

IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD
Cr. Miscellaneous Appln.No.D-09 of 2019

Before;

Mr. Justice Muhammad Iqbal Mahar
Mr. Justice Irshad Ali Shah

Applicant: Asghar Ali Mallah son of Shamsuddin,
Through Mr. Mumtaz Alam Laghari, Advocate.

Respondents: The State, through Mr. Shahzado Saleem Nahiyoon,
D.P.G.

Date of hearing: 17-09-2019.

Date of decision: 17-09-2019.

ORDER

Irshad Ali Shah J;- The facts leading to disposal of instant Criminal Miscellaneous Application are that the FIR crime No.35 of 2018, U/S 386, 337-H(ii) PPC r/w Section 6/7 of A.T.A of police station Doulatpur, District Shaheed Benazirabad was recorded by the police at the instance of Ghulam Sarwar an official of HESCO Doulatpur. On due investigation, the accused involved in the said FIR were challaned by the police to face trial accordingly.

2. On due trial, all the accused involved in the said FIR were acquitted by learned Special Judge, Anti-Terrorism Court, Shaheed Benazirabad & Sanghar at Nawabshah vide his judgment dated 29.03.2019 by extending them benefit of doubt. While, recording such acquittal of the accused, complainant Ghulam Sarwar, PW Abdul Haq and PW Asghar Ali (applicant) were served with the notice by learned trial Court to show-cause as to why the prosecution for giving false evidence should not be initiated against them.

3. Complainant Ghulam Sarwar, PW Abdul Haq and PW Asghar Ali (applicant) furnished their replies to the said show cause notices. Consequently, the notices issued against complainant Ghulam Sarwar and PW Abdul Haq were discharged while PW Ghulam Asghar (applicant) was charged for an offence punishable under Section 193 PPC for giving false evidence by learned trial Court vide order dated 10.06.2019, which is impugned by PW Ghulam Asghar (applicant) before this Court by way of instant Criminal Misc. Application.

4. It is contended by learned counsel for the applicant that the statement of the applicant recorded by the police u/s 161 Cr.P.C was not on oath and very true version was narrated by the applicant before learned trial Court during course of his examination as such the applicant is not liable to prosecution u/s 193 PPC. By contending so, he prayed for setting aside of the impugned order, which is not opposed by learned D.P.G for the State.

5. Admittedly, the applicant is a witness of the incident and his statement during course of investigation was recorded by the police u/s 161 Cr.P.C. It was not on oath. The applicant was not declared to be hostile by the prosecution during course of examination before learned trial Court, which goes to suggest that whatever, was stated by the applicant before learned trial Court during course of his examination was accepted by the prosecution to be true impliedly. The accused involved in above said incident have been acquitted by learned trial Court by extending them

benefit of doubt by making a conclusion that the prosecution has not been able to prove its case against the accused. The failure of the prosecution to prove its case could hardly be attributed to the applicant alone. In that situation, initiating proceedings against the applicant for his prosecution u/s 193 PPC by way of impugned order is not appearing to be justified, it is set-aside.

6. The instant Criminal Miscellaneous Application is disposed of accordingly.

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