

IN THE HIGH COURT OF SINDH AT KARACHI

Cr. Acquittal Appeal No.252 of 2012

Appellant : State through Ms. Seema Zaidi,
DPG

Respondent : Waseem Faraz son of M. Saleem
Through Mr. Zafar Ali Sipyo
Advocate

Date of Hearing : 26.07.2017

JUDGMENT

ADNAN-UL-KARIM MEMON,J. ---Through instant Criminal Acquittal Appeal the Appellant/State has impugned Order dated 07.03.2012 passed by learned Xth Judicial Magistrate, Karachi, East in Criminal Case No.3505/2010 under section13-D, Arms Ordinance, 1965 whereby Respondent namely Waseem Faraz, son of Muhammad Saleem has been acquitted from the charge.

2. The gist of allegations against the Respondent is that on 12.11.2010 at 0450 hour ASI Hussain Bux Bhutto of Police Station Gulshan-e-Iqbal, Karachi lodged F.I.R No.854/2010 under section 13-D Arms Ordinance, 1965 against the Respondent. The contents of FIR show that Respondent was apprehended near shop No.3 known as 'Rex Decoration and Catering', Islamic Apartment, Block-2, Gulshan-e-Iqbal, Karachi and during his body search police recovered one 9 MM Pistol with loaded magazine (without bullets) from his possession under Mashirnama. At the time of arrest of Respondent in the instant crime he was also booked in a murder

trial bearing Crime No. 853/2010 for offences under section 302, 397 and 34 P.P.C registered at Police Station Gulshan-e-Iqbal Karachi.

3. Police submitted Charge Sheet against the Respondent before learned Trial Court. On 22.02.2011 learned trial Court framed the charge to which Respondent pleaded not guilty and claimed to be tried.

4. On 13.08.2012, Respondent moved Application under section 249-A Cr.P.C. and the learned Trial Court after hearing the parties acquitted Respondent vide impugned Order dated 07.03.2012.

5. Ms. Seema Zaidi, D.P.G. for State/Appellant argued that learned Trial Court has erred in acquitting Respondent under section 249-A Cr.P.C. without recording evidence; that un-licensed Pistol of 9 MM No.T2F40920 is recovered from the possession of Respondent which has prima-facie established the guilt of Respondent; that prosecution is not given opportunity to produce material evidence in the case; that Respondent is also involved in crime No.853/2010 registered under sections 302, 397 and 34 P.P.C. of P.S. Gulshan-e-Iqbal, Karachi; that learned Trial Court cannot acquit Respondent under section 249-A Cr.P.C. when he is caught red handed with un licensed weapon; that learned Trial Court has erred in acquitting the Respondent under section 249-A Cr.P.C. without trial; that almost on 19 dates of hearing of the trial the jail authorities did not produce the Respondent for evidence and on almost four dates learned Presiding Officer was on leave due to which the matter could not proceed; that impugned Order is bad in law and on facts; that impugned Order is in violation of

Article 10-A of Constitution, 1973; that acquittal of Respondent has caused grave miscarriage of justice; she lastly prayed for setting aside of the impugned Order dated 07.03.2012 with direction to the learned Trial Court to conclude the trial within a period of one month.

6. Mr. Zafar Sipyo, learned counsel for Respondent supported the impugned Order.

7. I have heard learned counsel for the parties and assessed the material available on record.

8. The entire case of prosecution was premised on the issue that is, whether on 12.11.2010 at 0120 hours Respondent was found in possession of un-licensed Pistol 9MM No.T2F40920 with magazine (without bullets)?

9. The eye witnesses of the case are ASI Hussain Bux Bhutto, P.C. Abdul Rasheed and P.C. Arz Muhammad whose evidence is necessary to be recorded in order to ascertain innocence or guilt of the Respondent.

10. Perusal of impugned Order reflects that Respondent is acquitted on the sole ground that time period of one year lapsed after framing of charge but, none of the prosecution witnesses turned up to record evidence in spite of coercive method adopted by the Trial Court and, accused was languishing in jail without any progress in the trial.

11. Case diaries of the case explicitly show on several date of hearings of the trial, the jail authority did not produce Respondent

for evidence and on almost five dates the Presiding Officer was on leave. Resultantly, the case could not proceed.

12. Considering the material brought on record in totality, I am not satisfied with the conclusion recorded by learned Trial Court.

13. I am of the view that Respondent facing trial without any progress is hardly a ground for acquittal without recording evidence. Prima-facie the charge against Respondent is not groundless as he was caught red-handed with crime weapon that is, un-licensed Pistol 9 MM No.T2F40920. Though it is suggested by learned Trial Court in the impugned order that no doubt there are no grounds to believe either charge is groundless or there is no probability of Respondent to be convicted of the offence charged for, therefore, learned Trial Court has wrongly applied section 249-A Cr.P.C. therefore, no sanctity can be given to the impugned Order. Learned Trial Court has also ignored the fact that Respondent is facing murder charge under section 302 P.P.C in another crime. It is well settled principle of law that the fate of criminal matter should be allowed to be disposed of on merits after recording of prosecution evidence, statement of accused under section 342 Cr.P.C and under section 340 (2) Cr.P.C, if so desire and hearing the arguments of both the parties. I am fortified by the decision rendered by the Honourable Apex Court in the case of State through Advocate General Sindh Vs. Raja Abdur Rehman (2005 SCMR 1544) as well as the case decided by this court in the case of Sardar Majid Ali Khan Vs. The State (2012 P. Cr. L.J)

14. In the light of above facts and circumstances of the case, I have reached the conclusion that impugned Order passed by learned Trial Court is perverse, arbitrary, not sustainable in the eyes of law and is suffering from factual and legal infirmity. Resultantly, instant Criminal Acquittal Appeal is allowed and impugned Order dated 07.03.2012 passed by learned X-Civil Judge/Judicial Magistrate, Karachi, East is set aside. The case is remanded to Learned Trial Court with direction to record the evidence of the parties and conclude the same within a period of one month. Respondent is present in Court is directed to furnish surety in the sum of Rs.20, 000/- with P.R Bond in the like amount to the satisfaction of learned Trial Court. In case of failure to deposit surety, the learned Trial Court has to take appropriate action in accordance with law. Learned D.P.G. is directed to ensure presence of all P.Ws before learned Trial Court during the course of trial. The above observation is tentative in nature which shall not prejudice the case of either party at the trial.

J U D G E