

Writ Petition No.82843 of 2023

Rasoolan Bibi

The State, etc.

14.05.2024 Mr. Muzamal Aslam Khan, Advocate for the Petitioner.
Mr. Waqas Umer, AAG, with Murtaza A.S.I.
Rao Nasir Ilyas, Advocate for respondent No.5.

Through the instant petition, under Article 199 of the Constitution of the Islamic Republic of Pakistan, 1973, the legality and validity of the impugned order dated 12.12.2023 passed by Judicial Magistrate Section-30, District Courts, Lahore, have been challenged, whereby the accused/respondent No.5 was discharged from the case for insufficient incriminating material regarding the accused's implication.

2. Heard. Record perused.

3. Bare facts and perusal of the impugned order show that the investigating officer, through the application, requested for further physical remand of respondent No. 5. The physical remand of respondent No.5 was asked for by the police as some document had to be recovered from him for completion of the investigation. The Judicial Magistrate Section-30, Lahore, while discharging the accused (respondent No. 5), turned down the request for further physical remand of the accused (respondent No. 5). The accused (respondent No. 5) was discharged on the following grounds:-

“I.O through this application requested for further physical remand of the accused person.

The record shows the accused as nominated in FIR for preparing a false and forged agreement to sell

belonging to the property of Naziran Bibi (late), the mother of complainant. Previously seven days physical remand was accorded for the completion of investigation and recovery of alleged document. Presently, the matter is sub-judice between the parties on civil side, where the alleged document is used for obtaining stay orders. The court is the competent forum to proceed u/s 195 Cr.P.C., if the document is found to be false and fictitious. A private person is barred by Sec.195 Cr.P.C. make any complaint in this regard.

So far as facts are concerned, during the investigation conducted till so far no forgery is established on part of present accused. As per report by ADC (R) license in the name of Muhammad Sharif (Stamp Vendor) is found to be valid from 1974 to 23.01.2015 (when cancelled). However, Stamp vending register for 2013-14 was not deposited by said Stamp Vendor but it could not be termed that stamp papers issued during this period are fake and fictitious. Nothing is recovered from the possession of present accused despite of 07 days physical remand. In such circumstances, I do not found any incriminating material on record and turn down the request of I.O for physical remand. The accused is discharged from this case FIR and be released, if not required in any other case.”

Coming to the contention of the learned counsel for respondent No. 5 that an effort should be made to avoid conflict of findings between the civil and criminal courts, it is necessary to point out that the standard of proof required in the two proceedings is entirely different. Civil cases are decided based on preponderance of evidence, while in a criminal case, the entire burden lies on the prosecution, and proof beyond reasonable doubt has to be given. There is neither any statutory provision nor any legal principle that the findings recorded in one proceeding may be treated as final or binding in the other, as both cases have to be decided based on the

evidence adduced therein. Section 195 CrPC would be attracted only when the offenses enumerated in the said provision have been committed concerning a document after it has been produced or given in evidence in a proceeding in any court. The existence of the document is not denied. The learned counsel for respondent No. 5 admitted that the document had not been produced or given in evidence. Findings of the Judicial Magistrate Section-30, Lahore, are perverse and against the law. The findings of the Judicial Magistrate Section-30, Lahore, are perverse and result from misreading and non-reading the oral and documentary evidence on the record and file. The order dated 12.12.2023 passed by the Judicial Magistrate Section-30, Lahore, is set aside. The matter is referred to the learned District and Sessions Judge, Lahore, to entrust the case to any other Judicial Magistrate Section-30 to decide the matter afresh after issuing notice to all the concerned parties and allowing them to be heard by the law.

4. With the above observations, the instant petition stands disposed of.

(Aalia Neelum)
Judge

Approved for reporting

*This order has been dictated,
pronounced, prepared, and
signed on 14.05.2024*

*Ikram**