

JUDGMENT SHEET.

IN THE ISLAMABAD HIGH COURT, ISLAMABAD. **JUDICIAL DEPARTMENT.**

Crl. Appeal No. 95/2019.

Raza Ullah

Versus

The State, etc.

Appellant by: Rao Sabir Hussain, Advocate.

Respondents by: Mr. Hasnain Haider Thaheem, State Counsel.
Mr. Qaiser Imam Ch. and Mr. Shuja Ullah Gondal,
Advocates alongwith Respondents No.2 & 3.

Date of Decision: 07.09.2020.

MOHSIN AKHTAR KAYANI, J:- Through this Crl. Appeal, the appellant has assailed the order dated 26.02.2019, passed by learned Judicial Magistrate Section 30 (West), Islamabad, whereby respondents No.2 & 3 Sheikh Abdul Waris and Muqarrab Iqbal were acquitted U/S 249-A Cr.P.C. from the criminal case FIR No.284, dated 03.08.2015, U/S 427/506/448/452/147/149 PPC, P.S. Ramna, Islamabad.

2. Learned counsel for the appellant contends that appellant got lodged the above mentioned FIR against respondents No.2 & 3 with the allegations that on 20.07.2015 at about 02:00 p.m. respondent No.2 alongwith his four sons and servants attacked upon the shop of appellant situated in the basement of Super Plaza, G-10 Markaz, Islamabad under the name & style of Raza Tailor and dispossessed the appellant after assaulting him and locked the said shop, whereupon, appellant filed complaint in the Police Station Ramna for registration of FIR, whereby it was agreed in presence of Nawaz, ASI that possession of shop will be restored immediately to the appellant for his business affairs but the same was not complied with and on 03.08.2015 when he visited

the shop which was open and he found that 25/30 ladies clothes and one Juki Machine was missing, even his shop was flooded ^{with water} by the respondents; that challan was submitted before the trial Court and charge was framed, however, respondents filed application U/S 249-A Cr.P.C., whereby trial Court without considering the evidence produced by the prosecution has passed the impugned order; that trial Court has given much weight to the settlement executed between the parties in the office of Traders Welfare Association Ex.D/1; that from perusal of order it appears that trial Court misunderstood the alleged incident and mixed up the events with the action taken by the CDA, which was taken after the alleged incident reported by the appellant.

3. Conversely, learned counsel for respondents No.2 & 3 contends that CDA has taken the action against the appellant for non-conforming use who had opened an illegal door from the basement whereupon respondent No.2 filed an application to the CDA which was made basis of the entire action and even show cause notice and non-conforming use notice were issued to the owner of the building and appellant who was tenant in the said basement; that trial Court has rightly observed after recording of evidence of PW-1/appellant that there is no probability of conviction in this case as the event of theft was a subsequent allegation which was not found available in the first instance; that there is not a single witness referred in the FIR despite the fact that alleged incident took place in broad day light as referred in the FIR.

4. Arguments heard, record perused.

5. Perusal of record reveals that appellant is mainly aggrieved with the order dated 26.02.2019, whereby respondents No.2 & 3 were acquitted from above mentioned criminal case in terms of Section 249-A Cr.P.C. The primary allegation referred in the said FIR against the respondents is based upon complaint Ex.PA referred to SHO P.S. Ramna whereby it was alleged that on 20.07.2015 at about

02:00 p.m. respondent No.2 alongwith his four sons assaulted the appellant and dispossessed him from the shop situated in basement of Super Plaza, G-10 Markaz, Islamabad, whereby he filed complaint and matter was patched up between the parties in the police station in presence of Nawaz, ASI but possession was not restored and when he visited the shop on 03.08.2015, 25/30 ladies clothes alongwith Juki Machine were missing and shop was damaged.

6. I have gone through the evidence of PW-1, whereby it was acknowledged by him that he was tenant in the basement of Super Plaza, G-10 Markaz, Islamabad and dealing with tailoring business, whereby his complaint Ex.PA was admittedly tempered in terms of date and certain other words and four sons of respondent No.2 were not referred instead of eight persons who attacked upon him. He also acknowledged that he has not referred a single witness of the incident in his complaint rather there is no witness of the incident in the first instance. Similarly, actions taken by CDA for non-conforming use were admitted by him, even he acknowledged that accused/respondent No.2 had filed complaint Ex.PB for illegal abstraction of door from the basement to SHO as well as to Director Enforcement, CDA upon which Inspector Building Control, CDA served show cause notice regarding said illegality. Similarly, it was also conceded by the appellant that matter was resolved between the parties through a *Jirga* vide letter dated 14.09.2015 but appellant himself backed out from said decision. He also acknowledged another *Jirga* dated 28.08.2015, Ex.D/H, which was also referred in Ex.D/1.

7. This entire evidence as well as exhibited documents reveal that allegation of theft could not be substantiated in the first *Jirga* meeting, even not claimed by the appellant which was subsequent act, however, when appellant entered into compromise and recorded his statement before the Court of Additional Sessions Judge for confirmation of pre-arrest bail of respondents/accused, investigation

for the purpose of recovery was not further proceeded. Moreover, there is no offence U/S 380 PPC mentioned in the FIR, even charge has also not been framed U/S 380 PPC. However, at this stage it appears from record that appellant himself has violated the CDA bye-laws and he has been proceeded in terms of Section 49-C(i) of the CDA Ordinance, 1960 read with Building and Zoning Regulations for opening of illegal right of way, which was initiated on the complaint of respondent No.2 prior to the said occurrence. All these facts were acknowledged by the appellant and as such unauthorized opening of door is the main dispute. Even otherwise it is not the case of appellant that respondents/accused have taken over the shop by force rather he acknowledged in his cross-examination that when he visited the shop on 22.07.2015, he found that ladies clothes were missing alongwith one Juki machine, as such complaint was filed before the SHO P.S. Ramna regarding the said action with delay of two days. All these facts clearly spell out that complete evidence if at all be brought on record respondents could not be convicted.

8. It is not the case of appellant that he was injured or medically treated by any doctor when this incident took place or he received injuries at the hands of respondents rather it is the case that respondent No.2 locked the shop of appellant by force when he was creating the unauthorized access from the basement which is confirmed by the CDA through their justified actions. The entire matter reveals that appellant is pressing hard for protection of his illegal action which was in fact initiated on the complaint of respondent No.2. Trial Court has observed all these facts and probability of conviction was measured from the cross-examination of the appellant and even question of trespassing is not justiciable on record. Similarly, the allegation of threat is not discovered from the statement of appellant especially when there was no independent witness of

occurrence, therefore, at this stage order of trial Court is within four corners of law. Hence, instant appeal is not made out and the same is hereby **dismissed**.

(MOHSIN AKHTAR KAYANI)
JUDGE

Zahid