


PESHAWAR HIGH COURT, PESHAWAR

FORM OF ORDER SHEET

Date of Order of Proceedings	Order of other Proceedings with Signature of Judge.
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18.10.2017	<p><u>W.P.No.2516-P/2017</u></p> <p>Present: Mr. Daris Khan, Advocate for the petitioner.</p> <p>_____</p> <p><u>SHAKEEL AHMAD, J-</u>. Through the instant constitutional petition, the petitioner has sought the following relief:-</p> <p>It is, therefore, respectfully prayed that on acceptance of this writ petition, this Hon'ble Court may graciously be pleased to declare the impugned order dated 17.05.2017 as illegal, without jurisdiction, without lawful authority and the case of the petitioner may kindly be remanded back to the trial court to be decided on merits.</p> <p>2. Briefly stated the facts of the case are that the petitioner filed a complaint u/s 3/4 of the Illegal Dispossession Act 2005 against the respondents on the ground that on 22.8.2010 at 9.15 a.m. the respondents entered into his house and forcibly took away the entire household articles alongwith gold ornaments and cash amount etc. lying in his house and that he is still in possession of the house; that the respondents are accused in case</p>

	<p>FIR Nos.58, 239, 313 and 312 and are at large in the said cases, but the local police is avoiding to arrest them; that the complainant approached the high up of the police officials for redressal of his grievance but all his efforts in this respect proved to be a wild goose chase, and as such prayed for proceedings against the respondents in accordance with law. The complaint was lodged on 27.3.2013. The SHO Police Station, Mattani was directed to inquire into the matter and to submit comments/inquiry report. The inquiry report was submitted in the court, wherein, it was stated that both the parties are absconders and it was dangerous to proceed to the spot and no report was submitted in respect of illegal dispossession of the complainant/petitioner. After receipt of the inquiry report, process was issued against the accused. Accused Nasim Akhtar attended the court who was formally charge sheeted to which he pleaded not guilty and claimed trial. Lateron he absented himself and proceedings under section 512 Cr.P.C. were initiated against him. All the accused were declared as proclaimed offenders and perpetual warrants of arrest were issued against them vide order dated 14.3.2015. After arrest of the accused Akhtar Nawab/ respondent, the complainant submitted an application on 14.10.2012 before the learned ASJ-IV, Peshawar praying therein for commencement of trial as such formal charge was framed against him on 10.3.2016 to which he pleaded not guilty and claimed trial. During trial, the learned counsel for accused submitted an</p>
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application u/s 265-K Cr.P.C., notice whereof was issued to the complainant and after hearing the learned counsel for the parties, the learned Additional Sessions Judge-IV, Peshawar accepted the application and acquitted the accused vide order dated 17.5.2017, hence this petition.

3. Learned counsel for the petitioner argued that the findings and observation given by the learned court below are illegal. He next argued that the case of the petitioner falls outside the ambit of Section 403 Cr.P.C. therefore, warrant interference.

4. Arguments heard and record perused.

5. Perusal of the record reveals that earlier, the petitioner had lodged a case vide FIR No.504 dated 22.8.2010 registered under sections 380/452/427/148/149 PPC at the order of learned Justice of Peace, against the respondents for the same incident as narrated in the complaint. The trial was conducted in that very FIR, wherein, complainant appeared as PW-1 and the accused/respondents were acquitted by the learned Judicial Magistrate vide order dated 02.03.2017, which was upheld by this court. The respondent was acquitted from the charges leveled in the FIR, which are same as mentioned in the complaint, therefore, his trial on the same allegations is hit by embargo placed by section 403 Cr.P.C. which is reproduced below:-

Section-403. 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 403 contemplates of a situation where a person has once been tried by a court of competent jurisdiction and acquitted by such court cannot be tried again for the same offence nor for any other offence based on similar facts. In this respect, reliance can well be made on the case of Shehr Yar Vs. Bacha and 4 others (1997 MLD page-1672), it is held that:-

Section 403, Cr.P.C. contemplates of a situation where a person having once been tried by a Court of competent jurisdiction and acquitted by such Court cannot be tried again for the same offence nor for any other offence based on similar facts.

6. For the foregoing reasons, we hold that the learned trial court has rightly acquitted the accused u/s 265-K Cr.P.C. as there was no probability of his being convicted. We find no irregularity or illegality in the impugned judgment, therefore, the same is maintained. The writ petition, being bereft of merit, is dismissed in *limine*.

Announced.
18.10.2017


JUDGE


JUDGE