

ORDER SHEET  
IN THE HIGH COURT OF SINDH, CIRCUIT COURT,  
HYDERABAD

Criminal Revision Application No.S-26 of 2019

<b>DATE</b>	<b>ORDER WITH SIGNATURE OF JUDGE</b>
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| 1. For orders on office objection<br>2. For hearing of main case<br>3. For orders on M.A 1867/19 |  |
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08.03.2019

Mr. Riazat Ali Sahar, Advocate for applicants.

Ms. Rameshan Oad, A.P.G. alongwith ASI Ghulam Hussain Zardari, P.S A-Section Nawabshah, District Shaheed Benazirabad.

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Learned Counsel for the applicants at the very outset has stated that applicants had filed application u/s 265-K, Cr.P.C for acquittal in subject sessions case No.1925/2017 filed under Illegal Dispossession Act, 2005 by respondent No.2 namely Haji Manzoor Hussain Bughio against them but the learned trial court instead of deciding the same on merits and considering the material produced by the accused has dismissed the application on technicalities by considering the alleged conduct of the accused of remaining absent in the court and that the proceedings are yet formal. Learned Counsel submits that the trial court was required to decide the application as per law on merits instead of alleged absence of accused as it has no relevancy with the scheme of section 265-K, Cr.P.C as such the impugned order is not tenable having been passed on extraneous consideration.

Learned Assistant P.G has conceded to the above fact and has urged that this case be remanded to the trial court to decide the application u/s 265-K, Cr.P.C afresh on merits in view of all the material including defense presented by the applicants.

ASI Ghulam Hussain Zardari of P.S A-Section, Nawabshah present submits that he visited the address of the complainant for many a times but could not find him available there.

I have heard the parties and perused the material including impugned order. It is obvious that the learned trial court has not decided the application u/s 265-K, Cr.P.C moved by the applicants on merits but has instead considered the formal stage of the case and alleged absence of the accused

before it as a justification to dismiss it. The law requires decision of the application on merits related to the scheme contained in section 265-K, Cr.P.C i.e. “.....*nothing shall be deemed to prevent the court from acquitting an accused at any stage of the case if after hearing the prosecutor and the accused and for reasons to be recorded it considers there is no probability of the accused being convicted of any offence*”. The learned trial court while deciding the applications has not traveled into this legal aspect of the case and has passed the impugned order on the consideration which is alien to the scheme of section 265-K, Cr.P.C.

Accordingly, this Criminal Revision Application is disposed of alongwith listed application in the terms whereby the case is remanded back to the trial court to decide the application u/s 265-K, Cr.P.C on merits afresh as per scheme contained therein after affording an opportunity of hearing to all the parties.

JUDGE

Ali Haider

