

**IN THE PESHAWAR HIGH COURT,**  
**PESHAWAR**

Criminal Revision No.69-P/2016

Date of hearing: 21.07.2017

Petitioner(s) : (Kifayat and others) by Malik Manzoor Hussain, Advocate

Respondent(s) : (Sami Ullah and another) by Mr. Naqibullah, Advocate for respondent No.1.

Syed Sikandar Hayat Shah, AAG for respondents No.2 and 3.

**JUDGMENT**

**ABDUL SHAKOOR, J .-** Accused/Petitioners Kifayat,

Abid Ali, Farman and Riyasat have filed this Petition under section 439 Cr.P.C. read with Section 561-A Cr.P.C. against the dismissal of their application which they filed before the learned Additional Sessions Judge-XI, Peshawar under section 265-K Cr.P.C. for their acquittal in the case FIR No.345 dated 25.4.2013 registered under section 302/324/148/149 PPC at Police Station Chamkani, Peshawar.

2. Facts giving rise to the filing of instant petition are that on 25.4.2013 respondent No.1 Samiullah lodged aforementioned FIR for the murder of his father Inayatullah, wherein present petitioners and their two brothers, namely, Wajid and Jawad were charged for his murder. Petitioners after their arrest except petitioner Kifayatullah have applied for their release on bail. At that stage complainant party i.e. (L.Rs of deceased of Inayatullah) and petitioners patched up the matter regarding the alleged murder of deceased Inayatullah. Subsequent to the said development the male members of complainant party made a statement before the learned trial court wherein they categorically stated that matter has been patched up between the accused party (petitioners) and complainant, the same is genuine and entered between them without any coercion and they have waived of their right of Qisas and Diyat and also pardoned the accused party (petitioners) in the name of Almighty Allah and they have no objection if the accused/petitioners are released on bail or acquitted in the aforementioned case FIR. The joint statement of male members of the complainant

party was exhibited on the record of the aforesaid case FIR as Ex.PB. The learned trial Court after recording the statements of male L.Rs of deceased vide order dated 05.6.2013 appointed one Miss Sonia advocate as local commissioner for recording the statements of female LR's and one son of the deceased, namely Irshad Khan. The said advocate/counsel Miss.Sonia Naz in the light of the order of learned Trial Court visited the house of complainant party and recorded their joint statement which was exhibited on the record of the aforesaid case FIR as Ex.PD. The statements of all the female L.Rs of deceased and son Irshad Khan recorded by the said local commission clearly shows that they have pardoned the accused party i.e. petitioners in the name of Allah and waived off their right of Qisas and Diyat and they were having no objection if the present petitioners were granted bail or acquitted of the charges levelled against them. The same compromise was also translated into proforma meant for affecting compromise under Qisas and Diyat Ordinance and marked as Ex.PE on the record of above said case. As a result of that compromise,

petitioners were released on bail, while Wajid and Jawad brothers of petitioners at trial stage were acquitted. It was highly unjust and unfair petitioners who were released on bail of the said compromise like their brothers Wajid and Jawad but were not acquitted alongwith them. This constrained the present petitioners for filing an application under section 265-K Cr.P.C. for their acquittal on the basis of aforesaid compromise and statements of L.Rs of deceased Inayatullah which as hinted hereinabove are exhibited on the record of the aforesaid case FIR as Ex.PB, PD and PE. However, the learned trial Court without taking into consideration the above said exhibits PB,PD and PE has dismissed the application of petitioners which they filed under section 265-K Cr.P.C. vide order dated 09.6.2016. Feeling aggrieved from the aforesaid order, the present petitioners have approached this Court for their acquittal on the basis of above said exhibits PB,PD and PE.

3. We have heard learned counsel for the parties and have gone through the record with their valuable assistance.

4. Perusal of the record reveals that all the accused have been assigned the same role in the aforesaid case FIR, which by no stretch of imagination could be termed as an effective role for the murder of the deceased Inayatullah. The record further reveals that with sincere efforts of the notable of the area a genuine compromise at the bail stage has been effected between the parties for an end to the enmity once for all, as both the parties are closely related to each other. As a result of that compromise the present petitioners were released on bail and none of the L.Rs of the deceased referred to in the aforesaid exhibits which are part and parcel of the record of the trial Court has pointed his finger on the said compromise at the bail stage. The same compromise clearly shows that all the L.Rs of deceased Inayatullah have waived off their right of Qisas and Diyat against the present petitioners and they have got no objection on their enlargement on bail and acquittal at the trial stage in the said case FIR. The compromise arrived between the parties was not confined to the matter of bail only but the same pertains to the entire case. Complainant/L.Rs

of deceased Inayatullah and one injured person had undertaken to get the petitioners acquitted from the trial Court when that stage was to arrive. In this view of the matter, the trial Court on account of resiling of L.Rs. of the deceased from the compromise at trial stage was not justified to decline the acquittal of present petitioners. It is well settled principle of administration of justice and law that a compromise in a criminal case could not be allowed to resile from if it had already acted upon, compromise effected between the parties at the bail stage still ensure to the benefit of accused person and the complainant/L.Rs. of deceased Inayatullah and injured person could not be allowed to resile from the same. In this regard, we are fortified by the dictum laid down by the august Supreme Court in the case titled Syed Iftikhar Hussain Shah Versus Syed Sabir Hussain Shah and 2 others (1998 SCMR 466) and Manzoor Ahmed and another Vs. The State and 2 others (PLD 2003 Lahore 739).

6. For what has been discussed and observed above, we are fully convinced that the

compromise arrived at between the parties at the stage of petitioners bail still ensure to the benefit of the petitioners, as such, the respondents cannot be allowed to resile from the same. The offences allegedly committed by the petitioners are compoundable. In this view of the matter, this petition is allowed and the above mentioned criminal case against the petitioners is quashed with the effect of petitioner's acquittal on the basis of compromise.

Announced.  
21.07.2017

JUDGE

JUDGE

