

## ORDER SHEET

# IN THE LAHORE HIGH COURT, MULTAN BENCH, MULTAN.

JUDICIAL DEPARTMENT

Crl. Misc. No.6425-M of 2024

Muhammad Sarfraz etc.

**Versus**

The State etc.

| S.No. of order/<br>proceeding. | Date of order/<br>proceeding. | Order with signatures of Judge, and that of parties<br>or counsel, where necessary. |
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20.11.2024. Rana Muhammad Nadeem Kanjoo, Advocate for the petitioners.

Mr. Umar Farooq Khan, APG

Mr. Muhammad Ataullah Nasir Bhatti, Advocate for the complainant.

Through this petition filed under section 561-A Cr.P.C. the petitioners have assailed the vires of the order dated 08.06.2024 passed by the learned Additional Sessions Judge, Jalalpur Pirwala, District Multan.

2. The brief facts of the case leading to the filing of the instant petition are that the petitioners were named as accused in the case F.I.R. No.761 of 2021 registered at Police Station Jalalpur Pirwala, District Multan on the information of the respondent No.2 and after the investigation of the case, the report under section 173 Cr.P.C. was submitted and the petitioners were summoned to face the trial of the case and the learned trial court framed the charge against the accused on 15.11.2022 to which they pleaded not guilty and claimed trial, however, on 28.10.2023 the petitioners submitted an application under section 249-A Cr.P.C. seeking their acquittal from the charge as framed against them and the

learned Magistrate Jalalpur Pirwala on the same day allowed the said application and directed the acquittal of the petitioners from the charge framed against them which order was assailed by the respondent No.2 by way of filing a criminal revision petition which criminal revision petition was allowed by the learned Additional Sessions Judge, Jalalpur Pirwala vide his order dated 08.06.2024 with a direction to the learned trial Court to retry the petitioners.

3. The learned counsel for the petitioners submitted that the order dated 08.06.2024 passed by the learned Additional Sessions Judge, Jalalpur Pirwala was violative of the provisions of section 417 and 439 sub-section (5) Cr.P.C., therefore, was not sustainable.

4. The learned Additional Prosecutor General submitted that the learned Additional Sessions Judge had no authority under the law to have passed the impugned order.

5. The learned counsel for the respondent No.2 submitted that as no evidence has been recorded till the order was passed by the learned Magistrate, therefore, the correct procedure was followed by the learned Additional Sessions Judge while passing the impugned order.

6. I have heard the learned counsel for the petitioner, the learned counsel for the respondent No.2, the learned Additional Prosecutor General and perused the record with their able assistance.

7. A perusal of the record reveals that the petitioners were named as accused in the case F.I.R. No.761 of 2021 registered at Police Station Jalalpur Pirwala, District Multan on the information of the respondent No.2 and after the investigation of the case, the report under

section 173 Cr.P.C. was submitted and the petitioners were summoned to face the trial of the case and the learned trial court framed the charge against the accused on 15.11.2022 to which they pleaded not guilty and claimed trial, however, on 28.10.2023 the petitioners submitted an application under section 249-A Cr.P.C. seeking their acquittal from the charge as framed against them and the learned Magistrate Jalalpur Pirwala on the same day allowed the said application and directed the acquittal of the petitioners from the charge framed against them which order was assailed by the respondent No.2 by way of filing a criminal revision petition which criminal revision petition was allowed by the learned Additional Sessions Judge, Jalalpur Pirwala vide his order dated 08.06.2024 with a direction to the learned trial Court to retry the petitioners. The provisions of the law with regard to the acquittal of an accused during the trial held by a Magistrate are very clear in their meaning. It has been provided under section 417 Cr.P.C., that if an accused is acquitted in a case, a person aggrieved by the order of acquittal passed by any court other than a High Court may within 30 days file an appeal against such order and the Public Prosecutor may also present an appeal to the High Court from the order of acquittal passed by any court other than a High Court. The provisions of section 417 Cr.P.C read as under:-

**“417. Appeal in case of acquittal.**

(1) Subject to the provisions of subsection (4), the Provincial Government may, in any case, direct the Public Prosecutor to present an appeal to the High Court from an original or appellate order of acquittal passed by any Court other than a High Court.

(2) If such an order of acquittal is passed in any case instituted upon complaint and the High Court, on an application made to it by the complainant in this behalf, grants special leave to appeal from the order of acquittal, the complainant may present such an appeal to the High Court.

(2A) A person aggrieved by the order of acquittal passed by any court other than a High Court, may, within thirty days, file an appeal against such order.

(3) No application under subsection (2) for the grant of special leave to appeal from an order of acquittal shall be entertained by the High Court after the expiry of sixty days from the date of that order.

(4) If, in any case, the application under subsection (2) for the grant of special leave to appeal from an order of acquittal is refused, no appeal from that order of acquittal shall lie under subsection (1)

(5) An appeal against an order of conviction or acquittal under section 354A, 376, 376A, 377 or 377B of the Pakistan Penal Code, 1860 (Act XLV of 1860) shall be decided within six months.”

It is also a fact that under section 439 sub-section (5) Cr.P.C., it has been expressly provided by law that where under the Cr.P.C., an appeal lies then no proceedings by way of revision shall be entertained at the instance of the party who could have appealed. Section 439 read as under:-

**“439. High Court’s powers of revision.**

(1) In the case of any proceeding the record of which has been called for by itself or which otherwise comes to its knowledge, the High Court may, in its discretion, exercise any of the powers conferred on a Court of Appeal by sections 423, 426, 427 and 428 or on a Court by section 338, and may enhance the sentence; and, when the Judges composing the Court of Revision are equally divided in opinion, the case shall be disposed of in manner provided by section 429.

