

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
PESHAWAR.

In Re:

Service Appeal No. 1221/2023


Muhammad Taimoor Ex-Constable.....(Appellant)

V E R S U S

Inspector General of Police & others.....(Respondents)

I N D E X

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Appellant

Through



Dated: 18/04/2024

Zahoor Islam Khattak
Advocate High Court,
Peshawar.
Cell No. 0346-9083579

18-04-24

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Muhammad Taimoor Ex-Constable.....(Appellant)

V E R S U S

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REJOINDER ON BEHALF OF
APPELLANT.

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 12257

Dated 18.04.2024

Respectfully Sheweth:

Preliminary objection:

All the preliminary objections taken by respondents are incorrect, false and frivolous, and appellant has got genuine cause of action to file the instant appeal.

Reply on facts:

1. Para No. 1 of the appeal is admitted by the respondents.
2. Para No. 2 of the appeal is correct while that of reply is incorrect, moreover entries in service record does

not means that appellant may be dismissed from service.

3. Para No. 3 of the service appeal is correct while that of reply is incorrect, because appellant was implicated in fake and fabricated cases, on the basis of which appellant was departmentally proceeded by the respondents.
4. Para No. 4 of Service Appeal is correct while that of reply is incorrect, because appellant performed his duties with due diligence, and have unblemished service record.
5. Para No. 5 of the appeal is correct while that of reply is incorrect. that appellant was acquitted in criminal cases by the Hon'ble Courts, so all the proceeding taken by the respondents are baseless and based on malafide. (Copy of judgment is attached as annexure "A")
6. That Para No. 6 of the appeal is correct while that of reply is incorrect, moreover harassing of the appellant in order to avoid illegal arrest appellant did not approached to the respondent within time.

Moreover the appellant filed condonation of delay in which reason are mentioned for delay.

7. Para No. 7 of the appeal is correct, while that of reply is incorrect the appellant has given the detail of his innocence but due to stubborn attitude of the respondents rejected the revision of the appellant.
8. All the allegations are concocted orders, based on malafide and appellant has got genuine cause of action to file the instant appeal.

REPLY ON GROUNDS:

- A. Para "A" of the grounds of the appeal is correct, while that of reply is incorrect. Appellant dismissal from service is not accordance with law and rules, hence denied.
- B. Para "B" of the ground of appeal is correct, while that of reply is incorrect. Appellant was indulged in fake cases, on the basis of which appeal was departmentally proceed.
- C. Para "C" of the appeal is correct. While that of reply is incorrect. The appellant has filed condonation of

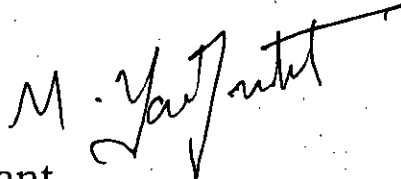
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delay along with appeal, on which reason is mentioned in reply.

- D. Para "D" of the appeal is correct while that of reply is incorrect. The respondent No. 1 with malafide intention dismissed the applicant from his service.
- E. Para "E" of the ground of Service Appeal is correct, while that of reply is correct. The appellant was dismissed from service in fake cases, and all the departmental proceeding are not carried out in accordance with law.
- F. Para "F" of the ground of Service Appeal is admitted by respondent.
- G. Para "G" of the ground of Service Appeal is correct, while that of reply is incorrect, all the allegations are general in nature having no footing at all.
- H. Para "H" of the grounds of Service Appeal is admitted by respondent.
- I. Para "I" of the grounds of Service Appeal is correct while that of reply is incorrect. appellant was not treated in accordance with law.


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- J. Para "J" of the appeal is correct, while that of reply is incorrect. Appellant has performed his duties with diligence and despite that appellant was dismissed from service.
- K. Para "K" of the grounds of the appeal is admitted by the respondents.
- L. In reply to Para "L" of the grounds of the appeal, that the respondents have no ground to agitated against the appellant.

It is, therefore, humbly prayed that on acceptance of this rejoinder, the appeal of the appellant may be accepted.


Appellant

Through

Dated: 18/04/2024


Zahoor Islam Khattak
Advocate High Court,
Peshawar.

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,

PESHAWAR.

In Re:

Service Appeal No. 1221/2023

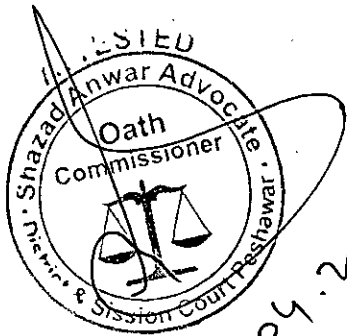
Muhammad Taimoor Ex-Constable.....(Appellant)

V E R S U S

Inspector General of Police & others.....(Respondents)

AFFIDAVIT

I, Muhammad Taimoor (Appellant), do hereby solemnly affirm and declare on oath that the contents of the accompanying **Rejoinder** are true and correct to the best of my knowledge and belief and nothing has been concealed from this Hon'ble Tribunal.



