

ORDER SHEET
IN THE HIGH COURT OF SINDH AT KARACHI
Criminal Acquittal Appeal No.592 of 2021

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| Date | Order with signature of Judge |
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1. For order on MA No.11480/2021 (Exemption)
2. For hearing of main case

08.11.2023

Mr. Naeem Akhtar Khan Tanoli advocate for the appellant
Mr. Saiff Ali Akbar advocate for respondents No.1, 3 and 7
Ms. Rubina Qadir, Deputy PG

The appellant/complainant through instant Criminal Acquittal Appeal has impugned the order dated 30.9.2021, passed by learned XIII-Civil Judge & Judicial Magistrate/MTMC, East Karachi, in Criminal Case No.207 of 2021, whereby the private respondents have been acquitted of the offense outcome of FIR No.874/2020 under Section 337-H(ii), 506-B,427,448,511,147,148 and 149 PPC of P.S Shahrah-e-Faisal Karachi, an excerpt whereof is reproduced as under:-

“8. I.O has collected some CCTV footage during his investigation in order to prove the presence of vehicles and accused at the place of occurrence on relevant date and time, which are available in police file but no one could be seen having any weapon and even otherwise neither the registration numbers of vehicles nor the face of any was clear. Furthermore, there is nothing in the record to show that I.O sent the CCTV footage for forensic analysis as such no forensic report is available in police file. The Honourable Supreme Court of Pakistan held in reported case-law PLD 2019 Supreme Court 675 that a forensic report must be prepared by an analyst in respect of an audio tape or video.

9. So far as the allegations for breaking the boundary wall up to 6/7 feet are concerned, the complainant and PWs have been failed to show source by which the accused party broke the wall and even they did not state what pecuniary loss in terms of money was caused. Even I.O has failed to investigate this aspect of the case. It is pertinent to mention here that four accused are arrested in this case and alleged vehicles were seized too but undeniably no weapon/arm was either recovered from possession or on pointation of any accused or from said vehicles. Even a single empty could not be secured to show in fact any aerial firing was done on the relevant date and time. It was very interesting that despite such severe aerial firing no empty is on the record. Moreover, no one from accused could be seen damaging/breaking the boundary wall and making any aerial firing in CCTV Footage.

10. It is also matter of record that there is dispute over said property between the parties and such Civil Suit was pending before Honourable High Court of Sindh, Karachi. Thus, there is no evidence/material at all to connect the accused with the alleged offence. Unquestionably; no other independent cogent or coherent piece of evidence is available with the prosecution to prove the guilt to the hilt against present accused. I am clear in my mind that even an opportunity may be provided to the prosecution to lead evidence against the present accused; there is no probability of present accused being convicted of the offence and pending trial against them is a futile exercise. For the foregoing reasons present accused 1) Amanullah S/O Bakhtawar, 2) Sanaullah S/O Matloob Ur Rahman, 3) Jaffer S/O Naveed, 4) Yasir Hussain S/O Aftab Hussain, 5) Samiullah Jung S/O Muhammad Azizullah, 6) Nael Jung S/O Samiullah Jung & 7) Aliya Jung D/O Muhammad Azizullah are hereby acquitted under section 249-A Cr.P.C of the accusations arising out of FIR No.874/2020, P.S Shahrah-e-Faisal Karachi, Offence punishable U/S 147,148,149,337-H(ii),506,427,448,511 in

the above-captioned case. Accused are present in the court on bail, their bail bonds stand cancelled, and surety, if any, is discharged from all liabilities.”

