

ORDER SHEET
IN THE HIGH COURT OF SINDH CIRCUIT COURT
HYDERABAD

Criminal Jail Appeal No.S-103 of 2016

1. For hearing of MA No.1268 /2019.
[Application u/s 345 (2) Cr.P.C.]
2. For hearing of MA No.1269 / 2019.
[Application u/s 345 (6) Cr.P.C.]

Date of hearing: 08.04.2019.

Date of Order: 08.04.2019.

Appellant: Qasim through Mr. Ishfaque Ahmed Lanjar,
advocate.

Respondent: The State through Mr. Shawak Rathore,
D.P.G. Sindh.

ORDER

Fahim Ahmed Siddiqui, J- Through the listed applications, the appellant/convict seeks acquittal in a case wherein he is convicted and sentenced up to 10 years for the offence of rape under Section 376 PPC while he was also convicted for the offence under Section 457 PPC for three years and fine as well as seven years under Section 364-A of Pakistan Penal Code (hereinafter referred as PPC).

2. Briefly, the facts of the case are that the complainant found his 12/13 years old daughter Naseeman missing in the morning of 22.03.2015 and next day he came to know that her missing daughter is available nearby a hospital in Badin. He reached at the said place, where he met her daughter, who disclosed that the appellant and others have abducted her during night time after entering into the house. It was also disclosed by the victim daughter of the complainant that appellant committed rape with her in the jungle and then the accused persons left her nearby the hospital of Dr. Ghulam Hussain

Kumbhar, who handed her to the area police, from where she went with her father.

3. We have heard Mr. Ishfaque Ahmed Lanjar, advocate for appellant and Mr. Shahwak Rathore learned DPG and have also gone through the available record.

4. Learned counsel appearing on behalf of appellant mainly contended that since the complainant and victim have forgiven the appellant without any consideration and solely in the name of Almighty Allah; as such, the listed applications are to be allowed. He requests that the said applications may be sent for inquiry to the trial Court and after inquiry the appellant may be acquitted. Regarding involvement of the appellant in non-compoundable offence, his contention is that in similar type cases, the superior Courts have accepted compromise; as such, the appellant's plea of compromise duly supported by the complainant party may also be accepted. In support of his contention, he takes reliance from 'Aamir and 2 others v. The State and another' [2011 MLD 1468] and 'Mudassar alias Yasir v. The State' [PLD 2018 Lahore 70].

5. Learned DPG strongly opposed the compromise application. According to him, in the instant case, some of the sections are not compoundable and those are the main penal sections; as such, no compromise application can be entertained.

6. Admittedly, the appellant was convicted after a full-fledged trial and the conviction is called into question in the instant appeal. In the second schedule of the Code of Criminal Procedure, 1898 (hereinafter referred as Cr.P.C), the offence of rape (offence u/s 376 PPC) is non-compoundable and the reason is obvious that it is against the public policy. It is important to note that the compounding of offences is described in Section 345 of Cr.P.C in a tabular form and none of the penal sections of the instant case is included in the table of Section 345 Cr.P.C. It is pertinent to mention here that Subsection 7 of Section 345 Cr.P.C has placed a specific bar for compounding of offences not mentioned therein, which reads as under:-

"(7). No offence shall be compounded except as provided by this section."

7. Besides the unambiguous and clear-cut language of section 345(7); Cr.P.C the Hon'ble Supreme Court in a case reported as 'Muhammad Rawab v. The State' [2004 SCMR 1170] has observed as under:-

"The legislature has laid down in this section the test for determining the classes 'of offences which concern individuals only as distinguished from those which have reference to the interests of the State and Courts of law cannot go beyond that test and substitute of it one of their own. It is against public policy to compound a non-compoundable offence, keeping in view the state of facts existing on the date of application to compound. No offences shall be compounded except where the provisions of section 345, Cr.P.C are satisfied as to all matters mentioned in the section".

8. The legislature has made compoundable only those offences affecting the human body mentioned in Chapter XVI of PPC by substituting Sections 299 to 338-H vide Criminal Law (Second Amendment) Ordinance, 1990, whereby the victim/legal heirs are allowed to compound the offences with the permission of the Court where the case is pending. As far as the case cited by the learned counsel for the appellant are concerned the same are not applicable because the judgment in the case of Amir and 2 others [supra] is of the learned Single Judge of Lahore High Court in which the learned Judge relied upon a case of the Hon'ble Supreme Court reported as 'Ghulam Shabbir and 2 others v. The State' [2003 SCMR 1468], but in the case of Ghulam Shabbir [supra], the Hon'ble Supreme Court has allowed compromise in a compoundable matter, as such, the said judgment of Lahore High Court is divergent to the principle laid down by the Hon'ble Supreme Court not only in case of Ghulam Shabbir [supra] but also in the case of Muhammad Rawab [supra]. As far as case of Mudassar alias Yasir [supra] is concerned, in the said case only an application under Section 426 was allowed and not the entire case was disposed of, as such, the same is distinguishing to the present case.

9. For what has been discussed above, I am of the candid view that there is no need to send the matter to trial Court for inquiry regarding the listed applications for compounding of the offence; as the same are not maintainable, hence dismissed. Nonetheless, the appellant may proceed with the instant appeal on merits on the next date of hearing.

JUDGE

Abdullah Channa/PS