

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI

Crl. Acq. Appeal No.30 of 2017

Date	Order with signature of Judge
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1. For orders on M.A No.957/2017 (Ex/A).
2. For hearing of main case

Present: Mr. Justice Nazar Akbar

Appellant : Mst. Lubna W/O Naveed Ahmed
Through Mr. Muhammad Ramzan, advocate.

Versus

Respondent No.1 : 1st Additional District and Sessions Judge,
South City Court at Karachi.

Respondent No.2 : State through Prosecutor General
Ms. Seema Zaidi, D.P.G.

Respondent No.3 : Sub Inspector Abdul Saeed
Respondent No.4 : Assistant Sub Inspector Ali Hassan.
Respondent No.5 : Head Constable Muhammad Ashraf.
Respondent No.6 : Police Constable Muhammad Munir.
Through Mr. Jamshed Iqbal, advocate.

Date of hearing : **23.05.2019**

Date of decision : **23.05.2019**

JUDGMENT

NAZAR AKBAR, J:- This Crl. Acq. Appeal is directed against the order dated **15.12.2016** passed by the learned Additional Sessions Judge-I, South Karachi on application under Section 265-K of the Cr.P.C filed on behalf of Respondents in Sessions Case No.60/2012 arising out of FIR No.409/2010 registered at P.S Darakshan, Karachi under Sections 386, 342, 354, R/W Section 34 PPC, whereby accused/ Respondents No.5 and 6 were acquitted under **Section 265(K)** of the Cr.P.C and Respondents No.3 and 4 were also released of charge under **Section 403** of the Cr.P.C.

2. Brief facts of the case are that on 01.05.2010 appellant/complainant Mst. Lubna alongwith her husband and maidservant was going in their car to Sea View for morning breakfast and at about 0730 hours when they reached at Kakar Hotel situated at Badar Commercial, a police mobile of P.S Darakshan headed by ASIP Ali Hassan alongwith four other constables was already available there. ASIP Ali Hassan came to them, called her husband and took his mobile phone. He also came to the complainant and took her mobile phone as well. Thereafter the complainant took mobile phone from her maidservant and called at 15 Madadgar Police. In the meanwhile, ASIP Ali Hassan told them that he contacted the SHO, therefore, they may go to P.S. Then Constable Ashraf Cheema (Respondent No.5) got seated in complainant's car, who abused them and used filthy language and when they reached at P.S, Respondents No.5 and 6 maltreated complainant's husband and put him in lockup. Thereafter SIP Saeed (Respondents No.3), SHO Sanaullah and ASIP Ali Hassan (Respondent No.4) consulted with each other and gave her a chit having written Rs.20,000/- asking her to arrange the same and in failure, they would be booked in a case of charas. After remaining in harassment, she gave Rs.20,000/- to SIP Saeed (Respondent No.3) in presence of her husband and maidservant, who returned mobile phones and extended threats not to disclose and ultimately left them from the P.S.

3. It is pertinent to mention here that after three days of the incident, the complainant moved an application dated **04.05.2010** to Incharge Anti-corruption, South Zone, Karachi against the accused and obtained an order for registration of FIR against accused SIP Abdul Saeed (Respondent No.3) and ASIP Ali Hassan (Respondent

No.4), who both faced the trial in Special Case No.48/2011 in the Court of Special Judge, Anti-corruption, Karachi, arising out of the **FIR No.31/2011** of ACE Karachi under Sections 161, 342, 34 PPC R/W Section 5(2) of Prevention of Corruption Act, 1947. They were found guilty and convicted by the Anti-corruption Court. At the same time complainant also approached local police to register another FIR of the same incident and got it registered as FIR No.409/2010.

4. Learned trial Court after hearing learned counsel for the parties by order dated **15.12.2016** acquitted the accused/respondents No.5 and 6 under Section 265(K) of the Cr.P.C and Respondents No.3 and 4 were also released of charge under Section 403 of the Cr.P.C. The appellant/ complainant has preferred the instant Criminal Acquittal Appeal.

5. I have heard learned counsel for the appellant and learned D.P.G and perused the record.

6. Learned counsel for the appellant has contended that the Respondents have been prematurely acquitted by the trial Court since only complainant has been examined and the evidence of other witnesses has yet to be examined. He, however, concedes that the order of acquittal of Respondents No.3 and 4 was correct but he says that the two other accused/Respondents No.5 and 6 were not tried by the Anti-corruption Court and, therefore, their acquittal under Section 265-K of the Cr.P.C without recording of complete evidence was not justified.

7. Learned counsel for Respondents No.3 to 6 and learned D.P.G. have supported the impugned judgment. Learned counsel for Respondents contended that from registration of another FIR and

trial of another Court for one and the same incident which was reported to Anti-corruption police and even tried by Anti-corruption police was illegal since there is no concept of two FIRs of the same incident. I may add here that two other accused who have been acquitted under Section 265-K of the Cr.P.C by the trial Court are also government officials and, therefore, their status was at par with the status of the other co-accused and, if at all, case was made out against them they should also have been tried by the Anti-corruption Court who has already seized the matter. There is no reason and justification for not including them in the earlier trial despite the fact that they are also government officials.

8. The perusal of impugned order shows that this is a case of double jeopardy as the appellant/ complainant has also lodged another FIR of the same incident against the same accused/Respondent. In this context the observations of the trial Court in the impugned order are well reasoned which is reproduced as follows:-

Such incident is very much mentioned in the FIR of present case. Learned counsel for the applicants/ accused also filed certified copy of FIR bearing No.31/2011, registered under section 161, 342, 34 PPC, R/W Section 5(2) of Prevention of Corruption Act, 1947, of P.S ACE, Karachi, alongwith his statement. A perusal of the said FIR shows that the complainant narrated the same story therein as stated in the present crime, in which accused ASIP Ali Hassan and SIP Saeed are facing the trial. Said both the accused have faced trial before the Special Court in Spl. Case No.48/2011, arising out of crime No.31/2011, registered under section 161, 342, 34 PPC, R/w Section 5(2) of Prevention of Corruption Act, 1947, of P.S ACE, Karachi, alongwith another accused Haji Sanaullah and they all were convicted vide judgment dated 04.09.2014. From perusal of the said judgment, it is very clear that accused SIP Saeed and ASIP Ali Hassan faced the trial for the incident took place on 01.05.2010, reported by the complainant and present crime is

also the same for the said incident. Therefore, basic conditions attracting provisions of section 403, Cr.P.C are appearing in the present case as there was an earlier trial of both the said accused in which they both were convicted and now the prosecution is seeking second trial for the same offence. Facts alleged in the earlier trial are the same sought to be proved in the present trial. The earlier trial has been conducted by a Special Court of competent jurisdiction and it has ended in conviction of the said both accused. Accordingly, the protection of section 403, Cr.P.C can be extended in favor of accused SIP Saeed and ASIP Ali Hassan and it can also be considered that the present trial amounts to double jeopardy.

The above observations of the trial Court was enough for acquittal of the Respondents No.3 to 6.

9. In view of the above, the impugned order does not call for any interference by this Court, therefore, instant criminal Acquittal Appeal is dismissed with no order as to cost.

JUDGE

Karachi, Dated: 23.05.2019

Ayaz Gul