2. The facts of the prosecution case as per FIR are that on 11.12.2020, SIP Shakeel Ahmed, duty officer, Police Station Shahrah-e-Faisal, received one written application addressed to SHO of P.S Shahrah-e-Faisal from one Tariq Mahmood (complainant) for lodgment of FIR wherein he contended that on 11.12.2020 at about 11:10 a.m, some persons namely Samiullah Jung, his sons, Aliya Jung with their guards and goons entered into the gate of their property viz. 118-236 Na Class Drive Inn Marquee, Dalmiya Road, Karachi, which was their property for the last 15/16 years. He further alleged that accused Samiullah Jung with the aid of his guards and goons severely beat their people/employees, and broke about 6/7 feet boundary wall of the property; upon the instructions of said Samiullah Jung, they made aerial firing and entered inside and beaten their people. The accused entered the property in their vehicles No. 1) ATV-240, Colour Golden, Toyota Camry, No. 2) IBF-8275 Land Cruiser Prado, Pearl White Colour and No. 3) AFV-843, Toyota Corolla, White Colour, according to CCTV footage persons sitting in the vehicles were also having weapons/arms and can be seen entering into their property. Upon their informing to concerned police who reached the spot, those culprits fled away by jumping over the boundary wall by leaving those vehicles at the spot. He requested the police to take the vehicles into their custody. He further stated that at their property there were gates, walls, property boards, regular signboards of Marriage Hall, and hoardings of Royal Dynasty Restaurant. After the lodgment of the FIR, the usual investigation was carried out by the I.O SIP Aijaz Ahmed. After the conclusion of the investigation, I/O submitted a charge sheet before the Court of law wherein he recommended the above said accused to face their trial. The charge sheet was accepted, cognizance taken and the case was registered. Before the commencement of trial, in compliance with section 241-A Cr. P.C. required documents were supplied to the accused, and such receipt was obtained and taken on record at Ex-1. The formal Charge against the present accused was framed at Ex-02 for offenses punishable under sections 147,148,149,337-H(ii),427,448,511, it was read over and explained to them, to which they did not plead guilty and claimed trial, such pleas were recorded and brought on record at Ex-2/A to 2/G.

3. Learned counsel for the applicant argued that the respondents are involved in a serious offense and there is sufficient material available on the record to connect them with the commission of the offense. There are specific allegations against them that require evidence to be recorded. As per learned the decision of criminal case should be on merits after the recording of the prosecution evidence, statement of the accused under section 342, Cr.P.C., recording of statement of accused under section 340(2), Cr.P.C. if so desired by the accused persons and hearing the

arguments of the counsel of the parties and that the provisions of section 249-A, should not normally be pressed into action for the decision of fate of a criminal case especially when conviction is probable after recording evidence. He emphasized that in the instant case, the allegations leveled in the FIR are supported by the preliminary evidence and it could not be said at that stage by the trial Court that there was no probability of conviction of the respondent-accused. He added that sanctity cannot be accorded to acquittals at intermediary stages and the trial should be based on full-fledged evidence; that the order of acquittal of the accused under section 249-A Cr.P.C. would not have the same sanctity as orders of acquittal on merits. He asserted that in the present case, the trial court disrupted the normal course of law against the mandate of principles laid down by the High Courts in the cases of Warner Brother v Imtiaz and others (2000 P. Cr. L.J 752), Naik Muhammad & others v Naseemullah and others (2008 P. Cr. L.J 11), Shoukat Ali v Rana Muhammad Ashfaq & others (1992 ALD 243 1), and Karachi Electric Supply Corporation v Naseer Ahmed (1986 P. Cr. L.J 1684).

4. The learned counsel representing the respondents has supported the impugned order and submitted that respondents have falsely been implicated in this case with mala-fide intention and ulterior motives by the complainant and police due to property dispute; there is no iota of evidence direct or indirect against them; that there is not any description of any person having suffered any injury as such the section 337-A(I) PPC applied in the FIR and charge-sheet is the result of proactive of police in favor of the complainant. There is no recovery of any arm/weapon or empties from the spot or the possession of the accused though four accused are arrested. There is a Civil Suit bearing No. 1890/2020 pending before this Court in respect of a piece of land in which Nazir of the court was directed to conduct an inspection Consequently, on 11.12.2020 he made arrangements by calling in the revenue and police officials. Accused persons were required to be present at the site at the time of conducting the inspection; therefore, their presence was logical and legal. As per the inspection report, Nazir opined that adversaries exchanged hot words only but the situation was brought under control, thereafter, he conducted a site inspection. There is no incriminating evidence available from the prosecution against the accused. All the prosecution witnesses are interested witnesses and no single independent and private corroboration is with the prosecution to prove the charge against the accused, as such it is a fit case for the exercise of powers under Section 249-A Cr.P.C. Further proceeding with this case would be a futile exercise; an abuse of the process of law and a waste of precious time of this court as there is no probability of the accused being convicted. In support of his contention, he relied upon the cases of Abbas Haider Naqvi and another v Federation of

