

IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Acquittal Appeal No.S-85 of 2022
[Maqbool Ahmed v. Qaiser Khan & others]

21.09.2026

Mr. Wali Muhammad Khoso, Advocate for appellant.
Ms. Rameshan Oad, Deputy Prosecutor General, Sindh.

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JUDGEMENT

ZULFIQAR ALI SANGI J:- The appellant has impugned the order dated 03.03.2022, passed by the learned IIIrd Additional Sessions Judge, Hyderabad, in Sessions Case No.184 of 2013, arising out of Crime No.200 of 2012, registered under Section 395 PPC, at Police Station Tando Jam, Hyderabad, whereby the learned trial Court, upon an application under Section 265-K, Cr.P.C., acquitted respondents No.1 and 2/accused of the charge, holding that proceeding further with the case would be a futile exercise.

2. Briefly stated, the prosecution case is that on 26.10.2012, at about 1700 hours, the accused intercepted the complainant party and robbed complainant Maqbool Ahmed of cash amounting to Rs.337,000/- and a Nokia mobile phone; PW Fida Hussain of cash amounting to Rs.5,200/- and a mobile phone; and PW Tariq of cash amounting to Rs.3,200/- and a mobile phone. Hence the FIR was registered against them.

3. After framing of the charge against the accused, the learned trial Court recorded the evidence of as many as three (03) prosecution witnesses. Thereafter, on an application filed by the accused under Section 265-K, Cr.P.C., and after hearing the learned counsel for the parties, the learned trial Court acquitted the respondents/accused vide impugned order dated 03.03.2022. Hence, this Criminal Acquittal Appeal.

4. Learned counsel for the appellant/complainant, at the very outset, submits that the impugned order is not sustainable in law, as the learned trial Court, without affording the prosecution an opportunity to complete its evidence and prove its case, proceeded to acquit the private respondents/accused under Section 265-K, Cr.P.C. He contended that the impugned order is contrary to the principles of natural justice and, therefore, seeks remand of the matter to the

learned trial Court with a direction to proceed with the case afresh in accordance with law.

5. Learned DPG supported the impugned order contending that learned Trial Court held that futile exercise was to be conducted if trial proceeds.

6. I have heard the learned counsel for the appellant as well as learned APG and have perused the impugned order passed by the trial Court. During the course of arguments, learned counsel for the appellant could not show the specific part of the order wherein the learned trial Court has committed any gross illegality or irregularity.

7. The record reflects that the parties were already entangled in civil and revenue litigation regarding the alleged share in the property left by their predecessor-in-interest. Such background of admitted enmity assumes significance while appreciating the prosecution case, particularly when considered together with the other circumstances appearing on record. The prosecution case is that the complainant party was returning after selling cattle when the accused robbed them with their valuables; however, no receipt of cattle or other documentary material was produced to substantiate such transaction or otherwise establish their presence at the place of occurrence in the manner alleged. It is further evident that despite the allegation of robbery, the Investigating Officer, SIP Siraj, failed to recover any of the allegedly robbed articles from the respondents/accused. Likewise, although the accused were alleged to have been armed with weapons, none of the members of the complainant party sustained any injury during the alleged occurrence. These circumstances, when considered collectively, create material doubt regarding the prosecution version.

8. It is also borne out from the record that the complainant party had instituted other criminal cases against the accused party. The complainant himself conceded that another criminal case of similar nature had been registered by him at District Badin, which was subsequently not proceeded with as he failed to appear for recording of his evidence. Though such circumstance, by itself may not be sufficient to discard the prosecution case, it assumes relevance when considered with the admitted prior civil and revenue litigation, the delay in registration of the FIR, absence of recovery and the other circumstances discussed above. In these circumstances, the learned trial Court, after recording the evidence of three prosecution witnesses and considering the material available on record, came to the conclusion that continuation of the proceedings would be a futile

exercise. The power under Section 265-K, Cr.P.C. can be exercised where, upon consideration of the material available on record, the Court finds that there is no probability of conviction. The provision is, however, to be exercised with caution and upon recording reasons. The impugned order, when examined in the light of the material available on record, does not suffer from any such illegality or material irregularity as would warrant interference by this Court. More importantly, learned counsel for the appellant has not been able to identify any material piece of evidence which was either misread or ignored by the learned trial Court, nor has he pointed out any circumstance demonstrating that the conclusion reached by the learned trial Court was perverse, arbitrary or otherwise contrary to the record. The mere possibility of taking another view of the material available on record is not, by itself, sufficient to interfere with an order of acquittal. The principles governing interference in an appeal against acquittal require the appellate Court to exercise greater caution, particularly where the view taken by the trial Court is a reasonable and possible view.

9. Thus, upon an overall appraisal of the material available on record, I am of the view that the learned trial Court has assigned plausible and cogent reasons for exercising jurisdiction under Section 265-K, Cr.P.C. The impugned order does not suffer from any misreading or non-reading of material evidence, illegality or perversity warranting interference by this Court.

10. For the foregoing reasons, the instant Criminal Acquittal Appeal is found to be without merit and is accordingly **dismissed** along with pending application[s], if any. Consequently, the impugned order dated 03.03.2022 passed by the learned IIIrd Additional Sessions Judge, Hyderabad, under Section 265-K, Cr.P.C., whereby the respondents/accused were acquitted, is maintained.

JUDGE

Muhammad Danish