

JUDGMENT SHEET
IN THE PESHAWAR HIGH COURT,
D.I.KHAN BENCH
(Judicial Department)

Cr.A. No.32-D/2017.

Kifayat Ullah
Vs.
Gul alias Gulli, etc.

JUDGMENT

Date of hearing: **18.8.2017.**

Appellant-Petitioner by Mr. Muhammad Waheed
Anjum Advocate

Respondent State.

SHAKEEL AHMAD, J. Through instant criminal appeal No.32-D/2017, the appellant-complainant Kifayat-Ullah has assailed the judgment dated 29.11.2017 of the learned Resident Judicial Magistrate, Daraban, D.I.Khan, whereby the accused-respondent was acquitted of the charges.

2. Precisely stated facts of the case, out of which the present appeal arises, are that the appellant filed a complaint against accused, alleging therein that he is the owner of landed property measuring 15 kanals in Khasra No.526 and that the accused is his tenant and used to cultivate his land. He further alleged that for the crop of Rabie 2015 in

Khasra No.526, a ban was imposed by the Deputy Commissioner, D.I.Khan, in exercise of powers conferred under Section 144, Cr.P.C. vide his letter dated 15.5.2015, restraining the tenant from removing or causing to remove any Rabie harvest, 2015 from the threshing floor unless he has delivered his due share of produce of Rabie Harvest 2015 according to Rewaj of the landlord, but despite imposition of ban the accused had cut the crop, and violated the conditions imposed by the Deputy Commissioner, hence committed an offence punishable under Section 188, Cr.P.C. The complaint was incorporated into FIR No.135 dated 01.8.2015, under Section 188 PPC at police station Daraban Kalan, D.I.Khan.

3. After completion of investigation, the case was put to trial, the accused was formally charged to which he pleaded not guilty and claimed trial. In order to prove its case, the prosecution examined as many as six witnesses. At the conclusion of trial, vide judgment dated 29.11.2016, the accused was acquitted by the learned Resident Judicial Magistrate, D.I.Khan. Not contented with the same, the complainant has filed the instant appeal.

4. The learned counsel for the appellant argued that the accused had cut the crop during the ban imposed by the Deputy Commissioner, which was imposed in exercise of powers conferred under Section 144, Cr.P.C, therefore, acquittal order passed by the learned Resident Judicial Magistrate, suffers from legal infirmity. He further submitted that the prosecution has proved its case against the accused beyond a reasonable doubt, therefore, the impugned judgment is liable to be set aside.

5. Arguments heard and record perused.

6. Perusal of the record reveals that the ban was imposed under Section 144, Cr.P.C. by the Deputy Commissioner, D.I.Khan vide letter dated 15.5.2015, but in the instant case, admittedly, the complaint was filed and the report was lodged by the appellant instead of Deputy Commissioner.

7. A bare reading of Section 195(1)(a), Cr.PC, reveals that no Court can take cognizance of the offence punishable under Section 188 PPC, except on the complaint as defined under Section 4(h), Cr.P.C. of the Public Servant, who promulgated Section 144, Cr.P.C, the present FIR was not lodged by the concerned District Magistrate.

8. In case of violation of the order passed by District Magistrate within the meaning of Section 144, Cr.P.C. the machinery of law can only be moved by filing complaint by order of such public servant who promulgated the real order or by his superior, as envisaged under Section 195(1)(a), Cr.P.C. In the present case, there ought to have been a complaint as envisaged under Section 4(h) Cr.P.C. by District Magistrate himself or his superior i.e. Home Secretary and under no circumstances by a private person who is landlord of the accused, therefore, the accused was rightly acquitted by the learned Resident Judicial Magistrate.

9. For what has been discussed above, I found no illegality or jurisdictional defect in the impugned judgment, rather it has been passed in accordance with law. The appeal, being bereft of substance and merit, is hereby dismissed in *limine*.

Announced.
Dt: 15.8.2017.

JUDGE