

**JUDGMENT SHEET**  
**IN THE ISLAMABAD HIGH COURT, ISLAMABAD**  
**JUDICIAL DEPARTMENT**

**P.S.L.A. No. 1 of 2022**

Shahid Amin Minhas

versus

The State and others

Petitioner by: M/s Ehtasham Aslam Khan and Zubair Aslam,  
Advocates  
Respondent no.1 by: Mr. Asad Ullah Taimoor, State counsel  
Respondents no.2 to 4: Mr. Sher Afzal Khan Marwat, Advocate  
Date of Decision: **13.06.2022**

**Sardar Ejaz Ishaq Khan, J:** This is a petition for special leave to appeal under section 417(2) CrPC against the impugned order dated 18.12.2021 passed by the learned Judicial Magistrate - section-30, West-Islamabad, whereby he accepted the application under section 249-A CrPC, and acquitted the respondents in the private complaint filed by the petitioner under section 200 CrPC.

2 A review of the record reveals an unfortunate tale of real brothers turning against each other, and the petitioner against his 90 year old father, in their tussle over a house in Islamabad. The avarice for a material possession seems to have blinded them to filial respect and brotherhood to such an extent that they have filed all kinds of criminal and other litigations against each other.

3 The complaint in question under section 200 CrPC was filed on 17.07.2021, about one-and-a-half year after the alleged incident on 24.12.2019. The complaint alleged that respondents no.1 to 3, real brothers of the complainant, along with the security guards of the company arrayed as respondent no.4, trespassed into a portion of the house claimed by the petitioner to be his and, during that trespass, the respondents tried to take hostage the petitioner's wife, son and grandchild, and extended death threats. The complaint also alleges that one of the brothers shouted at the armed security guards ordering them to shoot at the complainant and his family, and that one of the guards did fire but the bullet misfired. The

complaint prayed for the court to try and punish the respondent brothers under sections 452, 506(ii), 324 and 34 PPC.

4 The learned magistrate recorded cursory evidence and passed an order to summon the accused. The respondents appeared and filed their application under section 249-A CrPC, setting out the entire history of the litigation between the brothers. That history is laid out in much elaborate detail in an order dated 25.10.2021 passed by the learned Sessions Judge Islamabad-West in another complaint no.1/2021 under sections 3, 4 and 8 of the Illegal Disposition Act, 2005 (**ILDA**) titled Major (R) Muhammad Amin Minhas versus Shahid Amin Minhas, etc., in an application under section 7 of ILDA, filed much prior to the complaint under section 200 CrPC the subject of this leave application. That complaint under ILDA was filed by the unfortunate 90 year old father stating that Shahid Amin Minhas, respondent no.1 therein and the petitioner in the instant leave application, entered into the father's property on 24.12.2019 and occupied a portion of the house without the father's consent, i.e. the father's illegal dispossession; the incident the subject of the instant complaint allegedly occurred on the same day. This date is material, as the learned counsel for the complainant laid much emphasis on the commonality of the dates for the two complaints, stating that the instant complaint was filed to counter the father's complaint under ILDA.

5 The subsequent events are elaborately laid down in paragraph 5 of the impugned order of acquittal against which the instant leave application is filed, and I can do no better to set the background litigation than to reproduce that paragraph in toto:

Perusal of record shows that complainant has preferred the instant private complaint for redressal of his grievance in respect of incident took place on 24.12.2019 whereupon while taking cognizance of the matter the private complaint was admitted and accused persons were summoned to face the trial. Now the substance of instant application the accused persons are seeking their acquittal from the accusation leveled against them by the complainant. It is adverted from the record that initially complainant reported the matter to the police but his plea was not entertained and ultimately the complainant filed a petition U/S 22-A Cr.P.C which was dismissed vide order dated 21.01.2020 passed by learned Ex-Officio Justice of Peace/Additional Sessions Judge-West, Islamabad. Contrary to the stance of the

