

H C J D A 38.

JUDGMENT SHEET  
IN THE LAHORE HIGH COURT LAHORE,  
LAHORE

JUDICIAL DEPARTMENT

**Crl. Misc. No.61551-M of 2022**

Rana Muhammad Yousaf Khan Advocate v. The State, etc.

Date of hearing **08.12.2022**

Petitioner by: Petitioner in person.

Respondent

No.2 by: Rana Shahid Mehmood Khan,  
Advocate for respondent No.2.

State by: Mr. Tariq Siddique, Additional  
Prosecutor General and Mr.  
Muhammad Naveed Umer Bhatti,  
Deputy Prosecutor General.

**MUHAMMAD WAHEED KHAN, J.-** By  
invoking inherent jurisdiction of this Court in terms of  
Section 561-A Cr.P.C., the petitioner/accused Rana  
Muhammad Yousaf Khan, Advocate has challenged the  
vires of order dated 16.04.2022 passed by the learned  
Magistrate Section 30, Gojra (**respondent No.4**), wherein,  
application filed by the petitioner under Section 249-A of  
Code of Criminal Procedure, 1898 (Cr.P.C) was turned  
down and order dated 15.08.2022, whereby, Criminal  
Revision filed against the order dated 16.04.2022 was  
dismissed by the learned Additional Sessions Judge, Gojra,  
District T.T.Singh, (**respondent No.3**), who upheld the  
order of learned Judicial Magistrate.

2. Complainant namely, Sheikh Abdul Waheed  
(**respondent No.2**), lodged F.I.R No. 877/2020 dated

17.10.2020 under Section 25-D of the Telegraph Act 1885, at Police Station, City Gojra, District T.T.Singh against the petitioner and the trial of above said case is pending adjudication before the Court of first instance and during trial proceedings petitioner filed an application u/s 249-A Cr.P.C. for his acquittal but said forum dismissed his application vide order dated 16.04.2022. Said decision was challenged by the petitioner before the learned Additional Sessions Judge, Gojra, by filing Criminal Revision Petition which also met with the same fate vide order dated 15.08.2022.

3. Learned counsel for the petitioner is not available today but the petitioner present in Court, who is also an advocate, submits that he is ready to advance arguments himself. In support of this petition, the petitioner contends that except one Compact Disc (CD) of a Call Data which was allegedly procured by the Police vide recovery memo dated 19.11.2020, the prosecution is not equipped with any other incriminating material/evidence on record. During the course of investigation, neither the mobile phone of the accused/petitioner from which the call was allegedly made nor the mobile phone of the complainant was taken into possession by the investigating agency. As far as the recovery of Compact Disc (CD) is concerned, the same was produced before the Police by one of the prosecution witness namely, Kamran son of Muhammad Ashgar and admittedly, no forensic report qua the veracity and genuineness of said C.D is available on record. Similarly, co-accused persons namely Hafiz Muhammad Shafiq and Mst. Ghazala Bibi were declared innocent by the Police and their innocence by the Police has not been challenged by the complainant at any Higher Forum of Police

hierarchy; petitioner lastly submits that since the charge against him is groundless and there is no probability of his conviction in any manner, so, by accepting instant petition, he be acquitted of the charge.

4. On the other hand, learned Law Officer assisted by the learned counsel for the complainant has candidly admitted that except Compact Disc (CD) the memo of which is annexed with this petition at Page No.36, there is no other incriminating evidence available with the prosecution and also admitted that said C.D has not been forensically got analyzed/tested by the Police. It was further apprised to the Court that report u/s 173 Cr.P.C. against the petitioner is pending adjudication for the last about two years in which not a single witness has been recorded by the prosecution so far.

5. I have heard the petitioner in person as well as learned Law Officer assisted by learned counsel for the complainant and have gone through the available record with their assistance and noticed that petitioner had basically sought his acquittal from the learned Trial Court u/s 249-A Cr.P.C. For ready reference Section 249-A is reproduced as under:-

**249-A. Power of Magistrate to acquit accused at any stage:** Nothing in this Chapter shall be deemed to prevent a Magistrate from acquitting an accused at any stage of the case if after hearing the prosecutor and the accused and for reasons to be recorded, he considers that the charge is groundless or that there is no probability of the accused being convicted of any offence.

