IN THE COURT OF ZAHIR KHAN, JUDICIAL MAGISTRATE -I TEHSIL KALAYA, DISTRICT ORAKZAI

Case No.....64/2 of 2022.

Date of Institution.....11.10.2022.

Date of Decision.....11.05.2023.

State through:

SI Shal Muhammad SHO, PS Kalaya, District Orakzai.....***Complainant***

VERSES

1. Kabeer Khan S/O Saleheen
2. Sanobar Khan S/O Malak Khan
3. Waqif Khan S/O Mir Rehman
4. Muhammad Yaqoob Khan S/O Ismail Khan
5. Subhan Ullah S/O Maroof Khan all R/O Qaum Feroz Khel, village Lerri, Tehsil Lower, District Orakzai.....***Accused***

Case FIR No. 49, Dated 18.05.2022 U/S 506,341,347,186,189, 147,149 PPC; PS Kalaya.

JUDGEMENT
11.05.2023

Through this judgement, I am going to dispose of the instant case registered against accused Kabeer Khan and four others vide case FIR No. 49, Dated 18.05.2022 U/S 506,341,347,186,189, 147,149 PPC, PS Kalaya.

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1. Brief facts of the prosecution's case as unfolded in the FIR are that, on the day of occurrence, SHO/complainant Shal Muhammad along with other police nafri accompanied with by Civil Judge Rehmat Ullah were present at the spot situated at

village Lerri, Feroz Khel, Lower Orakzai in connection with survey of land at village Lerri notified for Judicial Complex vide notification No. 208/DC/Land/Acq:/Ork dated 31.01.2022. Accused facing trial namely Kabeer Khan, Sanobar Khan, Waqif Khan, Muhammad Yaqoob Khan and Subhan Ullah along with absconding accused came to the spot and obstructed, threatened and wrongfully restrained the officials in discharge of their official duty of survey of land at village Lerri notified for Judicial Complex. On the strength of murasila drafted by SHO/complainant, the case in hand was registered against accused facing trial and absconding co-accused.

2. After completion of investigation, complete challan was submitted by prosecution against the accused facing trial.

3. Accused were summoned and legal formalities under Section 241-A Cr. PC were complied with. Accused were formally indicted. They pleaded not guilty and claimed trial, afterwards prosecution was directed to produce its evidence.

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Prosecution produced four (04) witnesses to prove its case against the accused while rest of the PWs were given up by prosecution and closed its evidence.

5. SI, Shal Muhammad deposed as PW-01. He stated that during the days of occurrence, he was posted as SHO, PS Kalaya. On 18.05.2022 at 11:00 a.m, he along with other police officials including constable Abdul Sattar No. 1454, Yousaf Ali No. 544 and

Muhammad Rasool No. 1423 accompanied with by Civil Judge Rehmat Ullah Wazir were present at village Lerri, Qaum Feroz Khel, Lower Orakzai in connection with survey of the land notified for construction of Judicial Complex, prison, and police line. The land was notified by the authorities concerned vide notification No. 208/DC/Land/Acq:/Ork dated 31.01.2022 in lieu of Rs. 38,000/- per marla when accused facing trial and absconding accused came to the spot and obstructed the officials in discharge of their official duty. He drafted murasila at the spot and sent it through constable Muhammad Rasool No. 1423 for registration of the case. Murasila is Ex.PW-1/1. Copy of notification is Ex.PW-1/2. After registration of the case, he pointed out the spot to IO who prepared site plan on his pointation. On 02.06.2022, accused facing trial surrendered before him and he arrested them vide card of arrest Ex.PW-1/3. Accused were handed over to IO for interrogation/completion of investigation. After completion of investigation, he submitted complete challan against the accused. Challan form is Ex.PW-1/4.

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PW-02, is the statement of constable Muhammad Rasool No. 1423. He stated that on the day of occurrence, he was present with SHO/complainant during survey of land situated at village Lerri Qaum Feroz Khel. The land was notified for Judicial Complex, Orakzai. At 11:00 a.m, accused obstructed the officials in discharge of their official duty. SHO/complainant drafted the murasila and handed over the same to him which he took to PS. Murasila was

handed over to Muharrir of the PS and thereafter, he returned back to the spot. His statement was recorded by the IO u/s 161 Cr.PC

7. SI Minhaz deposed as PW-03. He stated that after registration of the case, copy of FIR and other relevant documents were handed over to him for investigation. He proceeded to the spot and prepared site plan Ex.PB on the pointation of SHO/complainant. He recorded statements of PWs u/s 161 Cr.PC. As the accused were avoiding their lawful arrest, therefore, he vide his applications Ex.PW-3/1 and Ex.PW-3/2 applied for warrant u/s 204 and proclamation notices u/s 87 Cr.PC. Accused facing trial were arrested by SHO/complainant. He handed over the accused to him. He interrogated the accused and recorded their statements u/s 161 Cr.PC. On 03.06.2022, he vide his application Ex. PW-3/3 applied for physical custody of the accused. Accused were released on bail after considering the sections of law as bailable. After completion of investigation, he handed over the case file to SHO for submission of complete challan.

