

JUDGMENT SHEET
IN THE ISLAMABAD HIGH COURT, ISLAMABAD
JUDICIAL DEPARTMENT

Criminal Appeal No.278/ 2019

Khalid Mehmood
Versus
The State and others

Appellant by:	Mr. Nadeem Mukhtar Ch., Advocate.
Respondent No.2 to 4 by:	Mr. Sher Afzal Khan Babar, Advocate alongwith
State by:	Mr. Zohaib Hassan Gondal, State counsel alongwith Muhammad Yousaf Sub- Inspector.
Date of Hearing:	16.09.2020.

Ghulam Azam Qambrani, J.:- Through this appeal the appellant (Khalid Mehmood) seeks setting aside of impugned order dated 09.07.2019, passed by the learned Judicial Magistrate, Section-30, Islamabad-West, whereby respondents No.2 to 4 (hereinafter be called as “**respondents**”) were acquitted under Section 249-A, Cr.P.C.

2. Briefly, the prosecution case is that the complainant/appellant got registered F.I.R No.262 dated 22.09.2016, under Sections 279/ 337-G/ 506/ 34 P.P.C, with Police Station Margalla, Islamabad stating therein that suit for dissolution of marriage on the basis of khula was pending between the appellant and his wife before the learned Judge Family Court, Islamabad; on 21.05.2016 when he was going to attend the Court on foot, the accused/ respondents 2 to 4 and 3/4 unknown persons came there on an old model car, and hit with him. Resultantly, he got seriously injured and fell down; that the accused party threatened him that if the family case is not withdrawn, they would kill him, hence the above said F.I.R.

3. After registration of F.I.R, the investigation was carried out and on conclusion of investigation, report under Section 173 Cr.P.C was submitted before the learned trial Court on 14.04.2016 and the charge was framed on 29.03.2017. During the proceedings, respondents moved an application under Section 249-A, Cr.P.C., which was allowed vide impugned order dated 09.07.2019. The appellant/ complainant being aggrieved of the impugned order, has challenged the same through the instant appeal.

4. Learned counsel for the appellant contended that the impugned order has been passed in haste without affording opportunity to the prosecution to lead their evidence and prove its case; that acquittal of accused/ respondents is not in accordance with law and facts of the case. Further contended that the impugned order is unreasonable, perverse and manifestly wrong, as such, same is liable to be set-aside.

5. Conversely, learned counsel for the accused/ respondents submitted that the accused/ respondents are totally innocent and have falsely been implicated in this case; that after a delay of 33 days of the alleged occurrence, the complainant filed an application before the police for registration of the instant case; that on 18.10.2016, the complainant mentioned the vehicle Suzuki in the FIR, but the said vehicle has not been recovered during the investigation; that false F.I.R has been registered against them; that in the MLC of the appellant, no injury has been mentioned. Lastly, prayed for dismissal of the instant appeal. The learned State counsel supported the version of the appellant.

6. Heard arguments of the learned counsel for the parties and perused the available record.

7. In the instant case, as per version of the appellant/ complainant, a suit for dissolution of marriage on the basis of Khula was pending before the learned Judge Family Court in between the appellant and his wife namely Mst. Ume Salma, daughter of respondent No.3, (father-in-law of the appellant). The appellant

earlier filed a Private Complaint under Section 200 Cr.P.C. before the learned Additional Sessions Judge, West, Islamabad, leveling certain allegations against respondent No.3 and Mst.Ume Salma, which was dismissed vide order dated 27.11.2014, with the observation that the appellant failed to produce any cogent evidence in the form of oral as well as documentary evidence in support of his allegations leveled in the complaint. The appellant also moved an application under Section 22-A of Cr.P.C. for registration of a criminal case against his father-in-law/respondent No.3, which was also dismissed, but the learned ASJ-West, Islamabad vide order dated 17.11.2014 on the ground that the appellant is engaged in family litigation with respondent No.3 and his wife; that the petition under Section 22-A, Cr.P.C. has been moved just to exert pressure on them. Thereafter, the appellant also moved an application under Section 22-B Cr.P.C. for registration of case against his father-in-law, respondent No.3 and for recovery of Rs.2,49,538 and jewellery worth Rs.3,16,500/-, which was also dismissed by ASJ-West, Islamabad vide order dated 17.11.2014.

