

797

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Acquittal Appeal No.S-05 of 2018.

Appellant Dr. Bhagwandas through Mr. Muneer Ahmed Khokhar, Advocate.

Respondents Nawaz Ali Abbasi & others, through Mr. Habibullah G. Ghouri, Advocate.

Dates of Hearing: 09.03.2020.

Date of Decision: 09.03.2020.

J U D G M E N T

Zafar Ahmed Rajput –J. The Impugned in this criminal acquittal appeal is the order dated 12.12.2017, passed in Sessions Case No.613 of 2016 (Re: The State v. Nawaz Ali Abbasi & others) arisen out of Crime No.15/2016, registered at Police Station Market, Larkana under Sections 324, 427, 452, 506/2, 504, 380, 114, 34, PPC, whereby the learned III-Additional Sessions Judge, Larkana while allowing an application under Section 265-K, Cr.P.C acquitted the respondents No.1 to 4 of the charge.

2. Briefly stated, the facts of the case are that appellant/complainant Dr. Bhagwandas lodged the aforementioned FIR on 04.02.2016, alleging therein that on 06.08.2015, at about 6.45 p.m., accused persons, namely, 1) Nawaz Ali, 2) Hidayatullah, both sons of Haji Khan Abbasi, 3) Hubdar Ali son of Nawaz Ali, 4) Mst. Sanam daughter of Nawaz Ali Abbasi, and one unknown person, entered into his clinic situated at Empire road, Ali Gohar Abad, Larkana, used abusive language with him over death of T.B. patient Sartaj Ali Kalhoro son of accused Nawaz Ali; accused Nawaz Ali slapped the complainant and then assaulted upon him with drip stand with intention to kill him and injured him on his head so also instigated other accused persons to kill complainant and then accused jointly caused damage to the articles of his clinic and house and smashed the glasses of his car with

bricks and took away red colour table chadar, black colour N-70 Nokia Mobile phone and red colour diary from clinic.

3. At the trial, the respondents/accused filed an application under Section 265-K, Cr.P.C, which was allowed by the learned trial Court vide impugned order. Operating part thereof is reproduced hereunder:-

"Having heard the parties at length, I have carefully perused the case file. Perusal of copy of acquittal judgment passed by learned Judicial Magistrate-II Larkana in Direct Complaint brought on record as Criminal Case No.105/2016 suggests that there are similar nature allegations leveled against applicants/accused Nawaz Ali and Mst. Sanam by complainant Dr.Bhagwandas Pathai, therefore, it has come on record that this case is attracted by the provisions of Section 403, Cr.P.C, as it is well settled principle of law that "a person once convicted or acquitted cannot be tried for the same offence". Furthermore, this Court has ample power under Section 265-K, Cr.P.C to acquit the accused from the above mentioned case and crime at any stage even in such circumstances of this particular case."

4. Learned Counsel for the appellant, at the very outset, has failed to point out any illegality or irregularity in the impugned order requiring interference of this Court in exercise of its jurisdiction under Section 417, Cr.P.C. The learned Counsel for the appellant has attempted to differentiate the present case from the Criminal Case No.105/2016, on the ground that the said direct complaint was not filed by the appellant/complainant but his wife Dr. Bhagwant Devi and that is too without applying Section 324, PPC, hence the facts of the said direct complaint case were different from the facts of the instant case being outcome of Crime No.15 of 2016 lodged by the appellant/complainant. It reveals from the perusal of the record that almost entire facts of Crime No.15/2016 are available in the Direct Complaint Case No.105/2016; however, in direct complaint Section 324, PPC was not applied by the complainant, who is admittedly wife of the present appellant. Hence, it will be presumed that before filing direct complaint she would have detailed discussion with the appellant so far the facts of the direct complaint are concerned and since it was their opinion that no ingredient was available in the case in respect of Section 324, PPC, the same was not inserted; however, it

may be seen that in present matter the FIR was lodged by the appellant after six months of the alleged incident, while the direct complaint was filed by the wife of present appellant/complainant on 22.08.2015, hence deliberations for the purpose of implicating the accused persons falsely cannot be ruled out. Section 403, Cr.P.C provides that persons once convicted or acquitted not to be tried for the same offence. In fact this section is based on the ancient maxim "*nemo debts bis vexari*" which means that a person cannot be tried a second time for an offence which is involved in the offence with which he was previously charged. The same principle has been elevated to the status of a Constitutional right in Article 13 of the Constitution of Islamic Republic of Pakistan, which provides that "*No person (a) shall be prosecuted or punished for the same offence more than once,; or (b) shall, when accused or an offence, be compelled to be a witness against himself.*" The concept of double jeopardy is attracted where accused had been tried for the offence charged by the competent Court and there is judgment or order of conviction or acquittal.

5. The impugned order passed by the learned trial Court is based on facts and proper application of law, which requires no interference by this Court. Hence, this criminal acquittal appeal being without substance is dismissed accordingly.


JUDGE