ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Cr.Misc.A.No.891 of 2023

Mst.Lubna Aman ……Applicant

Versus

1st Addl.Sessiosn Judge (MCTC) Karachi……..….Respondents

1. **For orders on office objection at "A"**
2. **For hearing of main case/further arguments**
3. **For hearing of MA No.13818/23 of 2024**

Date of hearings : 18.10.2024 & 25.10.2024
Date of order : 30.10.2024

Ms. Wajiha Aman, advocate for the applicant.
Mr. Mamoon A.K. Sherwany, Advocate for Respondent No.2.
Ms. Amna Ansari, Addl.PG.

O R D E R

Muhammad Iqbal Kalhoro, J:- This application impugns an order dated 16.10.2023 passed on an application u/s 265-K CrPC filed by applicant seeking acquittal in sessions Case No.173 of 2017 under section 302/34 PPC, FIR No.193 of 2014, P.S. Zaman Town.

2. As per brief facts of the case on 03.05.2014 complainant Ahteshamullah Khan lodged an FIR at the said police station, stating that he is an advocate by profession and is living in House No.C-90, Sector 31/C, Street No.5, Darussalam Society, Korangi Karachi, where his real brother Ikramullah was also residing. On 16.03.2011 at about 1820 hours, his said brother Ikramullah was crossing the road near Indus Hospital main Korangi Road, Karachi, when one Nasir s/o Abdul Rasheed, riding a motorcycle rashly and negligently hit him, as a result he sustained multiple injuries, so also accused Nasir. They both were shifted to different Hospitals for treatment. However, on 29.03.2011 Ikramullah expired. Thereafter complainant came to know that his sister-in-law Mst.Lubna, applicant, and her brothers namely Haseeb and Muhammad Mohsin were present at the spot and allegedly had given a signal by nodding her head to the motorcycle rider Nasir, who thereon intentionally hit his motorcycle to Ikramullah with intention to murder him.

3. It is reported in arguments by both the parties that in this case at least three investigations have been carried out. In all the investigations, the applicant has been declared innocent. However, the cognizance of the

offence has been taken against her and she has been made accused in the case. In the trial, she filed an application u/s 265-K Cr.P.C., which was dismissed vide order dated 12.10.2022. But then she filed a second application under the same provisions of law seeking her acquittal, which has been dismissed by the impugned order.

4. Learned counsel for the applicant has argued that applicant is innocent and has been falsely implicated in this case. There is no evidence connecting the applicant with the alleged offence, which is a simple case of accident but the complainant who is brother-in-law of applicant and has a dispute with her over property has falsely implicated her in this case; that in this case three investigations have been carried out, in all the three investigations she has been declared innocent and not a single shred of evidence was found against her; the charge against the applicant is groundless and is self-contradictory in that it conveys that at the instigation of applicant, accused Nasir rashly and negligently driving the motorcycle hit Ikramullah. Learned counsel argues that either the act was intentional and deliberate, or it was rash and negligent. If the act was rash and negligent, it could not be intentional and there would arise no question of instigation. Both are antithesis to each other and are irreconcilable. She has further submitted that there is only one eye witness namely Muhammad Shakeel, who was present at the spot, he has denied presence of applicant at the spot or signaling the main accused to hit motorcycle to Ikramullah. In all the three investigations his statement has been recorded and he has denied presence of applicant at the spot or signaling to the main accused Nasrullah to hit the motorcycle to Ikramullah. She has further submitted that there is no probability of the accused being convicted in the alleged offence, as the charge is groundless and the case against her is of absolutely no evidence.

5. On the other hand, learned counsel for the complainant has supported the impugned order and submits that at least three witnesses namely Kaneez wife of deceased, Shahida sister-in-law of deceased and Rizwana wife of complainant in their 161 CrPC statements have implicated the applicant. He in support of his arguments has relied upon the case law reported in 2014 PLD S.C. 241.

6. Learned Addl.P.G has however, conceded the case in favour of applicant stating that there is no evidence to connect the applicant with the alleged offence. She has not supported the impugned order and has given no objection to the acquittal of applicant u/s 265-K CrPC

7. I have considered submissions of the parties and perused material available on record. The alleged offence took place on 16.03.2011, the FIR of which was lodged by the complainant first time on 17.05.2011 after about more than two months. In the first FIR, the complainant has not arraigned applicant as an accused or assigned her any role. The first FIR was disposed of under A-Class as no evidence except that of accident was discovered by the police, which the complainant did not challenge before any forum. Thereafter in order to register second FIR of the same incident, he filed an application u/s 22-A and B CrPC, making applicant as one of the accused attributing to her the role of instigating co-accused Nasir to hit motorcycle to the deceased. His application was dismissed against which he filed a Criminal Miscellaneous Application before this court which was allowed vide order dated 31.3.2014.

