

Order Sheet  
**IN THE HIGH COURT OF SINDH,  
CIRCUIT COURT, HYDERABAD**

Cr. Misc. A. No. S- 184 of 2023

---

DATE	ORDER WITH SIGNATURE OF JUDGE
------	-------------------------------

---

29.05.2023

For orders on office objections  
For hearing of main case

Mr. MB @ Nouman Sahito, Advocate for applicants  
Mr. Bago Bheel, Advocate for respondent No.4  
Complainant present in person.  
Mr. Nazar Muhammad Memon Addl. P.G.

The applicants have called in question the legality of the order dated 5.11.2022 passed by learned Additional Sessions Judge, Matiari in S.C. No. 73 of 2020 originated from Crime No. 12 of 2020 registered for offenses punishable under Section 302, 147, 149, and 504 PPC of PS Bhit Shah; thereby an application under Section 265-K Cr.P.C. filed by the applicants has been dismissed. An excerpt of the order is reproduced as under:-

“4. I have gone through record. Perusal of FIR shows that the accused/ applicants are nominated in the FIR with serious allegations that they in prosecution of common object, made quarrel with the complainant party, used abusive language and caused empty bottle blow to deceased Gandhi, who expired. The eyewitnesses in their 161 Cr.P.C statements have supported the version of the FIR. During the investigation, the bottle used in the commission of the offence was secured by the police under a mashirnama. After framing of the charge, the evidence of not a single witness has been recorded in the case, therefore, without recording evidence of the complainant and witnesses, it cannot be said that the charge against the accused is groundless and there is no probability of accused being convicted of any offense. In the case of State V/S Abdul Rehman (2005 SCMR 1544), the Honourable Supreme Court of Pakistan held that usually criminal case should be allowed to dispose of on merits after the recording of prosecution evidence, statements of accused U/s 342 CR.P.C and under section 340 (2) Cr.P.C. if so desired, and hearing the arguments of both parties. It was further held that the provisions of sections 249-A, 265-K, and 561-A of the Code of Criminal Procedure should not normally be pressed into action for deciding the fate of a criminal case. In the present case, prima facie sufficient material is available on the record against the accused hence prosecution is entitled to the opportunity to lead evidence for proving the allegations about the commission of the alleged offense.

5. In view of above discussed reasons, I have come to conclusion that the charge against the accused is not groundless and the defense counsel failed to convince as to how there is no probability of

conviction of the accused, hence application in hand is not maintainable, accordingly it is dismissed.”

2. Per learned counsel, the Complainant has now been examined and he has exonerated the present applicants from the alleged crime, and in this regard, he has filed an application extending no objection for grant of an application under Section 561-A Cr.P.C. in the matter. Counsel further submits that from the statement of Complainant no ingredients of Section 302 PPC are made out and there is no probability of the accused being convicted of the offenses and the charge so framed is groundless on the ground that the complainant has not alleged anything against the applicants in such circumstances the applicants are liable to be acquitted from the aforesaid charge in terms of Section 561-A & 265-K Cr.P.C. Counsel referred to the postmortem report of deceased Gandhi and submitted that doctor has opined that there are no injuries on the body of the deceased thus the cause of death could not be ascertained as in absence of incriminating material innocent person shall not be allowed to face the rigors of trial. He further submitted that the deceased Gandhi died due to natural death therefore the applicants cannot be saddled with criminal liability as such they are liable to be acquitted from the aforesaid case. He prayed for allowing this Criminal Miscellaneous Application.

3. Mr. Nazar Muhammad Memon APG has supported the impugned order and strongly opposed the application on the ground that if the complainant has exonerated the applicants the proper course is to file a compromise application before the trial court. He prayed for dismissal of the instant application.

4. To elaborate on the powers of trial court, in principle section 265-K of the Cr.P.C empowers the courts to acquit an accused at any stage even before framing of charge however, after hearing the complainant. The accused could be acquitted under Section 265-K Cr.P.C., where on the evidence available on record, there is no probability of the accused being convicted of the offense for which they were charged with.

5. The expression at any stage of the case employed in section 265-K Cr.P.C. means at the beginning of the trial in such circumstances of the case. The basic grounds for acquittal at an earlier stage are: firstly, that the facts alleged by the prosecution do not constitute commission of an offense; secondly, there is no evidence or incriminating material on record of the case; thirdly, the evidence or incriminating material collected during investigation in support of the commission of alleged offense and proposed to be produced

during trial is insufficient and, even if recorded, will not sustain the conviction of the accused and fourthly, the prosecution evidence so far recorded does not make out a case for conviction of the accused, of any offense in the case and the remaining prosecution evidence, even if recorded, will not improve the prosecution case against the accused in any manner.

6. There can be no cavil to the rule of practice and propriety, that when the trial is near completion, the fate of criminal case should not ordinarily be decided under Section 265-K of the Cr.P.C. and the matter should go for final decision on merits. However, In the present case it has been urged that only the complainant has been examined who has purportedly exonerated the applicants from the alleged charge; and, no conviction could be made in absence of incriminating material. Prima-facie, the Post Mortem report shows that the death did not cause due to any injury as portrayed by the prosecution; therefore, judicial propriety demands that fresh application in terms of the statement of complainant coupled with the report of doctor needs to be moved before the trial court for decision on merits, if not filed earlier.

7. In such view of the matter, let a fresh application under Section 265-K Cr.P.C. be filed if not filed earlier before the trial court and the trial court keeping in view the statement of Complainant and other material available on record shall pass a speaking order on the application so filed after providing a meaningful hearing to the parties concerned including learned prosecutor.

This Cr. Misc. Application stands disposed of in the above terms.

Let a copy of this order be transmitted to the trial court for compliance.

JUDGE