

Before The KP Service Tribunal, Peshawar

Appeal NO. 713/2019.

Sherzada vs Police Deptt:

Application for placing certain documents for perusal of Honorable Court for fair conclusion of the case.


Respectfully Crasethi:

- 1- That the instant appeal is pending before this Honorable Tribunal and file for arguments on 11/01/2023.
- 2- That the appellant was acquitted in criminal case on 17/11/2022 and wants to place the judgment dated 17/11/2022 before this Honorable Tribunal for perusal for fair conclusion of the service appeal pending before this Honorable Tribunal.

It is therefore most humbly prayed that on acceptance of this application, certain documents (Judgment dated 17/11/2022) may kindly be placed on file for consideration and fair conclusion of the case.

Appellant

through


Taimur Ali Khan
A.H.C

IN THE COURT OF WAQAS AHMED RAJA
JUDICIAL MAGISTRATE SECTION-30-WEST
ISLAMABAD

The State through Nawabzada Muhammad Akbar Khan Hoti
S/o R/o Hoti House, 22 Khayabaan-Iqbal F-7/3, Islamabad.

Complainant

Versus

1. Sherzada S/o Raheem-ud-Din R/o House No.930, Mohallah Qazi Khel Hoti Mardan (presently) Alipur Farash, Islamabad.
2. Minhaj-ud-Din S/o Raheem-ud-Din R/o House No.930, Mohallah Qazi Khel Hoti Mardan.
3. Abdul Hanan S/o Abdul Manan R/o Mohib Banda Tehsil & District Mardan.
4. Sajid S/o Mumtaz R/o Noshera Kalan Tehsil & District Noshera.

Accused persons

Case FIR No.354/16, Dated 17.09.2016, U/S
201/381/411/427/436/34 PPC, Police Station Kohsar, Islamabad.

Date of Decision.....17.11.2022

Present:- Accused Sherzada on bail.
Mian Ahmed Khan Advocate, learned counsel for the
accused persons.
Learned Assistant Deputy District Prosecutor for the
State.

J U D G M E N T /

The above named accused persons have been sent to this court to face their trial, in a case, which has been registered against them U/S 201/381/411/427/436/34 PPC, vide FIR No. 354/16, Dated 17.09.2016, at Police Station Kohsar, Islamabad.

2. The facts, in brief, as sifted out from complaint Ex-PB that on 13.09.2016 complainant was informed by his servant Sherzada and his son Nawabzada M Ibraheem Khan Hoti at 06:00 p.m that his house has

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been burnt by fire that thereupon he alongwith his servant and son reached his house at Islamabad at 07:30 a.m and upon inspection the house was found pitched black due to heavy smoke and fire and upon further inspection it was found by the complainant that articles as mentioned in the application Ex-PA were found burnt, hence, this FIR.

3. After the registration of FIR, investigation in this case was carried out. During the course of investigation present accused persons were nominated by the complainant through supplementary statement and in pursuance thereof it came on record that allegedly the accused persons had stolen cash amount from the house of the complainant. After the conclusion of investigation, reports U/S 173 Cr.P.C were submitted against the accused persons. The charge was framed against the accused person to which they pleaded not guilty and claimed trial.

4. In order to bring home guilt of the accused persons, the prosecution produced the following seven witnesses. The brief narration of witnesses is given here under:-

Asim Ghaffar ASI entered into witness box as PW-1 and deposed about the proceedings which he conducted during the investigation of instant case. In documentary evidence, he presented following documents:-

Sr. No.	Description of documents	Exhibits
01	Complaint	Ex-PA
02	FIR	Ex-PB
03	Signature on FIR	Ex-PB/1
04	Unscaled Map	Ex-PC
05	Signature on unscaled map	Ex-PC/1
06	Recovery memo	Ex-PD
07	Signature on recovery memo	Ex-PD/1
08	Recovery memo	Ex-PE
09	Signature on recovery memo	Ex-PE/1

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Nawabzada Muhammad Akbar Khan Hoti appeared as PW-2 and while appearing as witness, he reiterated the contents of his application and endorsed his signature on the same as Ex-PA/1. Precisely, he stated that the accused persons have stolen some articles from his house and also narrated the cost of damage articles.

Muhammad Baqir appeared as PW-3 and deposed in favour of the complainant and narrated the brief sketch of the day of occurrence. He also deposed that on his hue and cry, the patrolling police officials had reached to the occurrence. He further stated that he informed that the fire brigade and thereupon the fire brigade team had reached on the spot and controlled the fire. He also endorsed his signature on the recovery memo as Ex-PD/2 and Ex-PE/2, respectively.

Sikandar Ali 6677/H.C appeared as PW-4 and deposed that he accompanied the I.O for recovery of cash amount and he endorsed his signature on the recovery memo as Ex-PF/1.

Tariq Rauf S.I appeared as PW-5 and deposed that investigation was transferred to him on 29.09.2016 and further stated that complainant nominated the accused persons Minhaj and Sajid in his supplementary statement. He further deposed that during the course of investigation, cash amount of Rs.5,00,000/- had been recovered on the pointation of accused Sherzada and for the same he prepared recovery memo, presented Ex-PF. He further stated that on the application of the complainant, after the consultation of legal department, he added section 201 PPC. In nutshell he narrated the proceedings of his investigation.

