

ORDER SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Writ Petition No.3771/2019.

Ahmed Khan & another

Versus

Mushtaq Ahmed Mughal, etc.

S. No. of order/ proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	01.11.2019.	Sardar Muhammad Ashfaq Abbasi, Advocate for petitioners.

Through this writ petition, the petitioners have assailed the order dated 05.03.2019, passed by learned Judicial Magistrate, Section 30, Islamabad whereby application filed by petitioner was dismissed and the said order was further maintained by learned Additional Sessions Judge, Islamabad in Criminal Revision vide order dated 02.07.2019.

2. Learned counsel for the petitioners *inter-alia* contends that respondents No.1 Mushtaq Ahmed Mughal lodged the complaint against the petitioners in terms of Section 337-F(i) PPC, P.S. Shalimar, Islamabad and matter was reported to the concerned Court by way of qalandrah by the SHO concerned, however, later on FIR No.48, dated 16.02.2017, under Section 337-F(i) PPC, P.S. Shalimar was registered but after thorough investigation I.O has recommended its cancellation which is also pending before the concerned Court; that petitioners have filed application U/S 249-A Cr.P.C., however, after hearing the petitioners' side learned trial

Court kept the case pending for announcement of order, however, respondent/complainant did not put appearance during the course of arguments and later on appeared in absence of petitioners and recorded his stance that he on the basis of compromise through Jirga has forgiven the present petitioners/accused and did not want to prosecute them by way of his affidavit mark 'A' and trial Court has passed the order of acquittal of present petitioners on the basis of said compromise instead of passing order on application U/s 249-A Cr.P.C. Learned counsel for the petitioners further contends that petitioners are aggrieved with the said order as no compromise was effected between the parties and the statement recorded by respondent No.1 before the Court by himself is based upon false statement, therefore, petitioners have filed an application U/S 476 Cr.P.C. which was dismissed by the Magistrate, Section 30, Islamabad vide order dated 05.03.2019 and criminal revision was also dismissed by the learned Additional Sessions Judge, Islamabad without considering the law on the subject. It has lastly been contended that when the factum of compromise has not been brought on record with mutual consent of the parties the same could not be accepted and respondent No.1 is not the sole authority to settle the matter without the consent of present petitioners.

3. Arguments heard, record perused.

4. Perusal of record reveals that petitioners are

mainly aggrieved with the statement recorded by respondent No.1 before the trial Court, whereby he unilaterally agitated the matter that he entered into compromise with the petitioner and has submitted affidavit mark 'A' to that effect, whereas present petitioners have denied such compromise in the present proceedings as well as in the proceedings of qalandrah, although the trial Court has to see the probability of conviction in terms of Section 249-A Cr.P.C. which was pending at that stage on behalf of present petitioners.

5. The perusal of record further reflects that petitioners have argued their case before the trial Court and complainant put his appearance in presence of accused Tahir and Ahmed (present petitioners) who were on bail alongwith their counsel Sardar Ashfaq Abbasi, Advocate vide order dated 26.02.2019 and as such it could not be assumed that present petitioners and their counsel were not present rather the sanctity is attached to the judicial order in which presence of parties alongwith their counsel has been recorded, on which respondent No.1 has put his thumb impression and his counsel signed on the margin of order sheet, therefore, claim of the present petitioners after two days of passing of the said order by way of filing application U/S 476 Cr.P.C. is just to settle the personal vendetta and nothing more. Learned trial Court as well as learned Revisional Court has rightly dismissed the application

of the petitioners U/S 476 Cr.P.C. Even at this stage, the petitioners have failed to point out any illegality in the orders impugned before this Court. Hence, instant petition is hereby *dismissed in limine*.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid