

IN THE PESHAWAR HIGH COURT,  
PESHAWAR  
(Judicial Department)

**Cr.A. No.200-P/2008.**

Date of hearing: \_\_\_\_\_

Appellant (s) : \_\_\_\_\_

Respondent (s) : \_\_\_\_\_

**JUDGMENT**

**ASSADULLAH KHAN CHAMMKANI, J.-** This appeal is directed against the judgment dated 26.03.2008, passed by learned Revisional Court/Additional Sessions Judge-IX, Peshawar, whereby he while allowing the criminal revision petition of the respondents-accused, setting aside the judgment/order dated 12.07.2007 of learned Trial Court/Judicial Magistrate and by accepting the application of the respondents-accused under section 249-A Cr.P.C., acquitted them of the charge in case FIR No.139 dated 10.06.2003, registered under section 337-A (ii)/34 PPC, in Police Station Bhana Mari, Peshawar.

2. The prosecution case is that on 10.06.2003, at 06.20 hours, the respondents-accused while duly armed with rifles thrashed appellant-complainant Muhammad Iqbal, his brothers Muhammad Tariq, Farooq and Nasrullah with the Butts of their rifles, as a result,

complainant and his brother Tariq sustained injuries, hence, this case.

3. Accused/respondents were granted bail by the learned Judicial Magistrate on the basis of compromise arrived at between the parties. During trial, injured-complainant and PW Tariq, resiled from the compromise and in their statements before the learned Trial Court, charged the accused for commission of the offence. Some prosecution evidence was examined when in the meantime, accused/respondents filed application before the learned Trial Court under section 249-A Cr.P.C. for their acquittal on the basis of compromise at bail stage, but the same was dismissed vide order dated 12.07.2007, against which, the accused/respondents, filed a criminal revision petition before the learned Additional Sessions Judge-IX, Peshawar, who vide order dated 26.03.2008 by allowing the revision petition, set aside the impugned judgment/order of the learned Trial Court and acquit the accused/respondents by invoking the provision of section 249-A Cr.P.C., hence, this appeal.

4. Learned counsel for the appellant/complainant argued that no doubt injured had entered into a compromise with the accused, but the compromise was only to the extent of bail and by then the

prosecution of offence was not pending before the learned Judicial Magistrate, therefore, such compromise cannot be made as basis for acquittal during trial; that later on, due to conduct of the accused-respondents, the injured resiled from the compromise, therefore, appeared in the witness box before the learned Trial Court and charged the accused; that learned revisional court has proceeded on wrong premises by acquitting the accused on the basis of compromise at bail stage, therefore, the impugned judgment/order of the revisional court is liable to be reversed.

5. Conversely, learned counsel for the accused/respondents contended that compromise effected between the parties even at bail stage would remain valid during trial which cannot be revoked by any of the parties unilaterally when main case would come up for trial. He further added that victims after once having entered into a valid compromise were not competent to withdraw from the same. He further added that in the written compromise at bail stage, both the injured have categorically stated that they have no objection on release of the accused on bail as well as on their acquittal, therefore, the said compromise being exhibited before the competent court cannot be discarded on mere retraction of the injured from the same

during trial; that the injured just to black mail the accused, resiled from the compromise, therefore, the learned revisional court by considering the compromise arrived at, at bail stage, has rightly acquitted respondents-accused by invoking the provision of section 249-A Cr.P.C.

6. Learned AAG contended that if the compromise at bail stage was only for the purpose of bail, then the same cannot be taken into consideration for acquittal of the accused during trial. He, however, was of the opinion that if during compromise at bail stage the complainant/injured/ LRs of the deceased, as the case may be, waived or compound the offence with the accused and express their no objection on release as well as acquittal of the accused, then such compromise can be taken into account during trial even if the same has been retracted.

7. I have heard the respective submissions advanced from either side and perused the record carefully.

8. No doubt, in the compromise deed Exh.PA followed by statements of the injured, they have categorically expressed their no objection on release of the accused on bail as well as on their acquittal, but one thing is clear that by then the learned Judicial Magistrate, who granted bail to the accused on the basis of compromise, was not acting as a Trial Court being not confronted with

the prosecution of the offence, rather he was only confronted with the application of the accused for bail. Under sub-section (2) of section 345 Cr.P.C. the offences mentioned in the first two columns given in the said section may, with the permission of the Court before whom any prosecution for such offence is pending, be compounded by the persons mentioned in the third column given thereunder. Legally speaking such a compromise effected at bail stage, cannot be made basis for acquittal of the accused during trial as under section 345 (2) Cr.P.C. it would be the Trial Court which has to satisfy itself and grant permission in respect of compounding the offence being tried by it. The important point for consideration in cases of compromise is the satisfaction of the learned Trial Court about the genuineness of the compromise that whether it had been actually effected between the parties at bail stage. I am conscious of the fact that under section 345 (2) Cr.P.C. pendency of prosecution of the offence before the learned Trial Court at the time of compromise is a condition precedent, but in the interest of justice keeping in view the traditions, customs and the way of earning livelihood of the people in the country, I would added that the Trial Court may consider the same compromise arrived at between the parties at bail stage during trial, if the

compromise is still intact and victims or the LRs of the deceased as the case may be, have no objection over the compromise produced at bail stage, as this court has observed that after effecting compromise at bail stage, the male victims/ LRs of the deceased, sometime proceed abroad for the purpose of earning livelihood while in case of unmarried females injured/ LRs, if they get married, their attendance create complications/unnecessary hurdle in the way of compromise already effected and this sometime even result in dismissal of the compromise between the parties effected with great efforts by the elders of the area by burying the hatchets of the parties. However, if the learned Trial Court is not satisfied from the compromise arrived at between the parties at bail stage, it may proceed with the compromise afresh. As stated earlier, the main point for consideration in such like cases is always the satisfaction of the Trial Court in the interest of justice and the parties, before whom the prosecution of the offence is pending.

9. In the instant case, though the injured had effected compromise with the accused at bail stage, but during prosecution of the offence before the learned Trial Court, they resiled, therefore, the learned Trial Court being not satisfied from the compromise, was justified by not

considering the compromise for acquittal of the accused-respondents. The learned revisional Court by over-sighting the above discussed peculiar facts and circumstances of the case and the law on the subject, landed in the field of error and thus reached to erroneous conclusion by acquitting the accused under section 249-A Cr.P.C. on the basis of compromise.

9. Resultantly, I by allowing this appeal, set aside the impugned judgment of the learned Revisional Court and restored the order/judgment of the learned Trial Court. The case is remanded to the learned Trial Court for proceeding with the same on merits. Since, some of the prosecution evidence has already been recorded, therefore, the learned Trial Court by proceeding with the case on day to day basis, shall decide the same within a month, from the date of receipt of the record. During this period, the accused/respondents shall remain on bail on the already existing bail bonds. Office is directed to send the record to the learned Trial Court within two days, without fail.

10. The Additional Registrar (Judicial) of this court is directed to send copy of this judgment to the learned Sessions Judge, Peshawar, who shall further circulate the same among the Judicial Magistrates and the Additional Sessions Judges of the District for future

guidance. The Additional Registrar (Judicial), shall intimate compliance of direction to this Court.

**Announced**  
**22.12.2015**

**J U D G E**