evidentiary corpus is the identity of the items alleged to be stolen, and those recovered. The items reported stolen in the Madh and FIR were **01 Halich engine, 600 ft track, 02-C engine, 01 compressor, 02 fans, 02 submersible motors and 01 exhaust. Whereas the items allegedly recovered are 02 Peaks, 01 drill, and 01 battery generator charger.**
- Surprisingly, in statement of the complainant recorded during trial, that is long after reporting of the offence, and the alleged recovery of the items, he has omitted to

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claim the items recovered as his own, or allege their being stolen. Apparently, the items reported stolen, and those recovered are not the same.

- Next plot-hole the court could not dismiss was in the statement of Syed Shah Agha, witness no 06 for the prosecution. He claims to have transported the stolen items from the mine-field of the complainant to that of the alleged vendee, Mr. Raimin Ali. He also claims to have witnessed the sale.
- The theft as reported by the complainant was allegedly executed in the night on 04/09/23. Syed Shah Agha, witness no 06, states that he transported the items from *'mine of the complainant in my tractor trolley to the mine of Mr. Raimin Ali'*. He reports that on 05/09/23, in his presence, Mr. Raimin Ali purchased the items from the accused persons.
- His statement of transportation of the goods from the mine of the complainant to the mine of the vendee, Mr. Raimin Ali, casts serious doubts on the version of the prosecution. Clearly, he is not held as an accomplice in the case. If the goods were remove surreptitiously in the dark of the night, the transporter clearly was a suspect accomplice. However, if the goods were removed on

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05/0923, in daylight and public view, then the offence of theft is not attracted.

- If the goods were transported from the mine of the complainant on 05/09/23 in the tractor of PW-06, these could not have been stolen/removed on the night of 04/09/23.
- Additionally, witness no 06 states, that the goods were removed in his tractor at 11 am from the mine of the complainant. When contrasted with the version of the complainant i.e. theft took place in the night of 04/11/23, there is a clear, and irreconcilable conflict in the two versions.
- Finally, Mr. Abdul Wali, the alleged business-partner of the complainant who informed him about the commission of theft, was not produced as witness during trial. In a case of unseen offence, the witness or informant who led the prosecution in the direction of the accused is of critical significance. Unexplained omission by prosecution in his production as a witness reflects poorly on their case.

Ruling:

Prosecution was burdened with proof of the charge beyond reasonable doubt, which they, in presence of the dents

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and gaps highlighted above, have failed to discharge to the satisfaction of the court.

As prosecution failed to prove its case against the accused facing trial beyond reasonable doubt, therefore, accused namely Sher Khan is hereby acquitted from the charges leveled against him. He is on bail. His bail bonds stand cancelled. Sureties of said accused discharged from his liability. Case property, if any be dealt with in accordance with law.

Prima facie case exists against absconding co-accused namely Imran is intentionally avoiding his lawful arrest, hence, accused named above is hereby declared as proclaimed offender. His name be entered in register/list of proclaimed offenders. Perpetual warrant of arrest be issued against him.

File be consigned to the record room after its completion and compilation.

Announced
29.01.2026

(Ijaz Mahsood)
SCJ/JM,
Orakzai (at Baber Mela)

CERTIFICATE

Certified that this order consists of eight (08) pages. Each page has been read, corrected where-ever necessary and signed by me.

Dated:29.01.2026

(Ijaz Mahsood)
SCJ/JM,
Orakzai (at Baber Mela)