8. It also reveals from perusal of the record that the alleged occurrence as mentioned in the F.I.R is dated 21.05.2016 whereas the F.I.R has been lodged on 22.09.2016, after a delay of about four months; therefore, prima facie, malafide involvement of the respondents/ accused in the instant case, cannot be ruled out. Record further transpires that charge in the instant case was framed on 29.03.2017, but due to the absence of the complainant/ appellant, proceedings in the case were stopped and the case was consigned to the record room under Section 249 Cr.P.C, vide order dated 13.09.2017. The appellant moved an application for restoration of the same, which was allowed on 02.11.2017, but after restoration of the case, the appellant again disappeared. The respondents/ accused, moved an application under Section 249-A Cr.P.C, which was dismissed vide order dated 13.03.2019, thereafter, repeated summons and warrants were issued against the

complainant/ appellant for production of his evidence, but prosecution failed to produce its evidence. As such, the learned trial Court vide order dated 09.07.2019, acquitted the respondents/ accused under Section 249-A Cr.P.C. The learned trial Court after proper appreciation of the material available on record, has rightly come to a conclusion of acquitting the accused/respondents, keeping in view the facts and circumstances of the instant case, as there was no probability of conviction of the respondents, even if the entire prosecution evidence is summoned and recorded.

9. Jurisdiction under Section 249-A Cr.P.C can be exercised suo motu and no formal application is required when it is found that the charge against the accused is groundless and there is no possibility of his conviction even after recording of evidence; provision of Section 249-A Cr.P.C is meant to decide criminal case without completion of trial and in order to invoke powers under section 249-A Cr.P.C or 265-K Cr.P.C as the case may be, the Court has to fulfill the following three conditions:-

- (i) The Court shall hear the prosecutor;
- (ii) The Court shall hear the accused; and
- (iii) The Court shall take into consideration overall facts and circumstances and the evidence.

No other embargo exists upon the learned trial Court to exercise powers under Section 249-A Cr.P.C. The said provision is meant to prevent rigours of prolonged trial. Moreover, the use of expression at "*any stage of the case*" is indicative enough of the intention of the legislature that to exercise powers under Section 249-A, Cr.P.C or 265-K Cr.P.C, an application in each and every case is not mandatory and any such stage could be the very initial stage, after taking cognizance or it would be a middle stage after recording some proceedings, or even, it could be latter stage as well. Reliance in this regard is placed upon the case reported as "Chairman Agricultural Development Bank of Pakistan & another Vs Mumtaz Khan" (PLD 2010 SC 665) wherein the Hon'ble Supreme Court of Pakistan has held as under:-

" We may observe that prior to introduction of the Islamic provisions in the Pakistan Penal Code, 1860 an acquittal of an accused person could be recorded when the prosecution failed to prove its case against him beyond reasonable doubt or when faced with two possibilities, one favouring the prosecution and the other favouring the, defence, the Court decided to extend the benefit of doubt to the accused person and an acquittal could also be recorded under section 249-A, Cr. P. C. or section 265-K, Cr. P. C. when the charge against the accused person was found to be groundless or there appeared to be no probability of his being convicted of any offence."

