

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

Cr.Misc.No.227-D/2022.

Dr. Hazrat Khan

Versus

The State and others

JUDGMENT

For petitioner: Mr. Umar Farooq Betani
Advocate.

For respondents: Nemo (motion case).

Date of hearing: **04.7.2022.**

MUHAMMAD FAHEEM WALLI, J.- Through this criminal miscellaneous petition, the petitioner has sought special leave to appeal against the order dated 29.3.2022, passed by learned Judicial Magistrate-I, D.I.Khan, whereby the respondents/accused were acquitted under Section 249-A, Cr.P.C in a complaint filed by the petitioner under Sections 120/406/427/452/506/148/149/161 P.P.C.



2. Arguments of learned counsel for the petitioner heard and record perused.

3. The record reveals that the petitioner filed a complaint under Sections 120/406/427/452/506/148/149/161 P.P.C against the respondents/accused. It is averred in the complaint that vide Iqrar

Nama dated 01.6.2012, he purchased land measuring 06 kanal 16 marla in the shape of plots No.1, 2, 3, 13, 14 in survey No.80 Cantt situated opposite G.P.O Chowk, D.I.Khan from respondents No.2 to 8 for worth consideration of Rs.03 crore 80 lac, but thereafter by violating terms and conditions of Iqrar Nama and in connivance with respondent No.9, they transferred the said land in favour of respondents No.10 to 14 through registered deed No.1510 dated 15.5.2014 and registered deed No.1799 dated 02.6.2014 and thus committed fraud with him.

4. After recording statement of the petitioner/complainant under Section 200 Cr.P.C, the complaint was sent to the S.H.O of Police Station concerned for inquiry/investigation and in pursuance thereof, the report was submitted. During proceedings in complaint, the respondents/accused submitted an application under Section 249-A, Cr.P.C, notice whereof was given to the opposite side. The learned Judicial Magistrate-I, D.I.Khan, after hearing arguments of learned counsel for the parties, accepted application of the respondents/accused and acquitted them under Section 249-A Cr.P.C vide order dated 29.3.2022, impugned herein.

5. The record reflects that earlier, the petitioner had filed Misc. Complaint No.10 of 2018

against the respondents/accused regarding the same allegations as narrated in the instant complaint. The learned Special Judge, Anti-Corruption, Southern Region K.P.K, Camp Court at D.I.Khan, after hearing both the sides, dismissed the said complaint vide order dated 24.9.2021 by invoking the provisions of Section 203, Cr.P.C. Under the law, nobody could be tried twice for the same offence on the basis of maxim "nemo debet bis vexari", which means that no person can be tried for the second time for an offence with which he was previously charged. This principle is fundamentally embodied in (i) section 403, Cr.P.C., (ii) section 26 of the General Clauses Act, 1897 and (iii) Article 13(a) of the Constitution of Islamic Republic of Pakistan, 1973. For ready reference these are reproduced as under:-



“Section-403, Cr.P.C. Persons once convicted or acquitted not to be tried for the same offence. (1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not to be liable to be tried again for the same offence, nor on the same facts for any other offence for which a different charge from the one made against him might have been made under section 236, or for which he might have been convicted under section 237.

(2) A person acquitted or convicted for any offence may be afterwards tried for any district offence for which a separate charge might have been made against him on the former trial under section

235, subsection (1).

(3) A person convicted of any offence constituted by any act causing consequences which together with such act, constituted a different offence from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequence had not happened or were not happened, or were not known to the Court to have happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) Nothing in this section shall affect the provision of section 26 of the General Clauses Act, 1897, or section 188 of this Code.”

“Section 26 of General Clauses Act. Offences punishable under two or more enactments. Where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.”

“Article 13 of the Constitution of Pakistan. Protection against double punishment. No person—

(a) Shall be prosecuted or punished for the same offence more than once.

(b).....”




6. August Apex Court in case titled "*Sherin Bacha and others Vs. Namoos Iqbal and 3 others*" reported in (PLD 1993 Supreme Court 247), while dealing in similar circumstances has held that:-

"The Constitution and the Code of Criminal Procedure read with General Clauses Act do not permit the re-trial of an offence in which a person which having once been tried as accused stands finally acquitted."

7. In view of above, since the subject matter has already been tried by the Court of competent jurisdiction in Misc. Complaint No.10 of 2018, therefore, I am of the considered opinion that the learned counsel for the petitioner has failed to point out any illegality and irregularity in the impugned order 29.3.2022 of learned trial Court warranting interference by this Court. Accordingly, leave refused and the instant petition for granting special leave to file the appeal is dismissed.

Announced.
Dt: 04.7.2022.
Imran/*


JUDGE


05/07

(S.B)
Hon'ble Mr. Justice Muhammad Faheem Wali