

ORDER SHEET.
ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

Criminal Appeal. No. 329 of 2021

Misbah Mussarat Joura

Versus

The State etc.

S.No. of order/ proceeding	Date of order/ proceeding	Order with signature of Judge and that of parties or counsel where necessary.
	07.06.2022	Mr. Khurram Mahmood Qureshi, Advocate for the appellant. Fahad Ali, learned State Counsel. Raja Rizwan Abbasi & Babar Manzoor, Advocates for respondent No.2. Ghulam Murtaza, S.I. Javed Iqbal, A.S.I.

Misbah Mussarat Joura, appellant has preferred this criminal appeal under Section 417 Cr.P.C. against order dated 24.09.2019 passed by learned Judicial Magistrate, Sec-30, West-Islamabad, whereby respondent No.2 has been acquitted under Section 249-A, Cr.P.C. in case FIR No. 235, dated 26.7.2018, offence u/s 489-F, P.P.C. registered at Police Station Shalimar, Islamabad.

02. Brief facts of the case are that respondent No.2 issued a cheque amounting

to Rs.343,000/- against monthly rent of House No.237, Gali No. 18, Sector F-10/2, Islamabad which was dishonoured when presented at the bank; matter was reported to police by the appellant upon which above mentioned FIR was registered; police has conducted the investigation and submitted challan/report u/s 173 Cr.P.C. in the learned trial Court; charge was framed; evidence of 02 PWs was recorded; learned trial Court vide impugned order dated 24.9.2019 has acquitted respondent No.2 / accused by giving benefit of Section 249-A Cr.P.C., hence the instant appeal against acquittal.

03. Learned counsel for the appellant, *inter alia*, contends that the impugned order has been passed after recording of statements of only 02 witnesses; learned trial Court has not discussed their evidence; arguments / stance of prosecutor has also not been mentioned in the impugned order; statement of only one witness was left to be recorded but learned

trial Court in a slipshot manner has passed the impugned order which is not sustainable under the law, hence the same is liable to be set aside.

04. Conversely, learned counsel for respondent No.2 states that impugned order has rightly been passed in the light of evidence produced by prosecution; learned trial Court has mentioned all the relevant facts necessary for the acquittal of respondent No.2 and states that instant appeal is liable to be dismissed.

05. Learned State Counsel has also not supported the impugned order and stated that only statement of Investigating Officer was left to be recorded and learned trial Court was not supposed to decide the case without recording statement of the I.O and no plausible reason has been given, hence impugned order is liable to be set aside.

06. I have heard the learned counsel for the appellant, learned counsel for respondent

No.2, learned State Counsel and have perused the record.

07. Under section 249-A, Cr.P.C. a Magistrate is competent to acquit an accused at any stage of the trial, if after hearing the prosecutor and the accused and for the reasons to be recorded, he considers that the charge is groundless or there is no probability of the accused being convicted of any offence.

08. In the present case the police has mentioned name of three witnesses in column No.6 of challan/report u/s 173 Cr.P.C. out of which learned trial Court has recorded statements of two witnesses as PW-1 and PW-2. Only statement of I.O/PW-3 is to be recorded.

09. It is mentioned in the impugned order that issuance of cheque in question and its dishonouring is not disputed. As far as ground for the acquittal under section 249-A, Cr.P.C. is concerned, learned trial Court has not discussed the evidence produced by the

prosecution.

10. It is mentioned in para-8, 9 and 10 of the impugned order that:

I "It is an admitted fact"

But no details are mentioned that who has admitted these facts and what are the basis of admission etc.

11. Learned trial Court has absolutely not discussed the oral and documentary evidence produced by the prosecution in the impugned order.

12. It is mandatory provision of section 249-A, Cr.P.C. that hearing of learned prosecutor and the accused is must and reasons are also to be recorded if the Court considers that charge is groundless or there is no probability of the accused being convicted of any offence but in the impugned order learned trial Court has only marked attendance of Mr. Muhammad Javed Ata, learned Prosecution Inspector for State but has not mentioned the fact whether the said prosecutor made arguments before the Court

and what was his stance regarding acquittal of the accused under Section 249-A, Cr.P.C.

13. During the course of arguments learned counsel for respondent No.2 / accused stated that he has no objection if the impugned order is set aside and the case is remanded to learned trial Court for writing the order afresh in light of relevant provisions of law.

14. It is categorically mentioned that issuance of cheque and its dishonoring is not disputed so the reasons for acquittal without discussing the evidence are not plausible.

15. Hearing of prosecutor and the accused is pre-condition and by not recording the reasons / stance in the order of acquittal under Section 249-A, Cr.P.C. Learned trial Court has violated mandatory provisions of Cr.P.C.; neither a single argument made by the prosecutor is mentioned nor evidence produced by the prosecutor has been discussed which clearly indicates that impugned order has been passed in an

unusual and hasty manner. Acquittal of respondent No.2 under Section 249-A, Cr.P.C. which is not in accordance with law.

16. In view of above discussion, the appeal in hand is **allowed**, impugned order dated 24.9.2019, is set aside and the case is remanded to the learned trial Court with the direction to take up the proceedings afresh from the stage at which the impugned order was passed. The parties are directed to appear before the learned trial Court on 16.06.2022, and the learned trial Court is directed to decide the case expeditiously.

(TARIQ MEHMOOD JAHANGIRI)
JUDGE

Ahmed Sheikh