8. In terms of said order he registered second FIR on 03.05.2014, after more than three years of occurrence, arraying applicant as one of co-accused having acted as instigator. The order disposing of first FIR under A-Class in which applicant was not an accused was never challenged by the complainant. The second FIR, registered after more than three years of the incident arraigning the applicant, a sister-in-law of complainant, as an accused with the role of instigator, cannot be seen without a suspicion pointing out to some motive on the part of the complainant to drag her in the case.

9. This became evident in the ensuing investigations as not a single shred of evidence was found against the applicant. Consequently, she was let off by the police in all the investigations. The last investigation officer, who was an officer of a senior rank i.e. DSP has clearly mentioned in 173 CrPC report that there was a property dispute between the applicant and complainant, who had occupied the ground floor of the house of applicant. And it was only because of such dispute, the applicant was made accused in the case. It is pertinent to mention here that there is only one eye witness in this case. His name is Muhammad Shakeel. He has been examined in all the investigation u/s 161 CrPC separately. In all the three investigations carried out in the wake of second FIR, he has refuted the claim of the complainant qua presence of the applicant at the spot or signaling the accused Nasir to hit the deceased with his motor cycle.

10. Learned counsel for the complainant in his arguments drew my attention to statements of Kaneez, Shahida and Rizwana and urged that

these three witnesses have implicated the applicant in the case. However, he admitted that their statements are not based on any material fact but they have at the best articulated their apprehension by pointing finger to the applicant. Neither they were present at the spot, nor had any other source to fall back on and quote in support of their version that applicant was present and had partaken in the incident. It is not disputed that these three persons are not cited in the case as witnesses, nor during the investigation had come forward to record their 161 CrPC statements implicating the applicant. It is clear therefore that their statements are not relevant and cannot be counted as effective for the purpose of connecting the applicant in the alleged offence.

11. In the given facts and circumstances, the statements of all the three witnesses are found nothing but figment of their imagination, motivated and at the best but hypothesis in which they have simply articulated reductive point of view to get rid of applicant with whom they have apparently a dispute over the property. They were neither present at the spot nor had seen the incident themselves, and more so were silent for more than three years qua involvement of the applicant and did not come forward to implicate her in the case. Therefore, their statements are neither reliable nor can be counted as an incriminating piece of evidence against the applicant. I am not in doubt that such statements cannot be made the basis of conviction and sentence against the applicant.

12. Further, the charge itself is self-contradictory. On the one end, the complainant asserts that the deceased had died as a result of rash and negligent driving of motorcycle by co-accused Nasir, and on the other, he claims that applicant had instigated accused Nasir to do so. If applicant had instigated accused Nasir to do so, then the act of Nasir would be deemed to be intentional and deliberate and not as a rash and negligent. But if it is presumed that the act of accused Nasir was rash and negligent then there would be no question of instigation or abetment to him by the applicant. The rash and negligent act cannot reconcile, is incompatible, and cannot be equated with deliberate and intentional act and vice versa. The main focus of the prosecution case is on rash and negligent driving of accused Nasir, as the main reason leading to the incident in which deceased died subsequently from the injuries sustained by him.

13. Keeping in view the focus of the prosecution on the rash and negligent driving by accused Nasir as the only reason stirring the incident, the allegation against the applicant of instigating or abating accused Nasir

appears to be groundless. Apart from above, the entire case is silent over any hint revealing relationship, if any, of applicant with the co-accused Nasir, and or where and when she hired him or hatched a conspiracy with him to commit the alleged offence. In absence of such prerequisites involvement of applicant in the offence, when she was not even found present at the spot is not without a serious doubt.

14. After taking a holistic view of entire material in the light of above discussion, I have come to form a view that there is no case in fact against the applicant; the evidence against her is nonexistent, in all the three investigation carried out in the wake of second FIR, she was found innocent and let-off by the police. No evidence since has been put forward by the complainant showing involvement of the applicant in the case. The applicant is a real sister-in-law of the complainant and it is an admitted fact that between them there is a dispute over the property left by her late husband who happened to be brother of the complainant. In the facts and circumstances, the charge against the applicant is found ground less, and with the material available on record there is no probability of the applicant being convicted and sentenced in the offence. The learned APG has rightly conceded to the case of applicant and gave no objection to her acquittal.

15. Consequently, this application is allowed and the applicant is acquitted u/s 265-K CrPC in the sessions Case No.173 of 2017 u/s 302/34 PPC, FIR No.193 of 2014, P.S. Zaman Town. Her surety, if any, is accordingly discharged.

J U D G E

Rafiq/P.A.