complainant, there is another aspect of the facts lying behind the curtain which the complainant withheld and according to writ petition No.757 of 2020 titled as “Major ® Muhammad Amin Minhas etc Versus Shahid Amin Minhas etc” the order dated 07.02.2020 passed by the learned Additional Sessions Judge-West, Islamabad qua complaint U/S 3 /4 and 8 of Illegal Dispossession Act, 2005 was set aside and the writ petition was allowed and in this context Intra Court Appeal titled as “Shahid Amin Minhas Versus Major ® Muhammad Amin Minhas etc” was dismissed vide order dated 24.03.2021 by the Hon’ble Islamabad High Court, Islamabad. Furthermore, against order dated 21.01.2020 the complainant filed a writ petition No.1651 of 2020 titled as “Shahid Amin Minhas Versus Additional Sessions Judge/Ex-officio Justice of Peace Islamabad-West etc” which was decided vide order dated 25.05.2021 wherein the Hon’ble Islamabad High Court, Islamabad observed that the dispute between the parties is of civil nature. In furtherance whereof it is destined that the complainant has suppressed the material facts and it is rather his plea could not be entertained up to the level of Hon’ble High Court, therefore, in presence of verdict passed by the Apex forum there arises no probability of conviction of the accused persons, hence, while invoking the provision section 249-A Cr.P.C accused persons namely Abid Amin Minhas, Tahir Amin Minhas and Zahid Amin Minhas are hereby acquitted from the charges of instant case. Sureties stand discharge from liability. Case property if any be dealt in according with law. File be consigned to the record room after its due completion.

6 Learned counsel for the petitioner sought to argue that, this being a private complaint, the magistrate should have allowed evidence to be led, that only the petitioner’s cursory evidence was sufficient, and that the magistrate was not entitled to acquit the accused under section 249-A CrPC without conducting the full proceedings in the complaint. He cited Lt.Col. (Retd.) Baqar Nawab versus Syed Muhammad Hassan Tauheed and 2 others (2021 PCr.LJ 545) to claim that the material submitted in support of charge sheet had to be looked into before considering a case for acquittal. He tended to assert that the material included the allegation of a ‘misfire’, and also the affidavit of one of his neighbors who said that he heard a shot at that time. He placed much emphasis on that statement of his neighbour and cited Malik Muhammad Ibrahim versus The State and 4 others (1985 PCrLJ 929) to assert that the deponent of an affidavit had to be made available for his evidence to be led before invoking section 249-A CrPC.

7 I am afraid the legal position is not quite as urged by the learned counsel per the preceding paragraph. The words ‘at any stage’ in section 249-A CrPC would be rendered meaningless if the learned counsel’s proposition were to prevail. The Hon’ble Supreme Court observed in State vs Raja Abdul Rehman (2005 SCMR 1544) that “...*the words ‘at any stage’ denote that such application can be filed even before recording of evidence...*”. Accordingly, learned counsel’s contention that the magistrate was under a legal obligation to record the entire evidence before taking up and deciding the application under section 249-A CrPC, with respect, is not correct.

8 The scope of interference in appeal against acquittal is narrower and limited. Although, unlike an order of acquittal on merits after a trial, the double presumption of innocence may not apply with its full force to an acquittal under section 249-A, giving a go by to that double presumption altogether is also not warranted, or else the purpose of a leave stage would be rendered meaningless. One of the safest and most salutary principles is that if two views of the material on record are possible, the one favouring the acquitted is to be preferred: Ghulam Sikandar vs Mamaraz Khan (PLD 1985 SC 11) and Mohammad Inayat vs The State (1998 SCMR 1854). A leave to appeal must demonstrate on the record that the order is perverse, arbitrary, wholly illogical or the findings are not based on any evidence – this minimum threshold ought to be crossed for grant of leave. So the Court ought to be slow in interfering with an acquittal unless it is shown to be perverse, illegal, suffering from error or grave misreading or non-recording of evidence on record: Naqibullah versus The State and another (2019 PCr.LJ 100). Acquittal once granted cannot be recalled merely on the possibility of a contrary view; unless the impugned view is found on the fringes of impossibility resulting into a miscarriage of justice, the order of acquittal is not to be interfered with: Zulfiqar Ali versus Imtiaz and others (2019 SCMR 1315) and The State versus Abdul Ghaffar (1996 SCMR 678).

9 Given the extract of the impugned order reproduced above, the probability that the complaint was filed to settle the score in a civil dispute between the parties in relation to the disputed house, in which the petitioner did not met with any success right up to the High Court, cannot be ruled out

altogether. The petitioner's complaint to the police on the same incident right up to the highest authorities did not meet with any success and no case was registered. His application before the Justice of Peace was also dismissed for the same incident. Subsequently, his writ petition before the Islamabad High Court against the order of the Justice of Peace refusing to direct the police to register an FIR was also dismissed. The private complaint is yet another round of litigation, where the complainant urges an alternative version of the events that occurred on that fateful day when he was found to have dispossessed his own father. Plausible it might be, the view taken by the learned magistrate in the impugned order is not implausible either for this Court to prefer the complainant's version in the absence of demonstration of any 'threshold tests' per the preceding paragraph on a review of the record.

10 I do not find this case fit for grant of leave, and hence this petition for special leave to appeal is dismissed.

**(Sardar Ejaz Ishaq Khan)**  
**Judge**