

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

Cr.M Q.P. No. 101-M/2016
Said Afzal V/S The State & others
&
Cr.M Q.P. No. 102-M/2016
Said Afzal V/S The State & others

CONSOLIDATED
JUDGMENT

Date of hearing: **15.02.2018**

Petitioner:- (Said Afzal) by Mr. Abdul Qayum,
Advocate.

Respondents: (The State & others) by Malak
Sarwar Khan State counsel and Muhammad
Ikram Khan, Advocate.

MOHAMMAD IBRAHIM KHAN, J.- Upon registration of the case FIR No. 215 dated 10.6.2016 under sections 440,379,148,149 PPC registered at Police Station Sheringal District Dir Upper, it pertains to the report of Said Afzal, the Petitioner herein. Under narration of the facts that the parties belong to Qwanj Sheringal, the complainant is owner of the extensive properties both constructed and un-built properties and some time before the accused/Respondents by leaving their cattles in the wheat crops

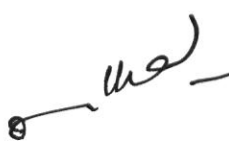
had damaged the said crops and also cut $\frac{3}{4}$ walnut trees. This occurrence was reported to the Court but even then later this offence was repeated and when the complaint was lodged for the second time against these accused/Respondents proceedings under section 427 PPC were initiated in which the next date of proceedings was fixed for 07.06.2016. When on 01.06.2016 at 7:00 a.m. the Respondents duly armed entered in the wheat crops and cut the same and in this way had caused a lot of loss to the complainant. As the offence under the covered sections 379,440 have been committed, therefore, the Respondents are to be prosecuted.

2. During the investigation, the police officials recommended the accused-Respondents Mian Zarin, Nasib Zada, Mola Muhammad, Hizbullah and Chandar and another group Mutabar Khan, Amir Bacha, Akbar Zada, Ihsanullah, Rahmatullah and Jan Bacha for reasons to believe that they

149

may not be involved in the commission of the offences, therefore, the impugned separate orders dated 14.06.2016 and 22.12.2016 have been passed by the learned Judicial Magistrate Sheringal Dir Bala in respect of discharge of the accused/Respondents under section 63 of the Code of Criminal Procedure. However, they were directed to submit bonds in the sum of Rs. 40,000/- each in two sureties in the like amount to the satisfaction of said learned Judicial Magistrate.

3. Aggrieved with the findings for the discharge of the accused/Respondents Criminal Revisions bearing Nos. 04 & 05 of 2016 were preferred before the Court of learned Sessions Judge/Zila Qazi Dir Upper. In verbatim form through the judgment dated 09.12.2016 for the same reasons particularly under Para 4 of each judgment, the learned Sessions Judge concerned did not interfere with the impugned orders of the learned Judicial



Magistrate. The verbatim Para No. 4 of both the judgments is reproduced herein:-

“ Honorable Superior Courts have time and again held that an order under this Section is only an administrative order and is not susceptible to interference in Revision Petition by the Sessions Judge. Reliance is placed PLD 2000 Lahore 136.

In view of the above scenario, this Revision Petition is dismissed on the ground of jurisdiction.”

4. Hence, these are the separate quashment petitions bearing Cr.M Q.P. No. 101-M & 102-M of 2016 preferred by the complainant (herein the Petitioner) Said Afzal against the impugned orders of the learned Courts below *inter-alia* on the grounds enumerated in each of the petition.

8-115

5. Having heard arguments of learned counsel for the parties and learned Astd: Advocate General appearing on behalf of the State, record with their assistance gone through.

6. Learned counsel for the complainant (the Petitioner herein) referred to 2002 SCMR 239 “Engr. Bashir Ahmad V/S Senior Superintendent of Police Islamabad”, 2006 SCMR 1920 “Hidayatullah V/S The State” and 2005 MLD 1883 “The State V/S Ubaidullah”

and accordingly prayed for the acceptance of both these quashment petitions and setting aside of the impugned orders of the learned Judicial Magistrate as well as learned Sessions Judge/Zila Qazi Dir Bala.

7. Consequent to these arguments, learned counsel for the accused-Respondents states that he has no objection to take up the trial before the learned Trial Court and conclude the same for its logic end, however, the impugned orders of the learned Judicial Magistrate for the discharge of the accused/Respondents did not call for any interference.

8. Indeed, the complaint of the present Petitioner would require the evidence to be

8 — (the)

adduced during the trial. The Investigation Officer of this case has furnished the 'challan' and will shortly be put in Court. It has to be seen that whether the orders of learned Judicial Magistrate are under appreciation of the true perspective theme as contained in section 63 of the Code of Criminal Procedure. Accordingly, while going through it reveals that:-

" Discharge of person apprehended.

No person who has been arrested by a police-officer shall be discharged except on his own bond, or on bail, or under the special order of a Magistrate."

This section enable the learned Judicial Magistrate to pass an order of discharging the accused involved in a case where there is requirement of warranting material evidence. The judgment as reported in **PLD 2001 Lahore 271 "Ashiq Hussain V/S Sessions Judge Lodhran"** of the Hon'ble Lahore High Court authored by Mr. Justice Asif Saeed Khosa has covered all the aspects of section 63 in comparison

8-149

to all the affiliated sections 173, 173 (3), 169, 170, 439 and 561-A read with sections 190 & 103. Thereby, the exhaustive findings would be more attractive to clarify the powers under section 63 of the Code of Criminal Procedure of a Judicial Magistrate for discharge of an accused/Respondents in this case. Upon submission of '*challan*' it's still open that a dressed trial can be held before the competent Court and in no way the complainant can be precluded from leading evidence which may implicate the accused/Respondents during the trial leading to conviction under the sections of law levied by the prosecution.

9. In another words, learned counsel for the accused/Respondents has shown his willingness that let during the dressed trial before the concerned competent Court a charge may be framed against the accused/Respondents while the complainant is to lead evidence to decide the wheel of

8 — 149

fortune of the accused/Respondents either in acquittal or conviction.

10. In such terms both these connected quashment petitions are not worth of credence, hence are disposed of accordingly.

Announced.
Dt: 15.02.2018


JUDGE

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