

Form No. HCJD/C-121

ORDER SHEET

LAHORE HIGH COURT,

RAWALPINDI BENCH, RAWALPINDI.

JUDICIAL DEPARTMENT

CRIMINAL REVISION NO.327 OF 2024

SHEIKH RASHEED AHMED Versus **THE STATE**

S.No.of order / Proceeding	Date of Order/ Proceeding	Order with signature of Judge, and that of parties counsel, where necessary
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10.12.2024 Sardar Abdul Raziq Khan, Advocate for the petitioner.

This petition under Section 435 read with Section 439 of The Code of Criminal Procedure, 1898 (hereinafter referred to as **Cr.P.C.**) stems from order dated 20th November, 2024, whereby learned Judge Anti-Terrorism Court-I, Rawalpindi (hereinafter referred to as **A.T.C.**) proceeded to dismiss the petition under Section 265-K of **Cr.P.C.** moved by the petitioner, seeking acquittal, pending trial.

2. Facts forming background of this petition are that a case FIR No.708 dated 09th May, 2023 was registered at Police Station R.A. Bazar, Rawalpindi with regard to an incident relating to attack on General Headquarters, Rawalpindi against some renown leaders of a political party alongwith other accused. The petitioner was implicated in the case on the basis of statement of co-accused recorded under Section 164 of **Cr.P.C.** In order to get his acquittal, the petitioner moved a petition under Section 265-C of **Cr.P.C.** before **A.T.C.** which was dismissed through the impugned order.

3. Learned counsel for the petitioner submitted that the petitioner has committed no offence. He added that the petitioner has been involved in the case by the prosecution on account of political victimization. Learned counsel submitted that there is no probability of conviction of the

petitioner and the trial before the A.T.C. would be mere futile exercise. It is argued with vehemence that the impugned order is not tenable under the law.

4. We have heard learned counsel for the petitioner at considerable length and perused the record.

5. The petitioner was arrayed as one of the perpetrators of the offence in the statement under Section 164 of **Cr.P.C.** of the co-accused, recorded before the Magistrate. The petitioner was sent before the A.T.C. to face the trial but at the very outset, he moved a petition under Section 265-K of **Cr.P.C.**, seeking his acquittal, which was turned down. We have noticed that after dismissal of the petition under Section 265-K of **Cr.P.C.**, A.T.C. proceeded to frame charge against the petitioner to which he pleaded not guilty and claimed trial. There is no cavil that in terms of Section 265-K of **Cr.P.C.** a court is vested with the power to acquit an accused at any stage of the case if it considers that there is no probability of his conviction in the offence.

6. In order to adjudge the propriety of the impugned order, it would be apposite to first examine the object and scope of Sections 249-A and 265-K of **Cr.P.C.** In the recent past, scope of Sections 249-A and 265-K of **Cr.P.C.** came under discussion before the Supreme Court of Pakistan in the case of MODEL CUSTOMS COLLECTORATE, ISLAMABAD versus AAMIR MUMTAZ QURESHI (2022 SCMR 1861), wherein Supreme Court of Pakistan held as under:-

Under section 249-A, the Magistrate is empowered to acquit any accused on two grounds i.e. charge is groundless and there is no probability of conviction, whereas under section 265-K, Cr.P.C., the court during the trial is empowered to acquit an accused, when there is no probability of conviction indicating that when there is no evidence on the record and even there is no remote probability of conviction and if there is remote probability of conviction then the court is required to

record the evidence and then decide the case on evidence bought on record during the trial. From the above sections, it is also clear that application under sections 249-A and 265-K, Cr.P.C. can be filed or taken up for adjudication at any stage of proceeding of trial i.e. even before recording of prosecution evidence or during recording of evidence or when recording of evidence is over. Although there is no bar for an accused to file application under the said sections at any stage of proceeding of the trial, yet the fact and circumstance of the prosecution case will have to be kept in mind and if there is slight probability of conviction then of course, instead of deciding the said application should record the evidence and allow the case to be decided on its merit after appraising the evidence available on record.