It is requirement of law that trial of an accused should be concluded within a reasonable time and speedy trial is right of the accused. The respondents stood remained in the dock since the year 2016, but till date neither the complainant nor his private witnesses have entered appearance and in this way, more than three years have been taken by the prosecution for recording its evidence, which has badly failed to discharge its duty. It is well saying of law that "justice delayed is justice denied" Section 344, Cr.P.C. binds the Court that without any reasonable cause proceedings in the trial may not be postponed. Law on the point is very much established as has been laid down in case titled "The State v. Jagmal Singh alias Madhu Singh and 4 others" (1970 PCr.LJ 649) wherein it has been observed as follows:

"It is well-settled that the accused have a right to a speedy trial and the Courts are not justified in granting adjournments to the prosecution indefinitely. "

It has been further held in Abdul Razak Gabole and 2 others v. The State (2012 PCr.LJ 999) as follows:--

"Let us first discuss the minutiae and niceties of section 249-A, Cr.P.C. which empowers the court to acquit the accused at any stage of the case if after hearing the prosecutor and the accused and for the reasons to be recorded, court considers that the charge is groundless or that there is no probability of the accused being convicted of any offence. It is clear from the language embodied under section 249-A, Cr.P.C. that while

deciding application in this particular section, court has to consider two crucial points, whether the charge is groundless or whether there is no probability of the accused being convicted of any offence. This provision gives right to accused person to move application for his acquittal at any stage of the proceedings which may be even 'prior to framing of charge or recording of evidence or at any subsequent stage and there is no bar imposed by law conditional to stage of proceedings. In order to decide this application in true spirit and scope, it is necessary for the court to examine entire material available on record and hold in the order in case of acquittal that the charge is groundless or that there is no probability of the accused being convicted of any offence and in case of dismissal of application moved under section 249-A, Cr.P.C. court should discuss the entire material available on record with probable cause on the basis of which reasonable grounds appear to continue the trial."

In the case reported as "Sanaullah Vs. The State through Prosecutor General"(2015 P.Cr.L.J. 382 (Balochistan), it has been held that as under:-

"It is well settled principle of administration of justice and rule of prudence stipulates that the prosecution has to prove its case beyond the shadow of any doubt. It is a well-settled rule of prudence that the accused has not to prove his innocence until and unless proven guilty. The golden principle of administration of criminal law under the Islamic Jurisprudence is that benefit of slightest doubt shall necessary be extended in favour of the accused and not otherwise."

10. The interference of this Court would be warranted, if the reasoning of the trial Court in acquitting an accused is perverse, artificial or ridiculous. It is only in an exceptional case that this Court will interfere by setting aside the acquittal of an accused. Mere nomination of the accused person in the FIR, without any corroboratory material, is not sufficient for conviction. In the instant case, number of opportunities were granted to the appellant to produce his evidence but he failed to appear before the learned trial Court inspite issuance of summons and warrants against him and

keeping in view the conduct of the appellant, the learned trial Court has properly appreciated the material available on record and acquitted the accused/ respondents through a well-reasoned order.

11. In the case reported as "Sanaullah Vs. The State through Prosecutor General" (2015 P.Cr.L.J. 382 (Balochistan), it has been held that as under:-

"It is well settled principle of administration of justice and rule of prudence stipulates that the prosecution has to prove its case beyond the shadow of any doubt. It is a well-settled rule of prudence that the accused has not to prove his innocence until and unless proven guilty. The golden principle of administration of criminal law under the Islamic Jurisprudence is that benefit of slightest doubt shall necessary be extended in favour of the accused and not otherwise."

12. After considering the case by all its pros and cons, the tout-ensemble of the same is that to continue with the proceedings of the case by the learned trial Court any more against the respondents would be an abuse of process of law and wastage of precious judicial time, as keeping in view the above facts and circumstances of the instant case, there is no probability of conviction of the respondents. I have found no illegality or irregularity in the impugned order passed by the learned trial Court, warranting interference by this Court. Resultantly, the instant appeal having no force, is **dismissed**.

~~(GHULAM AZAM QAMBRANI)~~
JUDGE

Announced In Open Court On this 21st day of September, 2020.

JUDGE

"Rana. M. Ift"