(2) No order under this section shall be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(3) Where the sentence dealt with under this section has been passed by a Magistrate the Court shall not inflict a greater punishment for the offence which, in the opinion of such Court, the accused has committed than might have been inflicted for such offence by a Magistrate of the first class.

(4) Nothing in this section shall be deemed to authorize a High Court—(a) to convert a finding of acquittal into one of conviction; or (b) to entertain any proceedings in revision with respect to an order made by the Sessions Judge under section 439A.

**(5) Where under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.**

(6) Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under subsection (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction.” (emphasis supplied)

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In this particular case the petitioners were acquitted in the case F.I.R. No.761 of 2021 registered at Police Station Jalalpur Pirwala, District Multan and, therefore, the respondent No.2, the complainant of the case, had to file an appeal against their acquittal under section 417 Cr.P.C., however, proceeded to file a criminal revision petition which was not even permissible under the provisions of section 439 sub-section (5) Cr.P.C. Furthermore, the learned Additional Sessions Judge while accepting the said criminal revision petition also erred in law and exercised jurisdiction which he did not have. It does not matter whether the acquittal of an accused in a case has been ordered after the recording of evidence or without recording of evidence and as it is an acquittal in a case therefore an appeal has to be filed under section 417 Cr.P.C. . No proceedings by way of criminal revision petition under section 439 Cr.P.C. are envisaged in a case where accused has been acquitted by any court other than a High Court. This Court in the case of *Mst. Bahisht Bibi Versus Maqbool Ahmad and 5 others (2003 P Cr. L J 768 )* has already held as under :-

“The respondents were tried in a private complaint and acquitted vide order, dated 22-11-1999 against which order the petitioner had a remedy under section 417(2), Cr.P.C. before this Court by tiling petition for special leave to appeal instead of filing this application the petitioner opted to file revision petition in the Court of learned Additional Sessions Judge which was dismissed and now this revision petition has been filed. Basically the order of acquittal dated 22-11-1999 passed in the private complaint tiled by the petitioner has been challenged in this revision petition and the same is not maintainable under subsection (5) of section 439, Cr.P.C. which provides that where, under this Code an appeal lies and no appeal is brought, no proceedings by way of revision shall be entertained at the instance of the party who could have appealed.”

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In the case of *MST. MAMOONA AKHTAR VERSUS MAGISTRATE SECTION 30, WAZIRABAD, DISTRICT GUJRANWALA and 2 others (2005 M L D 896)* this Court has held as under :-

“After going through the aforesaid provisions of law and the citations, I am of the considered view that no revision is competent before the Sessions Court against an order, which is challengeable in appeal under section 417(2-A), Cr.P.C. As the petitioner had been acquitted of the charge under section 249-A, Cr.P.C. by the learned Magistrate Section 30, the remedy of filing an appeal was available to the complainant and the revision petition was not competent, so the impugned judgment dated 15-4-1996 is declared to be without any lawful authority and as such of no legal effect.”

In the case of *GHULAM MUHAMMAD Versus ADDITIONAL SESSIONS JUDGE and 3 others (1998 M L D 1605)* this Court has held as under :-

“The remedy of appeal was available to the petitioner against the order of the Trial Court acquitting the accused while exercising power under section 249-A, Cr.P.C. The petitioner failed to file an appeal against the order of the Magistrate. The Additional Sessions Judge was justified in dismissing the revision vide impugned order dated 7-8-1996.”

In the case of *MUHAMMAD AKRAM versus ADDITIONAL SESSIONS JUDGE, RAWALPINDI and 6 others (2005 Y L R 1037)* this Court has held as under :-

“9-A. In the instant case, the learned Judicial Magistrate though used the word discharge by accepting the application under section 249-A, of the Cr.P.C. it will be read as acquittal. As learned Single Judge of this Court, as he then was, in the case of Muhammad Yasin v. Muhammad Hanif and others 1997 PCr.LJ 1626, found remarkable difference between the acquittal recorded under section 245, Cr.P.C. and one under section 249-A, of

the Cr.P.C. In his view, if evidence is not recorded and an order of acquittal is passed under section 249-A, Cr.P.C., it is amenable to the revisional jurisdiction of the Sessions Judge, but, in case acquittal is recorded after prosecution evidence and examining of the accused an appeal will lie under section 417, of the Cr.P.C. I have not been able to persuade myself with the view expressed by the learned Single Judge in the above case in view of the clear and unambiguous language used in section 249-A of the Cr.P.C. providing acquittal at any stage of the case, if the charge is groundless. Even otherwise, acquittal recorded by the competent Court of law on recording of evidence or without recording of evidence, will not determine the remedy of revision or appeal, but the same is governed by statutory provisions of law. After introduction of subsection (2-A) in section 417 of the Cr.P.C. any person aggrieved by an order of acquittal has been conferred a right to file an appeal against the acquittal. In presence of remedy by way of appeal, the revision is not competent under section 439(5) of the Cr.P.C.”

8. In view of the above discussion, this petition is **allowed** and the order dated 08.06.2024 passed by learned Additional Sessions Judge, Jalalpur Pirwala is **set aside**. Obviously the respondent No.2 shall be at liberty to avail the remedy available to her under the law to assail the acquittal of the petitioners by way of filing an appeal against the said order in accordance with the law.

**(SADIQ MAHMUD KHURRAM)**  
**JUDGE**

*Malik Iftikhar*

Approved for Reporting

Judge