18.04.2024

M. Taimoor

DEPONENT

7)

In the Court of Muhammad Khalil Khan,

Judicial Magistrate-I, Swabi

The State ... vs ... Taimour

Law P. 18 of 1973 and S. 203 under section 15 of Khyber Pakhtunkhwa Arms Act, 2013 of Police Station Kala Khan, District Swabi

Order # 11

1 November 2023

SPP for the state present. Accused on bail present and submitted an application under section 249-A Cr.PC for his acquittal. Notice of the application given to the prosecution.

This order of mine shall dispose of the application u/s 249-A Cr.PC moved by the accused for his acquittal in the present case owing to deficient evidence.

Arguments on the application heard and case file perused.

On scanning of the record, it reflects that, complete challan against the accused was put in court by the prosecution 05.03.2020. Thereafter, accused was summoned through process of the court. Accused appeared before court as such provision of section 241-A Cr.P.C. complied with against him, thereafter, formal charge was framed against the accused, wherein he refused to plead his guilt and claimed trial, thus the prosecution was allowed to produce their evidence, however, the accused submitted the instant application under section 249-A Cr.PC owing to deficient evidence.

Perusal of the record transpires that, after a long time, prosecution failed to produce even a single evidence before the court which shows lack of interest on their part. Moreover, the accused facing trial sought his acquittal owing to deficient evidence. Record reflects that, on the eventful day, the accused facing trial was arrested on thickly populated area, but, non was associated amongst the public to the proceedings, thus, violated the mandatory provision of section 103 Cr.PC. Further noted from the record that complainant did not place on the record DD regarding the departure of the local police to the place of occurrence. The accused remained in police custody however, he neither confessed his guilt nor during the trial pleaded his guilt. The case of the prosecution even otherwise, suffers from

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reasonable doubt. The witnesses to the recovery memo are police officials, who could not be relied upon in the presence of the fore stated observations, implying malafide on the part of police by not observing the due process of law. The bare perusal of the recovery memo reveals that, the F.I.R number mentioned on the recovery memo and signature of the marginal witnesses is a question mark on the investigation conducted by the I.O which also shattered the case of prosecution as the recovery memo, site plan etc prepared on the spot while then the F.I.R was registered at the Police Station, which clearly shows that, all the proceedings were conducted inside the Police Station. Besides all the above, the complainant himself is the I.O of the case.

Hence, it shall amount to miscarriage of justice to proceed further with the trial when conclusion is possible as improbability of conviction of the accused at this stage. The case is fit for jurisdiction under section 249-A Cr.PC.

Section 249-A Cr.P.C empowers a Magistrate to acquit an accused at any stage of the proceedings, if, he is satisfied that either the charge is groundless or there is no probability of the accused being convicted.

In light of above circumstances, there is no probability of conviction of the accused if prosecution is allowed to lead its entire evidence, rather, it would be a futile exercise and wastage of the precious time of the Court. The instant application under section 249-A Cr.P.C is, therefore, accepted. Accused is hereby acquitted from the charge so levelled against him. He is on bail, therefore, his bail bonds stand cancelled and sureties are absolved from the liabilities of bail bond. Case property stands confiscated to the state. Requisitioned record (if any) be returned while file of this court be consigned to record room after its necessary completion and compilation.

Announced:
01.11.2023

(M. MU. 01/11/23)

Muhammad Khalil Khan
Judicial Magistrate-I, Swabi

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Court. The instant application under section 249-A Cr.P.C. is, therefore, accepted. accused is hereby acquitted from the charge so levelled against him. Since, he is on bail, therefore, his bail bonds stand cancelled and sureties are absolved from the liabilities of bail bonds. Case property, if any, be dealt as per law. Requisitioned record (if any) be returned while file of this court be consigned to record room after its necessary completion and compilation.

Announced:
01/11/2023

(Signature)
Muhammad Khalil Khan
Judicial Magistrate-I, Swabi

10)

In the Court of Muhammad Khalil Khan,

Judicial Magistrate-I, Swabi

The State ... vs ... Talmour etc

Case F.I.R # 430 dated 30.05.2022 under section 452/506/504/34 PPC of Police Station Kalu Khan, District Swabi

Order # 09

01.11.2023

SPP for the State present. Accused are on bail while complainant not in attendance.

Accused submitted an application under section 249-A Cr.PC for his acquittal. Notice of the application given to the prosecution.

This order of mine shall dispose of the application u/s 249-A Cr.PC moved by the accused for his acquittal in the present case owing to deficient evidence and compromise.

Arguments on the application under section 249-A Cr.PC s heard and record perused.