7. Yet again, in the case of AMMAD YOUSAF versus The STATE and another (PLD 2024 Supreme Court 273), the Supreme Court of Pakistan outlined the scope of above noted provisions in the following words:-

3. The Code has granted an inherent jurisdiction by virtue of sections 249-A and 265-K to the trial courts, as the case may be, to acquit any or all accused at any stage of the judicial proceedings for reasons to be recorded, after providing an opportunity of hearing to the parties. The words "any stage" used in both the sections include the stages before or after framing of the charge or after recording of some evidence. Such power can only be exercised where the Court is of the opinion that no charge could be framed because of lack of jurisdiction; because the material available before it is insufficient for the purposes of constituting an offence; that if charge is framed, but the Court considers it to be groundless and to allow the prosecution to continue with the trial would amount to an abuse of process; or that in all circumstances, where there is no probability of conviction of the accused, even after a full-fledged trial. Thus, if circumstances for exercise of inherent powers exist, the Court must use such powers at any stage of the proceedings on its own or upon an application by the accused, provided that an opportunity of hearing is afforded to the parties before making any order. The power assigned to the Courts by the legislature is to avoid the abuse of process of the Court; to protect the integrity of the criminal justice system; to safeguard a person involved in the case from the agony of a purposeless, malicious, and frivolous criminal prosecution; or otherwise, to secure the ends of justice. The exercise of the inherent powers is mandatory in nature, therefore, any departure therefrom would be a violation of the substantive provisions of law and would prejudice the interests of the accused, which is an illegality. If the Court considers that the available material is sufficient to proceed with the trial and refuses to quash the judicial proceedings, it does not preclude the Court from exercising its inherent power subsequently after recording some evidence or surfacing any material for the purpose of quashing the proceedings. However, the exercise of such power by the Courts must be in exceptional

circumstances, with great caution and by applying its mind judiciously.

8. After having an overview of the principles noted, hereinabove, it can safely be inferred that the powers of acquittal with the court embodied in Sections 249-A and 265-K of **Cr.P.C.** can be exercised at any stage of the trial, if in the opinion of the court, there is no probability of the accused, being convicted of the offence but such powers cannot be exercised in an omnibus fashion. The court while proceeding in terms of above provisions of law, first has to assure itself that in all probabilities, there is no chance of conviction of the accused. In simple words, we can say that for the purpose of invoking the powers either under Section 249-A or Section 265-K of **Cr.P.C.**, the approach of the court should neither be inventive nor adventurous, instead facts of the case itself require and persuade the court to exercise such powers so as to save the accused from the agony of protracted and futile trial. The petitioner though has invoked the powers of the **A.T.C.** by moving a petition under Section 265-K of **Cr.P.C.** but remained unsuccessful. As we have already noted, hereinabove, that after dismissal of petition under Section 265-K of **Cr.P.C.**, the petitioner has been confronted with charge sheet, we feel no cavil to observe that at this initial stage, it would not be apt for us to make any comment upon worth and credence of statement of the co-accused recorded under Section 164 of **Cr.P.C.** as it may cause prejudice to any of the side before the trial court. In our considered opinion, acquittal of the petitioner in terms of Section 265-K of **Cr.P.C.** in the facts and circumstances of the case, at this early stage, would amount to stifle the proceedings before the trial court, who already refused to exercise its powers in favour of the petitioner. Moreover, after dismissal of

petition under Section 265-K of **Cr.P.C.**, **A.T.C.** proceeded to frame charge against the petitioner.

9. We, thus, are of the unanimous view that **A.T.C.** did not commit any illegality or perversity while dismissing the petition under Section 265-K of **Cr.P.C.** moved by the petitioner. Resultantly, this petition, being devoid of any merits, is **dismissed *in limine*.**

10. Before parting, we may observe that the petitioner would be at liberty to move the **A.T.C.** at any subsequent stage of the trial even in the process of recording of evidence and if any such fresh application is moved by the petitioner, that shall be proceeded with and decide strictly in accordance with law.

(SARDAR MUHAMMAD SARFRAZ DOGAR)
JUDGE

(MIRZA VIQAS RAUF)
JUDGE

Sajjad

APPROVED FOR REPORTING

JUDGE

JUDGE