Pakistan & others (PLD 2002 SC 562), Ghulam Sarwar v Khuda Bux and others (2022 YLR 1519), Abdul Wasay and others v The State (2021 SCMR 1059), The State v Zulfiqar Mirza & others (2020 YLR 568), Shoukat Ali v Muhammad Ismail and others (2022 P. Cr. L. J Note 60), Talib v The State (2020 P. Cr. L.J Note 198), Eng. Dr. Muhamamd Naseem and others v Sohail Anwar and another (2013 P. Cr. L. J 1866) and Ishtiaq Ahmed Mirza v Federation of Pakistan and others (PLD 2019 SC 675).

5. I have considered the above arguments and perused the material available on record.

6. The Applicant Tariq Mehmood has impugned the order 30.9.2021 passed by learned XIII-Civil Judge & Judicial Magistrate/MTMC, East Karachi, in Criminal Case No.207 of 2021, whereby the private respondents have been acquitted of the offense under Section 337-H(ii), 506-B,427,448,511,147,148 and 149 PPC of P.S Shahrah-e-Faisal Karachi, under section 249-A, Cr.P.C.

7. The question involved in the present proceedings is whether the prosecution had sufficient material/evidence to warrant the prosecution of the respondents or whether there was no probability of the respondent-accused being convicted of any offense.

8. In the present case, there is a Civil Suit bearing No. 1890/2020 pending before this Court in respect of a piece of land in which Nazir of the court was directed to inspect the site and as per the inspection report dated 21.12.2020, Nazir opined that adversaries exchanged hot words only but the situation was brought under control, thereafter, he conducted a site inspection and submitted report to this Court in the aforesaid proceedings, an excerpt whereof is reproduced as under:-

9. Prima facie, as per Nazir's report, and police report under section 173 Cr. P.C, submitted before the trial court no sufficient incriminating material i.e. Medical Certificate of alleged injuries to attract Section 337-H(ii), alleged crime empties were collected by Police to connect the respondents for the alleged offenses under Section 337-H(ii), 506-B,427,448,511,147,148 and 149 PPC. So far as trespass is concerned Civil Suit No. 1890/2020 is pending before this Court and it is yet to be ascertained who is owner of the subject property. So far as 'criminal intimidation' is concerned, the same has been defined in Section 503 PPC in the following words:-

“503. Criminal Intimidation: Whoever threatens another with any injury to his person, reputation, or property, or to the person or reputation of anyone in whom that person is interested, with intent to cause

alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.”

10. A bare perusal of the afore-quoted provision of law makes it clear that whenever an overt act is materialized and ended into an overt act, the provision of Section 506(ii) PPC would not be applicable and the only provision that will remain in the field is the overt act, which is committed in consequence of criminal intimidation.

11. In the present case, the provision of Sections 427, 511, 147, 148, and 149 PPC have also been alleged against the respondents and as per investigating officer, he collected CCTV footage of the incident but failed to send it for forensic analysis in terms of law laid down by the Supreme Court in the case reported as **PLD 2019 SC 675**; that a forensic report must be prepared by an analyst in respect of an audio tape or video. The learned Magistrate opined that no weapon/arm was recovered from the vehicles. Even a single empty could not be secured to show any aerial firing was done on the relevant date and time. As per order no one from the respondents was found damaging/breaking the boundary wall and making any aerial firing. In the absence of the incriminating material, no conviction could be brought.

12. Primarily, under section 249-A, the Magistrate is empowered to acquit any accused on two grounds i.e. charge is groundless and there is no probability of conviction. From the above section, it is also clear that application under sections 249-A can be filed or taken up for adjudication at any stage of the proceeding of trial i.e. even before the recording of prosecution evidence during the recording of evidence or when the recording of evidence is over. Although there is no bar for an accused to apply to the said section at any stage of the proceeding of the trial, the facts and circumstances of the prosecution case will have to be kept in mind and if there is a slight probability of conviction then of course, instead of deciding the said application should record the evidence and allow the case to be decided on its merit after appraising the evidence available on record.

13. For what has been discussed above, I have concluded that the impugned order does not appear to have been passed in an arbitrary or cursory manner, to be interfered with by this Court through instant Criminal Acquittal Appeal; and, it is dismissed accordingly.