Perusal of the record transpires that, after a long period, prosecution failed to produce even a single evidence before the court which shows lack of interest on their part. Moreso, the accused facing trial sought his acquittal owing to deficient evidence. Furthermore, the complainant has charged the accused for criminal intimidation by making aerial firing in order to threaten him which is not supported by any strong corroborating piece of evidence. Record further divulges that, complainant of the instant case has does not want to pursue the case in hand as he did not bother to appear before the court to pursue his case despite services/NBWA. During the course of investigation, no incriminating recovery has been effected, either from the immediate possession or upon the pointation of the accused. No independent witness of the occurrence is present. Record further suggests that neither ocular

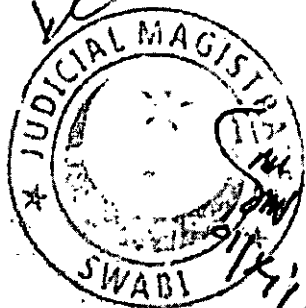
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account nor strong circumstantial substance exists on record to believe that there is probability of the accused being convicted.

The ingredients for the commission of offence u/s 506 PPC are enumerated u/s 503 PPC viz- there must be a threats, that threats must be causative of injury to a person, reputation or to his property or to any other one in whom that person could be interested and thirdly that there must be a purpose of threats also which could be to cause harm to that person or to do any act which he was not legally bound to do or to omit with that person was legal entitled to do. In the present as stated above none of the forgoing ingredient is fulfilled in order to constitute the offence of criminal intimidation punishable u/s 506 PPC while intimidation simpliciter in nature does not attract section 503 PPC reliance is placed on 2007 YLR 441 Lahore. Furthermore, the accused facing trial sought his acquittal owing to deficient evidence which is appealing and convincing to the mind in the light of foregoing discussion. Hence, it shall amount to miscarriage of justice to proceed further with the trial when conclusion is possible as improbability of conviction of the accused at this stage. The case is fit for jurisdiction under section 249-A Cr.PC.



On scanning of the record, it reflects that, HBA order dated 30.06.2022 passed by the court of Hon'ble Addl; Session Judge-III, Swabi available on case, wherein, the complainant has effected compromise with the accused.

Since, the star witness i.e. complainant has already shown her disinterest in the prosecution of

accused as the matter has been resolved between the parties, there is no likelihood that recording the testimony of any other witness listed in the calendar of witnesses by the prosecution can lead the case to success against the accused; hence, there appear no probability of conviction of accused at end of the trial and ultimate fate of the case would be acquittal of the accused. Furthermore, accused is charged for the offences under section 452/506/504 PPC, wherein, the offence under section 506/504 PPC is compoundable while offence under section 452 PPC is though non-compoundable in nature, but, if the parties had themselves voluntarily forgotten and forgiven the crime and had entered into an outside the court settlement, the same could be considered as ground for the acquittal of accused in the interest of justice and equity.

Furthermore, when the complainant party also does not want to prosecute the matter any further, court could not compel it to do so. In this regard, wisdom is drawn from 2012 YLR 1606.

" Offence with which accused was charged was not compoundable, but, when the complainant and his witnesses were not ready to depose against the accused, then no other evidence would be sufficient for conviction of the accused".

Reliance is also placed on the Judgment of Peshawar High Court reported as 2016 PLD page 26 and 1999 PCr.LJ 1107 Lahore.

Hence, it shall amount to miscarriage of justice to proceed further with the trial when conclusion is possible as improbability of conviction of the accused at this stage. The case is fit for jurisdiction under section 249-A Cr.PC.

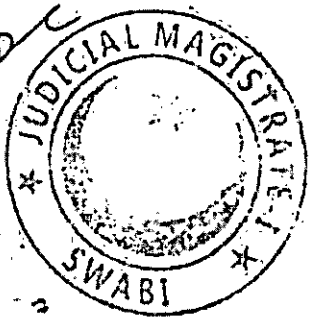
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Section 249-A Cr.PC empowers a Magistrate to acquit an accused at any stage of the proceedings, if, he is satisfied that either the charge is groundless or there is no probability of the accused being convicted.

By culmination the afore mentioned discussion, it is held that, the case of the prosecution is suffering from numerous omissions and anomalies creating reasonable doubt and dents in prosecution case qua guilt of the accused. In the presence of such omission anomalies, there is no probability of the accused being convicted, hence, by invoking powers under section 249-A Cr.PC, all the accused are hereby acquitted. Since they are on bail therefore, their bail bonds stand cancelled and sureties are absolved from the liabilities of bail bond. Case property, if any, be dealt in accordance with law. Requisitioned record (if any) be returned while file of this court be consigned to record room after its necessary completion and compilation.

Attested to
b.c. true



Announced:
01.11.2023

(Signature) 01/11/23
Muhammad Khalil Khan
Judicial Magistrate-I, Swabi