

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

P.S.L.A No.03-2024

Malik Abdul Majeed Bilal
Versus
Zubair Farooq Khan and others.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
(02)	02.12.2024	Raja Muhammad Shafat Khan, Advocate for the petitioner.

MOHSIN AKHTAR KAYANI J. Through the instant petition, the petitioner has assailed the order dated 22.11.2023, passed by learned Judicial Magistrate, Sec. 30 (West), Islamabad, whereby the criminal complaint has been dismissed.

2. Learned counsel for the petitioner contends that the petitioner has filed a complaint against the respondents with the allegation that Complainant was present alongwith his companion Faheem and Saleem on the land of Suleyman Khan Warriach and Ibrahim, measuring 180 Kanal situated at Mouza Shah Allah Ditta for the purpose of leveling the land with machinery. On 15.12.2016 at about 05:00 p.m, 20 to 25 armed persons in connivance of Zubair Farooq and Khalid Mehmood Bhatti, respondents No.1 & 2, attacked them, who illegally trespassed the land and gave life threats. Ahmed Ibrahim called Police 15. The application was also filed for registration of F.I.R before the Police Station, but no case was registered and finally the petition under

Section 22-A Cr.P.C. was filed, thereafter, F.I.R bearing No.73, dated 15.12.2016, under Sections 506(ii)/452/148/149 PPC, P.S Golra Sharif, Islamabad was registered. However, Complainant was not satisfied with the working of the Police and persuaded his claim through the trial Court, whereby he has recorded his evidence. He further contends that learned trial Court has recorded the evidence of 04 PWs namely Malik Abdul Majeed/Complainant, PW-01, Muhammad Faheem, PW-02, Muhammad Sulman Khan, PW-03, Ahmed Ibrahim, PW-04 alongwith Mian Muhammad Shabaz, Inspector/I.O, CW1, but despite that trial Court has not appreciated the legal position and acquitted the respondents; that overwhelming evidence of alleged trespassing has been proved on record and all the witnesses have corroborated the charge against the respondents.

3. Arguments heard and record perused.

4. Perusal of record reflects that the complaint for alleged trespassing and extending life threats was filed by the Complainant/petitioner Malik Abdul Majeed Bilal, who has recorded his evidence as PW-01 and alleged that on 15.12.2016, he alongwith other companion namely Faheem and Saleem were present in his land measuring 180 Kanal situated at Mouza Shah Allah Ditta with clear boundary line compact and the land was leveled through machinery and gate was also installed there and Tube Well alongwith residential rooms were also constructed,

when Zubair Farooq Khan and Khalid Mehmood Bhatti, respondents No.1 & 2 entered into the land with 20 to 25 armed persons, physically assaulted Faheem and took over the entire machinery as well as articles alongwith possession of the constructed rooms and extended life threats. Incident was reported and during the course of cross-examination, Malik Abdul Majeed, PW-01 acknowledged the following:-

یہ درسیہ ہے کہ میں نے تبدیلی تفتیش کے لیے کسی مرحلہ پر کوئی درخواست نہ دی تھی

Even he had not produced any witness before the Police. He also acknowledges that he has not attached any plan to confirm the development on site. The petitioner has also admitted that:-

یہ درسیہ ہے کہ جائیداد جائے وقوعہ بعد از وقوعہ ہذا بعد میں پولیس نے 145 ضف کے تحت سیل کی

تھی 145 ضف کی کارروائی علاقہ مجسٹریٹ کے پاس چلتی رہی ہے۔

Similarly, the other witness namely Muhammad Faheem, PW-02, Security Guard reiterated the stance of PW-01, who acknowledges that two rooms were constructed on the disputed land, in which one was occupied by Bilal and second room by Security Guard. He further acknowledges that after extending life threats by the accused side, he left the room and reached to the neighbouring compound of Dr. Nabeel. The 3rd witness Muhammad Salman Khan, PW-03 provided the details of the land and acknowledges that he alongwith his family members purchased 95 Kanals from Ibrar Khan and Khalid Mehmood Bhatti, situated in Khasra No.567. He confirmed that after receiving the possession from

the said accused persons at the time of purchase, he get the land demarcated and erected reservoirs and pools as well as constructed the rooms for Chowkidar. Later on, he came to know in the year 2010 that Khasra Nos.563 and 613 have different Khewat and on his protest, he was given assurance that the land will be settled by way of exchange. Consequently, 29 Kanals of land was exchanged. PW-03 produced the documentary evidence of periodical record of rights Exh.PE and Exh.PG, Exh.PH, Exh.PJ, exchange documents Exh.PK, Exh.PL alongwith contracts.

5. During the course of cross-examination, PW-01 confirmed that multiple cases are under trial with Khalid Mehmood Bhatti and other persons, even further acknowledges that an application for partition is also pending with Tehsildar Islamabad and later on, he had withdrawn the said application, which was allowed and appeal is pending before the Collector. He also confirmed that case is pending with Civil Court referred as Mark-DA. He has further taken the following stance:-

یہ درسیہ ہے کہ میں اس وسیعہ موقع مجوزہ وقوعہ کے وسیعہ موقع پر موجود نہیں تھا یہ درسیہ ہے کہ

میں نے مجوزہ وقوعہ کی سبیلہ جو بیان دیا ہے وہ ملازمین کے بتانے کی بنیاد پر بیان کیا ہے