On going through the above provision of law, it is clear that no embargo has been imposed upon the accused to file such application seeking his acquittal at any stage of the

case and only certain conditions have been described therein, firstly, that the Court has to give the right of hearing to the prosecutor and the accused and if reaches to the conclusion that the charge against the accused is groundless or there is no probability of accused being convicted of any offence, he shall be acquitted of the charge through an order in which such reasons have to be recorded for reaching to the conclusion that charge(s) against the accused is/are baseless. There is no cavil with the proposition that powers under Sections 249-A and 265-K Cr.P.C available to the learned Trial Court are similar to powers of High Court u/s 561-A of Cr.P.C.

6. As observed in this case, the charge against the petitioner was that he extended threats of dire consequences from his cell No.0302-7004605 at the mobile phone of complainant 0309-9107899 but admittedly, neither cell phone or its Subscriber Identity Module (SIM) nor the mobile phone of the complainant was taken into possession by the Investigating Agency during the course of investigation. Sole reliance of the prosecution in this case is, on the audio C.D allegedly prepared by above said Kamran. The relevant provision regarding evidence prepared through modern devices is Article 164 of QANUN-E-SHAHADAT ORDER, 1984 which is reproduced for ready reference;-

**164. Production of evidence that has become available because of modern devices, etc.:** In such cases as the Court may consider appropriate, the Court may allow to be produced any evidence that may have become available because of modern devices or techniques.

However, in the light of Article 164 supra the august Supreme Court of Pakistan in case of "ISHTIAQ AHMED

MIRZA and 2 others versus FEDERATION OF PAKISTAN and others” (PLD 2019 Supreme Court 675), has laid down the following criteria regarding admissibility of an audio tape or video in evidence before a Court of law and the mode and manner of proving same before the Court:

- (i) *No audio tape or video could be relied upon by a court until the same was proved to be genuine and not tampered with or doctored.*
- (ii) *A forensic report prepared by an analyst of the Provincial Forensic Science Agency in respect of an audio tape or video was per se admissible in evidence in view of the provisions of section 9(3) of the Punjab Forensic Science Agency Act, 2007.*
- (iii) *Under Article 164 of the Qanun-e-Shahadat Order, 1984 it laid in the discretion of a court to allow any evidence become available through an audio tape or video to be produced.*
- (iv) *Even where a court allowed an audio tape or video to be produced in evidence, such audio tape or video had to be provided in accordance with the law of evidence.*
- (v) *Accuracy of the recording must be proved and satisfactory evidence, direct or circumstantial, had to be produced so as to rule out any possibility of tampering with the record.*
- (vi) *An audio tape or video sought to be produced in evidence must be the actual record of the conversation as and when it was made or of the event as and when it took place.*
- (vii) *The person recording the conversation or event had to be produced.*
- (viii) *The person recording the conversation or event must produce the audio tape or video himself.*
- (ix) *The audio tape or video must be played in the Court.*
- (x) *An audio tape or video produced before a court as evidence ought to be clearly audible or viewable.*
- (xi) *The person recording the conversation or event must identify the voice of the person speaking or the person seen or the voice or person seen may be identified by any other person who recognized such voice or person.*
- (xii) *Any other person present at the time of making of the conversation or taking place of the event may also testify in support of the conversation heard in the audio tape or the event shown in the video.*
- (xiii) *The voices recorded or the persons shown must be properly identified.*
- (xiv) *The evidence sought to be produced through an audio tape or video had to be relevant to the controversy and otherwise admissible.*

- (xv) *Safe custody of the audio tape or video after its preparation till production before the court must be proved.*
- (xvi) *The transcript of the audio tape or video must have been prepared under independent supervision and control.*
- (xvii) *The person recording an audio tape or video may be a person whose part of routine duties was recording of an audio tape or video and he should not be a person who has recorded the audio tape or video for the purpose of laying a trap to procure evidence.*
- (xviii) *The source of an audio tape or video becoming available had to be disclosed.*
- (xix) *The date of acquiring the audio tape or video by the person producing it before the Court ought to be disclosed by such person.*
- (xx) *An audio tape or video produced at a late stage of a judicial proceeding may be looked at with suspicion.*
- (xxi) *A formal application had to be filed before the Court by the person desiring an audio tape or video to be brought on the record of the case as evidence.*

In another celebrated judgment of the august Supreme Court of Pakistan in case of “Member (Administration), Federal Board of Revenue and others versus Mian Khan” (**PLD 2021 SCMR 1077**), the Apex Court through its esteemed judgment has observed as following:-

