

ORDER SHEET  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD.**

Cr.Acq.Appeal.No.S- 215 of 2012

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| <b>DATE</b> | <b>ORDER WITH SIGNATURE OF JUDGE</b> |
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25.10.2016.

Mr. Muhammad Sachal Awan, Advocate for appellant.  
Mr. Ghulamullah Chang, Advocate for private respondents.  
Mr. Shahid Shaikh, A.P.G. for the State.

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Through instant Criminal Acquittal Appeal, the appellant has challenged the order dated 14.06.2016 passed on application u/s 249-A Cr.P.C. in Crime No.38/2011 PS Pangrio u/s 452, 382 PPC, whereby private respondents were acquitted from the charge.

Learned counsel for the appellant contends that the complainant and witnesses were present on that date of hearing, when this acquittal order was passed but the trial Court has observed that complainant failed to examine any witness, such version recorded by the trial Court is self contradictory. In support of his contention, he has placed the case diaries; further contends that the trial Court has not examined the FIR and statements of the witnesses.

In contra, learned counsel for the complainant contends that the trial Court was competent to pass that order on any stage as there was no evidence therefore, the matter was referred under cancel class however cognizance was taken by the Magistrate and there was no speck of evidence to convict the respondents.

On the other learned A.P.G. contends that instant order is not well reasoned and criterion with regard to Criminal Acquittal and with regard to offence u/s 249-A and 265-K Cr.P.C. are entirely different.

I have heard the respective sides and have also gone through the available material *carefully*.

At the very outset, I would acknowledge that there is no cavil to deny the proposition of law that a trial Court is competent to acquit the accused at any stage of the proceedings but *only* if there is no probability of conviction of *any offence*. The term '*any offence*' is not confined to those offences *only* with which the accused is charged but shall include those *too* wherein a Court can *competently* pass a conviction. Besides, order of acquittal in a *full dressed trial* and one, passed u/s 249-A and 265-K, have completely different criterion. In case of Section 249-A and 264-K Cr.P.C., the Court has to satisfy with *reasons* that there is no probability of conviction even if the prosecution is allowed to complete its case. One must be watchful that such exercise is not *dependant* to golden rule of 'benefit of doubt' but requires a *firm* view that there exists reasons for *early* acquittal of the accused as allowing trial proceedings shall not last into conviction of accused for *any offence* but would be an *abuse* to process of law. However, in a matter of full dressed trial, the trial Court has to examine the contradiction brought on record by the defence or available in the case where '*benefit of doubt*' has to be given to the accused.

Keeping the said touch stone, now I would refer the impugned order which is reproduced hereunder:

*"Heard and perused the record. Perusal of the record shows that the above case was recommended by SIO under false clause. The prayer of the I.O. was declined by the Court of learned Civil Judge and JM Tando Bago on 6.11.2011 and cognizance of offence under section 453, 380 was taken. The case in hand was received by this Court on 29.2.2012. The charge was framed against the accused by the Court of Civil Judge and JM Tando Bago on 30.5.2011. Since, then till today no any single witness is in attendance. The record further reflects that stolen property was not recovered from the possession of the accused*

*during investigation. The enmity between the parties is on record over matrimonial affairs.*

*Considering the above facts and circumstances, it is crystal clear that the charge is groundless and there is no probability of the accused being convicted in the offence with which they are charged. I therefore, acquit the accused above named by exercising powers conferred me under the provision of section 249-A Cr.P.C. They are present on bail, their bail bonds stand cancelled and surety absolved from their liabilities."*

The reasons of acquittal of the accused under Section 249-A can well be parted into two *parts*. In one part, trial Judge has emphasized that though charge was framed on 30.05.2011 yet not a single witness was in attendance; in *second* part, the Magistrate has given his opinion with regard to merits of the case and held the charge *groundless* merely for reasons that 'recovery was not effected' and 'parties are inimical to each other'.

The first part of *reasons* , I will insist, has no relevancy with jurisdiction under Section 249-A and 265-K Cr.PC, but has its relevancy to '*stop proceedings*' or placing the file '*sine die*' till appearance of witnesses. Thus, this reason, in no way, helps the impugned order of acquittal to sustain. Even otherwise, I have examined the diaries, appended with the instant appeal, which show that on many hearings, complainant was present and on 15.12.2012 and 02.02.2012 PWs alongwith complainant were present but the learned trial Judge has not shown the reasons as to why the witnesses and complainant went un-examined.

As regard the *second* part of reasons, it would suffice to say that it is well established principle of law that '**enmity is a double edged weapon which cuts either sides**' hence mere existence of enmity between parties shall not a ground for exercise of jurisdiction under Section 249-A or 265-K Cr.PC. A charge of *theft, robbery or decoity* is not entirely dependant upon recovery of *stolen/robbed* property nor mere '**non-recovery**' in such like cases can be allowed to be a reason for

exercise of jurisdiction under Section 249-A or 265-K Cr.PC. The impugned order, so recorded by the Magistrate, prima facie, fails to stand the test, required for exercise of jurisdiction under section 249-A Cr.PC hence the same cannot sustain.

Accordingly, same is hereby set aside. Case is remanded back to the trial Court to examine the case and pass a fresh order within two months without keeping any influence or any observation by this Court. Accused who were present on bail shall remain on bail on same bail bonds.

JUDGE

Tufail