Finally Ahmed Ibrahim, PW-04 also reiterated the similar stance that land is situated in Khasra No.616, Shah Allah Ditta and the respondents accused have taken over the machinery. He also explained that on the said land, they have erected the boundary wall and Entrance Gate was installed

and container for construction of two rooms alongwith Tube Well and water tank. He stated on oath that:-

حسب . ہم موقع پر پہنچے تو زیر فاروق صلب اور خالد بھٹی صلب انٹرنس گیٹ کے اندر کھڑے تھے۔

He further acknowledges that he entered into agreement in Khasra No.616 with Khalid Mehmood Bhatti qua land measuring 65 Kanal, in which 25 Kanal has been exchanged. He has purchased additional land measuring 17 Kanal and 17 Marla and possession was also delivered to them by Major Tariq Mehmood on the basis of agreement Exh.PB/1-2. He also produced multiple documents as Exh.PQ, however, during the course of cross-examination, he acknowledges that he has no proof for transfer of land nor produced any copy of mutation and sale deed. He also acknowledged the following facts:-

یہ درسیہ ہے کے Ex.PQ (10 to 13), Ex.PQ (10 to 11), Ex.PQ (8 to 9), Ex.PQ (14 to 15) پر بھی کسی خریدار کیلئے یہ غیر اقبال کے دستخط موجود نہ ہیں۔ یہ درسیہ ہے کہ معاہدہ Ex.PQ (1 to 4) میں معاہدہ کے مطابق 65 کنال زمین ساری کی سارے بیع نہیں تھی بلکہ 40 کنال بیع اور 25 کنال تبادلہ تھی۔ یہ غلط ہے کہ 25 کنال برائے تبادلہ کیلئے مجھے اپنے نام سے تبادلہ کیلئے دیا حاصل کرنا تھا۔ یہ درسیہ ہے کہ میں نے اپنے بیان میں یہ نہ بتایا ہے کہ میں 25 کنال زمین تبادلہ میں حاصل کرنے کے عوض اپنی طرف سے کوئی زمین دینا چاہتا تھا۔ یہ درسیہ ہے کہ میں نے 40 کنال کی زمین کی 100 فیصد قیمت ادا نہ کی ہے۔

PW-04 has not filed any application against the police officials. He also confirmed that Khalid Mehmood Bhatti has also registered the FIR against PW-04, but compromise was effected between the parties. On the other hand, official witness Muhammad Shahbaz appeared as CW-01, who acknowledges the registration of FIR Exh.CW-01/B. He visited the spot and confirmed the following:-

مزیقین کے مابین زمین کا تنازع تھا جو کہ مختلف عدالتوں میں زیر سماعت تھا جس کی بنیاد پر میں نے اختتامی رپورٹ سبیلہ مقدمہ ہذا صحت کرنے کے لیے SHO صلب کو پیش نہیں کی۔

SHO صلب نے ہذا رپورٹ صحت کر دی جو کہ پیش عدالت کی جس سے علاقہ مجبھیہ

صلب نے ہذا رپورٹ سے اتفاق نہ کیا اور چالان 173 ضف داخل کرنے کا حکم دیا۔ پھر میں نے گواہان استغاثہ کو طلب کیا جو کہ میرے پاس حاضر ہوئے جنہوں نے اپنے اپنے بیانات قلمبند کرائے جس پر میں نے تفتیش عمل میں لائی اور ملزمان کے خلاف چالان خانہ نمبر 2 میں رکھ کر عدالت کے رحم و کرم پر چھوڑ دیا۔

CW-01 was cross-examined at length. He confirmed that SHO prepared the discharged report of the accused persons. However, he confirmed that the statement of witness under Section 161 Cr.P.C. was not present in the case file. He also acknowledges that in the site plan, no boundary wall or constructed rooms were mentioned as the same were not physically in existence on spot, except one container. He also confirmed that:-

یہ درسیہ ہے کہ Ex.CW1/D پر مبینہ جائے وقوعہ کے رنگیہ کسی ڈاکٹر نیل کے احاطے کا ذکر موجود نہ ہے

He further confirmed that:-

یہ درسیہ ہے کہ مدعی کوئی بھی قلم ادخال شہادت جس سے وقوعہ کی تصدیق ہوتی ہو پیش کرنے سے قاصر رہا تھا اسی لیے ملزمان کو خانہ نمبر 2 میں رکھ کر چالان پاس کر دیا تھا یہ درسیہ ہے کہ میری تفتیش کے مطابق نہ کوئی وقوعہ تصدیق ہوا تھا اور نہ کوئی شہادت پیش ہوئی تھی۔

6. On the basis of above mentioned evidence, petitioner has acknowledged that multiple litigations are pending before the competent Court including the Civil Court as well as Revenue Authorities for partition of the land, as such both the parties at the most are co-sharers and agreements were also executed, whereby certain land was exchanged,

however, on spot the boundary wall and constructed rooms have not been demonstrated, even the issue more or less can be settled at civil side. CW-01 has not supported the case of petitioner. The multiple stories have been narrated by different witnesses, even PW-01 also stated that they have taken the possession and also got installed their machinery, but such factum was not mentioned anywhere in the pleadings, as such, this Court feels that instant case is full of improvements and contradictions between the stance taken by the petitioner side. The trial Court had discussed each and every aspect of the case while considering the evidence on record.

7. In view of above discussion, the trial Court has rightly extended the benefit of doubt to the respondents, therefore, instant petition being devoid of any merits is **DISMISSED IN LIMINE.**

(MOHSIN AKHTAR KAYANI)
JUDGE

RAMZAN