*“It is an admitted fact that no regular inquiry was conducted by the petitioner Department and the same was dispensed with on the ground that the other evidence in the shape of CCTV footage is so authentic that major penalty can be imposed upon the respondent in the absence of regular inquiry and while imposing the major penalty CCTV footage was made the sole criterion to proceed against the respondent. It is an apathy that the said CCTV footage was never sent to the office of Forensic Science Laboratory for its authenticity. In the absence of any forensic report qua the authenticity of the CCTV footage, the same cannot be considered a legal basis for proceeding against a person. In the case of **Ishtiaq Ahmed Mirza v. Federation of Pakistan** (**PLD 2019 SC 675**) this Court has held that with the advancement of science and technology, it is now possible to get a forensic examination, audit or test conducted through an appropriate laboratory so as to get it ascertained as to whether an audio tape or a video is genuine or not and as such or video has been edited, doctored or tampered with or not because advancement of science and technology has also made it very convenient and easy to edit, doctor, superimpose or Photoshop a voice or picture in an audio tape or video, therefore, without a forensic examination, audit or test, it is becoming more and more unsafe to rely upon the same as a piece of evidence in a court of law. We have noticed that the*

*CCTV footage was even not produced before the learned Federal Service Tribunal. Even otherwise, mere producing of CCTV footage as a piece of evidence without any forensic test is not sufficient to be relied upon unless and until corroborated and proved to be genuine. The passengers, who allegedly gave the bribe, had also not been associated with the departmental proceedings. No question of law of public importance within the meaning of Article 212(3) of the Constitution of Islamic Republic of Pakistan, 1973, has been raised either in this petition to warrant interference by this Court.*

7. After going through the ‘memo of possession’ of audio C.D, it is noticed that same was prepared by one Kamran, a witness of the case, after copying the audio from the mobile phone of the complainant while pasting the same at the C.D. Since the C.D was prepared after copying the original voice from the mobile phone, it loses its authenticity because the same was not the original device where the voice of the accused was recorded. Moreover, it was not provided by the complainant to the police rather by the afore-said witness after copying the same from the mobile phone of the complainant. Thus, the preparation of this C.D, in any way, does not fulfill the criteria as provided by the Hon’ble Supreme Court of Pakistan in the afore referred judgments. The best course in this case could be that the Police should have taken into possession the mobile phone of the complainant on which the threatening call was received and got it forensically tested after comparing with the voice of the petitioner/accused but this attempt was not made by the Investigating Agency to reach some proper conclusion. In my view, this evidence, i.e, the Compact Disc having audio cannot be used against the petitioner as the same was not prepared/generated in view of the parameters as mentioned above in the afore-referred judgments.

8. The other aspect of the case is that according to the contents of F.I.R, co-accused Hafiz Muhammad Shafiq, clerk of accused Muhammad Yousaf, Advocate, also allegedly extended threats of dire consequences to the complainant by using his mobile Phone No.0300-6683182. Similarly, co-accused Mst. Ghazala also extended threats and also called his name/abused the complainant. These two co-accused persons were declared as innocent by the Police and learned Law Officer assisted by learned counsel for the complainant frankly, admitted that these findings of the Police had never been challenged by the complainant at any higher forum of Police hierarchy.

9. So, for the reasons discussed supra, it is manifestly clear that the charges levelled against the petitioner by respondent No.2 Sheikh Abdul Waheed are groundless and analyzing and viewing the incriminating evidence/material, allegedly with which prosecution is equipped, there is no probability of the petitioner/accused being convicted. Now if the trial is allowed to proceed further that would be travesty of justice, sheer mis-use of process of law and wastage of precious time of Court as the petitioner has already suffered rigours and agony of protracted investigation and trial, since lodging of the F.I.R in question, which had been lodged on 17.10.2020. Resultantly, while exercising inherent jurisdiction conferred upon this Court u/s 561-A Cr.P.C, this petition is allowed and the order of the learned Magistrate dated 16.04.2022 to the extent of dismissing the application of the petitioner under Section 249-A Cr.P.C and judgment dated 15.08.2022 of the learned Additional Sessions Judge, Gojra, District T.T.Singh in Criminal Revision Petition are

set aside and petition filed by the petitioner u/s 249-A Cr.P.C is allowed and trial proceedings before learned Trial Court are hereby quashed and the petitioner Muhammad Yousaf is acquitted of the charge.

**(MUHAMMAD WAHEED KHAN)  
JUDGE**

*This case was heard on 08.12.2022 and reserved. Today i.e.  
13.01.2023, it has been announced in open Court.*

**JUDGE**

**Approved for reporting**

**JUDGE**

*Ehsaan Ullah Sandhu\**