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8. Asmat Ali Muharrir PS Kalaya, was examined as PW-04. He stated that on receipt of murasila from SHO Shal Muhammad through constable Muhammad Rasool No. 1423, he correctly incorporated the contents of Murasila into FIR Ex.PA which is in his hand writing and correctly bears his signature. Copy of FIR was handed over to IO for investigation. His statement was recorded u/s 161 Cr.PC.

9. Rest of the PWs were abandoned by prosecution and closed its evidence.

10. On conclusion of prosecution evidence, statements of accused were recorded u/s 342 Cr.PC, in which they professed their innocence, however, they did not opt to record their statements on oath as envisaged u/s 340 (2) Cr.PC, and also did not opt to produce any defense witness in their favour.

11. Record transpires that the alleged occurrence took place on 18.05.2022 at 1100 hours at village Lerri, Feroz Khel and it was reported on 18.05.2022 at 11:20 hours. FIR was registered on 18.05.2022 at 12:00 hours.

12. SHO/complainant, SI Shal Muhammad, who deposed as PW-01 stated in his cross-examination that entry regarding his departure from and arrival to PS was made in DD of PS but DD was not produced and neither copy nor extract thereof was produced and exhibited during course of trial. He further deposed that he left the PS at about 7:30/8:00 a.m. He does not remember parentage of accused facing trial. None of the accused was arrested at the spot. He also deposed that he has not mentioned in his report (murasila) names of administrative staff (AC and Tehsildar etc) and names of workers allegedly present at the spot at the time of survey of the land. He took about 20 minutes on drafting murasila. IO reached to the spot at about 12:45 p.m. On the other hand, constable Muhammad Rasool No. 1423, who deposed as PW-02, stated in his

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cross examination that they left the PS after 10:00 a.m. They directly proceeded to the spot. DSP Mehboob was also present with them. He does not know names of the accused. He also deposed that IO reached to the spot at about 11:45 a.m. There are material contradictions in the statements of PW-01 and PW-02. Source of information regarding involvements of accused in the commission of the offence has not been disclosed by the SHO complainant/PW-01. DSP Mehboob Khan is neither mentioned in the murasila Ex.PW-1/1 nor in the FIR Ex.PA. His name is not mentioned in calendar of witnesses of challan form Ex.PW-1/4. Administrative staff and workers have not been specifically mentioned in the report. Their statements were not recorded u/s 161 Cr.PC.

13. SI Minhaz Hussain, who is IO of the case, deposed as PW-04. He stated that accused facing trial voluntarily surrendered. In his cross examination, he stated that he reached the spot at 12:30 p.m. Statements of workers and administrative officials were not recorded. No worker was present at the spot at the time of spot inspection. DSP Mehboob was not present at the spot which contradicts the other PWs.

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14. It is concluded that accused facing trial were not arrested at the spot despite the fact that SHO/complainant and other police nafri was present at the spot at the relevant time. Accused facing trial were voluntarily surrendered before SHO/complainant (PW-01) on 02.06.2022. Source of information regarding involvement of

accused in the commission of the offence is not disclosed by SHO/complainant. Accused facing trial did not confess their guilt before the court. There is no criminal history of the accused. No independent witness was associated during course of investigation to support the version of prosecution. There are material contradictions in the statements of PWs.

15. There are so many dents and doubts in case of prosecution benefit of which goes to the accused. Prosecution failed to prove its case against the accused facing trial beyond shadow of doubt.

16. As prosecution failed to prove its case against the accused beyond reasonable doubt, therefore, accused namely Kabeer Khan, Sanobar Khan, Waqif Khan, Muhammad Yaqoob Khan and Subhan Ullah are hereby acquitted from the charges leveled against them. They are on bail. Their bail bonds stand cancelled. Sureties are discharged from their liability. Case property, if any be dealt in accordance with law.

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Accused Shah Faisal, Ibrahim, Noor Mat Khan, Ijaz Khan and Ismail Khan are absconding. Keeping in view the available record and statements of PWs, this court is satisfied that a prima facie case exists against the absconding accused named above who are intentionally avoiding their lawful arrest, hence, they are hereby declared as proclaimed offenders. Their names be entered in register/list of proclaimed offenders. Perpetual warrant of arrest be issued against them.

18. Case file be consigned to record room after its completion and necessary compilation.

Announced
11.05.2023

Zahir Khan
Judicial Magistrate-I
Kalaya, Orakzai

CERTIFICATE

It is certified that this judgment consists of **08** pages. Each page has been dictated, read, corrected and signed by me.

Zahir Khan
Judicial Magistrate-I
Kalaya, Orakzai