

BEFORE PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 11035

Dated 7/2/24

Appeal No. 942/2024
Next Date: 27-02-2024

Gul Afzal Ex-Constable No.340, Districe Police Abbottabad.
Petitioner/Appellant

VERSUS

Provincial Police Officer, KPK, Peshawar & others. **(Respondents)**

SERVICE APPEAL

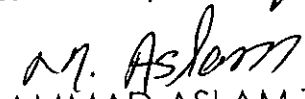
PETITION FOR PLACEMENT OF JUDGMENT/ACQUITTAL ORDER OF THE
PETITIONER/APPELLANT IN CRIMINAL CASE FROM TRIAL COURT ON
TITLE APPEAL FILE AS DIRECTED BY THIS SERVICE TRIBUNAL ON LAST
DATE 28-11-2023 AT CAMP COURT ABBOTTABAD.

Respectfully Sheweth:-

1. That titled Appeal is pending adjudication before this Honourable Service Tribunal and next date for arguments is fixed as 27-2-2024 at Camp Court Abbottabad.
2. That on last date 28-11-2023 the Petitioner/Appellant was directed by this Honourable Tribunal to place acquittal order of petitioner/appellant on the titled appeal file passed in criminal case by the Learned Trial Court.
3. That petitioner's acquittal order passed by trial court is attached herewith for placing on title appeal file as directed by this Honourable Tribunal.


PETITIONER/APPELLANT

THROUGH


(MUHAMMAD ASLAM TANOLI)
ADVOCATE HIGH COURT
ABBOTTABAD

Dated: -02-2024

IN THE COURT OF MISS SHAMIM S SHAH JUDICIAL
MAGISTRATE-I ABBOTTABAD

CASE # 42/2 JM-I ATD..... STATE VS SAQIB OTHERS


FIR-649 Dated 12-12-2021 u/s 419,420,118&1(c),119-1(D)-PS.Mangal.

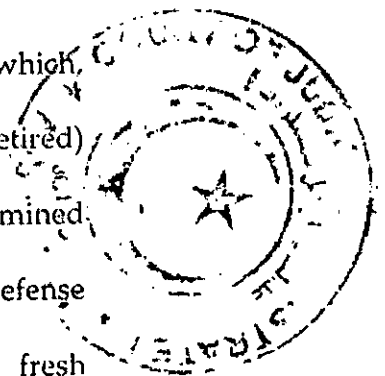
(SHAMIM S SHAH)
Judicial Magistrate-I
20-11-23

Order # 37
10.06.2023


Learned APP Miss Lubna Shahzadi for the state in attendance. Accused namely Gul Afzal and Saqib on bail alongwith counsel present while exempted accused through counsel present.

From perusal of the record, it is found that prosecution has submitted complete challan against the accused on 25.04.2022 and formal charge was framed on 12.10.2022 thereafter prosecution was invited to produce the evidence in support of their version. Abiding by the directions of the court the prosecution so far produced eight witnesses. It is pertinent to mention here that earlier application u/s 249 A CrPC submitted by the counsel for accused persons was dismissed on 02.05.2023 and prosecution was directed to produce material witnesses i.e IO to prove charge against the accused persons and the statement of investigation officer was made mandatory to arrive at a conclusion. After which, investigation officer Abdul Khaliq ASI/OII (Retired) appeared in the witness box on 16.05.2023 and examined as PW-5. Thereafter, the learned counsel for the defense while considering circumstances moved fresh application under section 249-A Cr.PC for the acquittal of the accused persons on the ground of there being no probability of their conviction in the instant case. Notice


10/06/23



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of the same was given to the State/prosecution on 05.06.2023.

Arguments on application filed U/S 249-A Cr.P.C already heard which is evident from order sheet no.36.

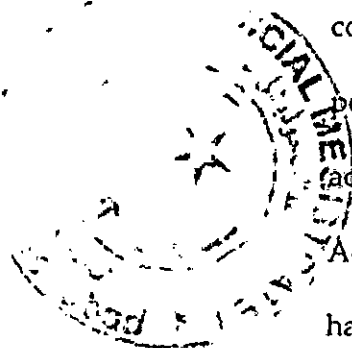
Perusal of the record reveals that neither the accused persons facing trial were directly charged in the instant FIR nor have they been arrested from the spot. Furthermore, the alleged vehicle i.e carry dabba which was important piece of evidence has also not been taken into possession by the local police. One thing worth discussion here is that the complainant charged unknown persons in his initial report and later on charged the accused persons facing trial through supplementary statement but no identification parade of the accused persons has been conducted nor has the complainant mentioned any description of the accused persons which creates doubt in the involvement of the accused persons in the commission of the offence. Admittedly, as per available record one Tahir and Fayaz have direct nexus with the occurrence in respect of sale and purchase of gold, but both of them have not been made accused in the case in hand.

Furthermore, PW-1 Khalid Mehmood ASI PS Mangal who conducted initial inquiry admitted in his cross examination that neither the complainant charged the accused persons in his application nor have they given any description of the accused persons in their

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application. He further admitted that accused persons have no-where been shown in the site plan during the occurrence. In addition, PW-5/IO of the case admitted the fact in his cross examination that no identification parade of the accused persons was conducted. During course of investigation white carry van was also not recovered and even nothing was recovered from the direct possession of accused persons. He also admitted that the place of occurrence as alleged is a hotel on GT road where public is always present but he did not associate any private witness in respect of recovery proceedings. He further admitted in his cross examination that it is correct neither the alleged uniform was recovered from the personal possession of accused Saqib and Gul Afzal nor at their pointation. Moreover, he did not obtain any search warrant from the JMIC concerned before raiding the house of accused. It is clear from cross examination of IO that he conducted raid at the house of accused without any search warrant and he failed to associate any private witness which is clear cut violation of section 103 Cr.P.C, all these factors make the case of prosecution as doubtful as well as novelistic one, if the proceeding in the instant case are carried, ultimate result would be nothing but acquittal of the accused.

In these circumstances, further proceedings in the case against the accused persons would be a futile exercise and wastage of time of the court. As there seems

EXAMINER
Secty. Judge
Abbottabad
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10/06/23



no likelihood of conviction of the accused facing trial in the present case. Therefore, by accepting the application u/s 249-A Cr.P.C, I hereby acquit the accused persons facing trial from the charges leveled against them. They accused persons are on bail; their sureties are absolved from the liability of the bail bonds.

Case property be dealt in accordance with law.
Case file be consigned to record room after its completion & compilation.

Announced
10.06.2023

SHAMIM S SHAH
JM-1, Abbottabad

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Bilal

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