Rafiq Shah 1974/C appeared as PW-6 and deposed that personal belongings of accused Sherzada were taken in his presence vide recovery memo Ex-PG and he identified his signature as being witness on the same as

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Ex-PG/1. He also stated that during the proceedings of recovery of cash i.e Rs.4,70,000/-, he was in the police team and he identified his signature on the recovery memo as Ex-PI/1. He also endorsed his signature on the recovery memo, prepared for the recovery of oil bottle, as Ex-PJ/1.

Amir Umer Khan Inspector (R) appeared as PW-7 and deposed that investigation of the case was entrusted to him and on the date, he inquired the servants of the complainant and sent the details for requisitioning of the mobile data of the servants of complainant. He presented the recovery memo, for receiving of record, as Ex-PK and his signature as Ex-PK/1. He also identified the recovery memo Ex-PJ and Ex-PL and presented his signature as Ex-PL/1. In the last, he stated that the offences U/S 381/411 PPC were added in the case and in the last stated that the investigation was transferred to the CIA.

5. Although, the accuseds' side conducted lengthy cross-examination to the prosecution witnesses, however, it is pertinent to mention here that during the course of prosecution evidence, compromise has been effected between the parties and on 15.11.2022, the complainant namely Nawabzada Muhammad Akbar Khan Hoti appeared before the court and submitted compromise deed duly signed by the complainant and accused namely Sherzada and complainant also got recorded his statement overleaf the compromise deed, wherein he categorically stated that he has forgiven all accused persons namely Sherzada, Abdul Hanan, Sajid Khan and Minhaj-ud-Din in the name of Almighty Allah and further stated that he does not want to pursue this case anymore and recorded his unreserved statement that he has no objection on the acquittal of the accused persons from the instant case.

6. Although seven prosecution witnesses have already been recorded, however, evidence of three calendar witnesses are yet to be

recorded. Moreover, on 14.06.2022, complainant's side preferred an application for reexamination of PW-1 i.e. Asim Ghaffar ASI but as said earlier, the complainant has categorically stated that he is not willing to pursue this case anymore and parties have been entered into a compromise. Though the alleged offences are non compoundable in nature, however, it is settled proposition of law that *compromise in non compoundable cases has always been considered a redeeming feature*. Guidance is sought from most valued judgment passed in matter titled as "**Aftab & another Versus The State**", reported as 2005 YLR 128. Same principle has also been held in esteemed judgment passed in matter titled as "**Aamir & another Versus The State & another**" reported as 2011 MLD 1468. For emphasis and ready reference, the relevant paragraph No.9 of the judgment is reproduced as below:-

9. Now I advert to the factum whether compromise can be effected in non-compoundable offence. I am of the view that the compromise is meant to promote harmonious living and maintain cordial relations between the parties. This view was affirmed by august Supreme Court of Pakistan in the case of Ghulam Shabbir and 2 others v. The State (2003 SCMR 663).

7. Undoubtedly prosecution has recorded their partial evidence but now the complainant, who is the star witness of the case, is not will to pursue this case anymore, then it can safely be observed that there is no probability of conviction of the accused persons. As, it is also settled proposition of law that if the court reasonably convinced that a criminal charge could not sustain, going on trial is not necessary, said powers (U/S 249-A Cr.P.C) could be exercised even before framing of charge. Reliance is placed upon venerated judgment passed in matter titled as "**Shoukat Ali Versus Muhammad Ismail**", reported as 2022 P.Cr.L.J.N 60 Karachi High Court Sindh. It is also settled that application U/S 249-A Cr.P.C can be moved at any stage of the case.

8. In view of above discussion, I come to the conclusion that there is no probability of the accused persons being convicted in the instant case and further recording of evidence is mere wastage of precious time of the court. Hence, instant application U/S 249-A Cr.P.C is accepted and accused persons namely Sherzada S/o Raheem-ud-Din, (2) Minhaj-ud-Din S/o Raheem-ud-Din, (3) Abdul Hanan S/o Abdul Manan and (4) Sajid S/o Mumtaz are hereby acquitted from the instant case i.e FIR No.354/16, Dated 17.09.2016, U/S 201/381/411/427/436/34 PPC, registered at Police Station Kohsar, Islamabad. Bail bonds of the accused persons stand discharged. Case property be dealt in accordance with law. Ahmad, namely Waqas Ahmed, is directed to consign the file after its due completion within one week.

Announced
17.11.2022

(WAQAS AHMED RAJA)
JUDL: MAGISTRATE SECTION-30-WEST
ISLAMABAD

Certified that this judgment consists of 06 pages, each page has been dictated, read, corrected and signed by me.

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Attested to be True Copy

SUPREME COURT
District & S
(West) Islamabad
Audited by
U/S 87 of
Order 1984

17.11.2022

Present:- Accused Sherzada on bail.
Remaining accused persons are absent.
Mian Ahmed Khan Advocate, learned counsel for the
accused persons.
Learned Assistant Deputy District Prosecutor for the
State.

ORDER/

Vide my separate detailed order in English language of
even date, instant application U/S 249-A Cr.P.C is accepted and
accused persons namely Sherzada S/o Raheem-ud-Din, (2) Minhaj-
ud-Din S/o Raheem-ud-Din, (3) Abdul Hanan S/o Abdul Manan and
(4) Sajid S/o Mumtaz are hereby acquitted from the instant case i.e
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completion within one week.

Announced
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(WAQAS AHMED RAJA)
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