

**IN THE HIGH COURT OF SINDH AT KARACHI**

**Cr. Misc. Application No.106 of 2017**

Arshad Mehmood and another .....Applicants

Versus

The State.....Respondent

**Date of hearing: 14.07.2017.**

Mr. Muhammad Nizar Tanoli, Advocate for the Applicants.  
Mr. Zahoor Shah, A.P.G.

**ORDER**

**ADNAN-UL-KARIM MEMON,J:-**Through instant Cr. Misc. Application the Applicants have impugned Order dated 07.06.2017 passed by learned IX-Additional Sessions Judge, Karachi, West in Cr. Revision No.26/2017, which was dismissed and Order dated 15-05-2017 passed by learned XXI Judicial Magistrate, Karachi, West was maintained.

2. Brief facts of the case are that Complainant (Faisal Atta Gormani) lodged FIR on 21.10.2015 against Applicants under section 406, 420 and 489-F P.P.C. The Investigating Officer submitted Charge Sheet against the Applicants on 05.11.2015 and learned Trial Court framed the charge on 10.02.2016 and proceeded to record evidence. In the meanwhile, Applicants moved Application under section 249-A Cr.P.C. before learned XXI Judicial Magistrate, Karachi, West which was dismissed vide Order dated 15.05.2017. The Applicants impugned the said Order dated 15.05.2017 before learned IX-Additional Sessions Judge, Karachi, West by filing Cr. Revision Application No.26/2017, which was dismissed vide Order dated 07.06.2017. The applicants being aggrieved by and dissatisfied with both the above specified Orders approached this Court on 12.06.2017 by filing instant Cr. Misc. Application.

3. Mr. Muhammad Nizar Tanoli, learned counsel for the Applicants has contended that besides other contradictions in

evidence it has transpired that alleged cheque was not issued in the name of Complainant. But, learned Trial Court as well as learned Appellate Court failed to appreciate that the ingredients of offence under section 489-F P.P.C. are lacking because the alleged cheque was not issued in the name of Complainant rather it was in the name of father of the Complainant. Therefore, no offence under section 489-F P.P.C. is made out against the Applicants and trial of the Applicants is nullity in the eyes of law. He next added that learned Appellate Court has ignored the legal aspect of the case that Complainant is not an aggrieved person, therefore, no FIR could have been registered and subsequent proceedings before learned Judicial Magistrate are Coram non iudice. He next added that Applicant No.2 was arrested on 21.10.2015 prior to lodging of FIR and subsequently criminal case was registered with a different story by placing alleged cheque on record which is not in the name of Complainant. He next added that learned Appellate Court failed to appreciate that the prosecution had already given up three prosecution witnesses and Complainant has executed personal affidavit regarding release of Applicants under section 249-A Cr.P.C. He further contended that prosecution has failed to establish any agreement between the parties. On the contrary, it has come on record during cross examination of Complainant and P.W.s that all the papers are signed and prepared at police station in order to attract the ingredients of Section 489-F P.P.C and this aspect of the case is also ignored. He further added that there are material contradictions in the statements of witnesses. He next added that there is no probability of conviction of Applicants but, learned Judicial Magistrate dismissed the Application causing grave prejudice to the Applicants. He lastly contended that when there is no evidence the Applicants are entitled to acquittal from the charge therefore, prays for grant of application.

4. Mr. Zahoor Shah learned DPG has opposed the grant of Application. He contended that prosecution has examined the witnesses and they have fully supported the prosecution case therefore, Application under Section 249-A Cr.P.C. was not maintainable and is rightly rejected by the learned Trial Court.

While supporting the impugned Order/Judgment learned DPG prayed for directions to learned trial Court to conclude the trial on merits within a period of one month.

5. I have heard learned counsel for the parties and perused the material available on record.

6. Record reflects that learned trial Court framed the charge in the month of February, 2016 and proceeded with recording evidence of the parties by examining Complainant (Faisal Atta Gormani) and P.W. (Imran Khan). The prosecution gave up the evidence of P.W P.C Javed Iqbal, P.W Muhammad Khalil and P.W Shoukat Ali, however, only three prosecution witnesses are yet to be examined, including the Investigating Officer/ASI Abdul Ghaffar of the case. There is no cavil to the fact that Judicial Magistrate can acquit an accused at any stage of the trial under section 249-A Cr.P.C. and, while dismissing the application under said section justiciable reasons are to be given. In the instant case, the learned Judicial Magistrate while dismissing Application under section 249-A Cr.P.C. opined that Complainant has fully supported his version in his evidence, therefore, the stance taken by the Applicant that Complainant has executed personal affidavit on 09.05.2017 regarding release of Applicants under section 249-A Cr.P.C. is of no avail when Complainant has deposed on oath and supports his version in evidence, therefore application is rightly rejected by the learned trial Court.

7. I have also gone through Order dated 07.06.2017 passed by learned Additional Sessions Judge, Karachi, West whereby Revision Application of Applicants is dismissed which is well reasoned and within the scope of law. Therefore, I do not find any illegality or material irregularity in the impugned orders passed by the learned Courts below. 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 desired and hearing the arguments of both the parties.

I am fortified by the decision rendered by the Hon'ble Apex Court in the case of The State through Advocate General Sindh v. Raja Abdul Rehman (2005 SCMR 1544) as well as the case decided by this Court in the case of Sardar Majid Ali Khan v. The State (2012 P.Cr.L.J 76).

8. In view of above facts and circumstances, the instant Criminal Misc. Application is dismissed with direction to the learned Trial Court to conclude trial on merits within a period of one month from the date of receipt of this order.

9. The above observations shall not prejudice the case of either party at the trial.

10. Foregoing are the reasons for short order dated 14.07.2017.

Karachi  
Dated:

JUDGE

S.Soomro/PA