

**JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
MINGORA BENCH (DAR-UL-QAZA), SWAT
(Judicial Department)**

Cr.A No. 72-M/2017

***Fazal Jameel s/o Abdul Khaliq r/o Bara Bandai, Swat, through
father Abdul Khaliq***

(Appellant)

Versus

- 1) The State through Additional Advocate General.***
- 2) Aftab Alam s/o Taj Muhammad r/o Faiz Abad, Swat.***


(Respondents)

Present: ***Mr. Amjad Hussain, Advocate for the appellant. -***

Hafiz Bakht Amin, Advocate for State.

Date of hearing: **15.02.2018**


JUDGMENT



ISHTIAQ IBRAHIM, J.- Impugned herein is the order/judgment dated 09.02.2017 passed by learned Judicial Magistrate-I/Illaqqa Qazi, Swat whereby respondent accused Aftab Alam has been acquitted of the charge in case F.I.R No. 863 dated 05.09.2015 under Sections 489-F/420 P.P.C registered at Police Station Mingora, District Swat.

2. Brief facts of the case are that a sale deed was executed between the complainant Fazal Jameel (who is now dead) and accused respondent Aftab Alam. The latter handed over a cheque bearing No. 8042723 dated 15.06.2015 of Habib Bank Ltd. to complainant but the same was

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dishonored by the concerned bank on presentation thereof for encashment. Complainant submitted an application before D.P.O, Swat for taking legal action against the accused, hence, the above referred F.I.R was registered against him. He was arrested in the said F.I.R whereafter the parties effected compromise vide deed dated 02.04.2016 according to which one Aman Khan stood surety for the respondent and he issued to complainant a cheque dated 06.05.2016 of Rs.500,000/- of Allied Bank Ltd. Mingora Branch with further undertaking that he will be responsible for payment of the said amount to complainant in case the cheque was dishonored. The compromise was presented in the trial Court on the basis of which bail petition of the respondent was allowed on 02.04.2016. The subsequent bank cheque issued by surety Aman Khan was also dishonored, hence, case vide F.I.R No. 532 dated 27.05.2016 under Sections 489-F/420 P.P.C was registered against him at police station Mingora. In that case, first an oral compromise was effected between complainant and Aman Khan who promised for payment of the outstanding amount and thereafter a written compromise was effected between them on the basis of which B.B.A of Aman

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Khan was confirmed. In the meanwhile the complainant died; Aman Khan who was accused in the subsequent F.I.R was acquitted of the charge on the basis of compromise. The present respondent Aftab Alam was also acquitted of the charge by learned Judicial Magistrate vide order/judgment dated 09.02.2017 on the basis of compromise effected by the parties at bail stage, hence, this appeal.

3. Partial arguments in this case have already been heard. Abstract of the arguments advanced by learned counsel for the appellant is that though in the compromise effected with Aman Khan full payment of the outstanding amount to the complainant has been mentioned but actually Aman Khan has paid nothing to the complainant. He further contended that the compromise effected with the respondent was just for the purpose of bail, therefore, his acquittal on the basis of that compromise is illegal. He maintained that the case has hotly been contested by father of the complainant i.e the appellant as there was no compromise between the parties in essence, but the learned trial Court illegally acquitted the accused on the basis of compromise without affording an

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opportunity to the appellant for producing his evidence. Learned State counsel supported the arguments of learned counsel for the appellant.

4. Learned counsel for the accused respondent during his arguments on the previous date had referred to copies of compromise deeds and submitted that pursuant to the compromise that was effected between the complainant and respondent, there is another compromise between the complainant and Aman Khan in the subsequent F.I.R whereby he paid an amount of Rs.500,000/- to complainant which was outstanding against respondent Aftab Alam. He further submitted that copies of the compromise deeds and statement of the complainant in support thereof is part of the record, therefore, the learned trial Court has committed no illegality by acquitting the respondent on the ground that once a compromise is always a compromise.

5. Arguments heard and record perused.

6. The moot question in this case which needs to be resolved by this Court is as to whether compromise effected at bail stage can be considered for acquittal of an accused during trial or not. Section 345 (1) of the Code of Criminal Procedure caters with the offences which can be compounded

by the specified persons without intervention of Court. These offences have been mentioned in a table next following the said sub-section wherein the offence under Section 489-F, P.P.C also figures. Compromise in such offences takes effect from the moment it is effected by the parties; the Court is bound to pass an order in accordance with the terms and conditions enumerated therein and the parties to such compromise cannot resile from it at subsequent stage of the trial. Wisdom in this regard is derived from the case titled "Tariq Mehmood Vs. Naseer Ahmad and others" (PLD 2016 Supreme Court 347) wherein it has been held that:-

"Subsection (1) of Section 345, Cr.P.C enlists the offences which may be compounded by the specified persons without any intervention of any Court and in some of the above mentioned precedent cases it had been clarified that compounding in such cases takes effect from the moment the compromise is completely entered into by the parties, the relevant Court which is to try the offence in issue is left with no jurisdiction to refuse to give effect to such a compromise and a party to such a compromise cannot resile from the compromise at any subsequent stage of the case".

7. Admittedly, complainant had effected compromise with accused/respondent on

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02.04.2016. Copy of a deed to this effect is available on record. The offence under Section 489-F, P.P.C falls within the category of cases mentioned in Sub-section (1) of Section 345, Cr.P.C, therefore, the parties are bound by that compromise in view of the principle laid down by the apex Court in the above referred judgment. Thus, keeping in view the provision under Sub-section (1) of Section 345, Cr.P.C and the above referred judgment of the august Supreme Court, the learned trial Court has committed no illegality by acquitting the accused on the basis of compromise entered by the parties at the initial stage of the case.

8. Although, accused/respondent is also charged in this case under Section 420, P.P.C which falls in the category of cases mentioned under Sub-section (2) of Section 345, Cr.P.C which cannot be compounded without intervention of the Court but from the allegations leveled in the F.I.R, the case is purely of Section 489-F, P.P.C and no ingredient of Section 420, P.P.C could be found therein, therefore, there is no application of the said section of law in the present case. It appears that police have inserted Section 420, P.P.C on its own as the contents of the F.I.R constitute only the offence under Section

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489-F, P.P.C. In the view of this Court, mere insertion of Section 420, P.P.C in the case without any accusation to this effect in the F.I.R is misconceived, therefore, it will not affect acquittal of the respondent/accused on the basis of compromise effected at bail stage.

2. Record shows that complainant effected compromise with Aman Khan in the subsequent F.I.R at the time when his B.B.A was sub-judice before the learned Additional Sessions Judge-III, Swat. His B.B.A was confirmed vide order dated 22.08.2016 on the basis of compromise exhibited at that stage as Ex.PA, in support of which the complainant recorded his statement. According to this compromise and statement of the complainant recorded before the Court, Aman Khan paid Rs.500,000/- to complainant which is the bone of contention in the present case. It means that at present no amount of the complainant or his father is outstanding against the accused respondent Aftab Alam. Contention of the appellant that actually no amount has been paid by Aman Khan to complainant, does not appeal to reason as how could the complainant verify the contents of the compromise with Aman Khan by recording his

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statement before the Court without receiving the outstanding amount from him. This aspect of the case also shows that the controversy between the parties has already been resolved through private patch up during the life of the complainant and further proceedings in the matter would be just a futile exercise.

10. For what has been discussed above, the impugned order/judgment is maintained and this appeal, being devoid of merits, is dismissed.

Announced.
15.02.2018

JUDGE

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