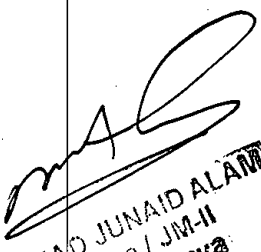


FORM "A"
FORM OF ORDER SHEET

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Case Title: _____ Vs _____

Serial No of order or proceedings	Date of Order Proceedings	Order or other Proceedings with Signature of Judge or Magistrate and that of parties or counsel where necessary
1	2	3
Order 48	13.12.2025	APP for the state present. Accused on bail alongwith counsel present. No one for complainant present. APP for the State submitted an application setting aside recording of evidence of PWs Mst. Qadam Bibi and Haji Rehman and re-calling of PWs under sections 493/540 & 537 Cr. PC, which is placed on file. Vide this order the Court intend to dispose of the two applications. Arguments on applications under section 249-A Cr. PC, heard and record gone through. Brief facts of the case folded in the FIR that on 06.05.2023 at about 1300 hours, the local police came to the emergency room of DHQ Hospital Mishti Mela, Orakzai, wherein injured/complainant Mst. Qadam Bibi wife of Khan Haider, resident of Qom Mishti, Orakzai was in conscious condition reported to the local police. That on the day of the occurrence, the complainant/injured was present in her house, that accused namely Yaqoob Khan son of Azam Khan, Shanzaib son of Yaqoob Khan, Shah Jehan and Itebar Gul, both sons of Arab Gul were came to her house and started scuffle with her family members in early morning. They started to throw out all the household


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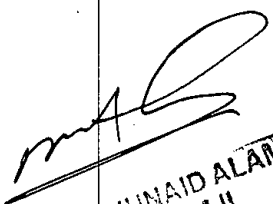
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articles lying in the house. Complainant/injured said to the accused facing trial that is why you throwing the house items. Upon the same the accused facing trial were angry and assaulted with stones and sticks on the complainant/injured. The accused Itebar Gul torn my clothes. The family wives are eyewitnesses of the occurrence. She charged the accused for the commission of offence. Motive behind the occurrence is land dispute between the parties. The local police read over the contents of her report, which she correctly thumb impressed. The one Haji Rehman son of Khan Haider verified her report as verifier. IO prepared the site plan on the pointation of complainant/injured.

Accused were arrested and later on, released on bail. Complete challan was put in court against the accused. Accused were summoned. They appeared before the court. Provisions of Section 241-A Cr. PC were complied with. Formal charges were framed. Accused pleaded not guilty and they claimed trial. Prosecution was allowed to produce evidence against accused. Prosecution produced five witnesses.

Arguments of learned counsel for accused/petitioners heard and APP for the State advanced his arguments.

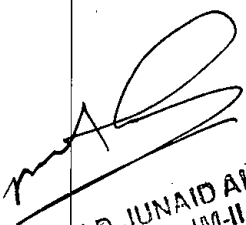

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Perusal of the available record shows that accused/petitioners through instant application states that after recording of statements PWs, there is no probability of conviction of accused/petitioners at later stage. Furthermore, counsel for the accused/petitioners stated that during cross examination PW-01 has deposed in her examination in chief that there were no bruises, rashes or injury on her body while during cross examination she stated that the lady/complainant was brought to the DHQ hospital, Mishti Mela by the local police. She further stated that there were no injury/wound on her body.

It is pertinent to mention here that the prosecution's story of assault, hurt, or use of criminal force becomes highly doubtful, because medical evidence does not support ocular testimony. Courts consistently hold that when medical evidence negates the prosecution version, benefit goes to the accused. Furthermore, IO stated in his cross examination that no recovery has been affected from the accused.

When complainant in the instant case appeared before the court and stated in her examination in chief that accused came and beat out persons. My family person was shifted to hospital. During cross examination she stated that no

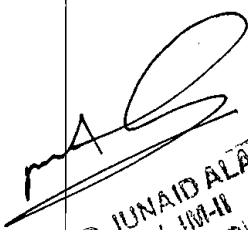


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persons were present at house, because they were in hospital. While PW-01, doctor stated in her cross examination that the lady was brought to the hospital by the police. She also stated in her cross examination that after her report in the hospital she was never meet with the police. She also stated in her cross examination that no site plan was prepared on her pointation. She also stated that she has not thumb impressed her report to the police. Furthermore, complainant/injured admitted in her cross examination that she was not wounded and no bleedings. PW-05, the verifier of the complainant report stated in his cross examination that accused quarrel with them due to which he and his father sustained injured. It is noted that Naqal Mad no. 19 reveals that due to assault of the accused party the complainant sustained injury. While PW-05 stated in his examination in chief that he alongwith his father sustained injury. Contrary to this learned APP for the state vehemently opposed the instant application and argued that accused have been directly charged in the instant case. They further argued that there exists no dent in the prosecution evidence and furthermore, the application in hand is pre-mature, hence, the prosecution may kindly be allowed to produce their remaining evidence in order to

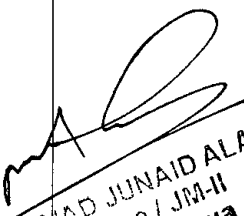

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bring home the charge against accused facing trial.

In given circumstances, perusal of the evidence, so far recorded by the prosecution, in the instant case would reveal that PW-01 has admitted in her cross examination that the lady was brought to the hospital by the local police and there were no injury/wound on her body. Furthermore, the complainant also admitted that after her report she never meet with the police and no site plan was prepared on her pointation. It is also pertinent to mention here that no recovery has been made from the possession of present accused/petitioner. Furthermore, complainant in the instant case is reluctant to pursue the case. It is also noted that non-appearance or disinterest of the complainant creates serious doubt about the prosecution version and entitles the accused to acquittal.


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Hence, in the light of above discussion, the case of prosecution is full of dents and is one of further inquiry. Furthermore, there exist vast contradictions in the evidence of prosecution so far. Hence there is no probability of the conviction of accused facing trial at later stage after recording of entire prosecution evidence rather it would be a futile exercise and would be wastage of precious time of this court. Accordingly, the application filed under section

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249-A Cr.P.C. is hereby allowed and accused facing trial are hereby acquitted under section 249-A Cr.P.C from the charges levelled against them. Their bail bonds stand cancelled and sureties are discharged from the liability of bail bonds.

As for as application for setting aside recording of evidence of PWs Mst. Qadam Bibi and Haji Rehman and re-calling of PWs under sections 493/540/537 Cr. PC is concerned, it is pertinent to mention here that an application under section 249-A Cr.P.C. is accepted and the accused are acquitted, the legal value of any prosecution application under sections 493 / 540 / 537 Cr.P.C. becomes infructuous and ineffective.

Case property be dealt in accordance with the law.

File be consigned to record room after necessary completion and compilation.

Announced

13.12.2025



Muhammad Junaid Alam,

Judicial Magistrate-II,
Tehsil Courts, Kalaya, Orakzai