

Form No.HCJD/C-121  
**ORDER SHEET**  
**IN THE LAHORE HIGH COURT, LAHORE.**  
**JUDICIAL DEPARTMENT**

Case No:                      Crl. PSLA No.341/2010

Matloob Qadir

Vs

Mujahid Shah etc

Sr. No. of Order/ Proceeding	Date of order/ proceeding	Order with signature of Judge, and that of parties or counsel where necessary
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10.04.2014 Mr. M. Baleegh uz Zaman, Advocate for the petitioner.

Through this petition for special leave to appeal, the petitioner Matloob Qadir assails the judgment dated 18.10.2010 passed by learned Judicial Magistrate, Ist Class, Gujrat, whereby the accused/respondents No.1 to 6 were acquitted of the charges in connection with a private complaint filed u/s 440/506/148/149 PPC.

2. Brief facts are that the petitioner filed a private complaint against the respondents wherein he maintained that all the respondents along with their co accused, being armed with firearms, demolished a room, constructed on the property, owned by the father and uncle of the complainant and at the same time, raised their own construction,

hurled abuses to his paternal grandmother and also extended threats to father of the complainant.

3. Learned trial court, after recording cursory evidence, summoned the respondents. Lal Shah, co-accused of the respondents died, due to which, to his extent, the proceedings were abated while accused Khalid Hussain, Amir Shah, Shahbaz Shah and Abid Shah absented themselves from the proceedings of the trial, so they were declared proclaimed offenders. The respondents were acquitted of all the charges by the learned Magistrate after a complete trial.

4. I have heard learned counsel for the petitioner and perused the record with his able assistance.

5. The only argument, leaving aside rest of the legal and factual aspects of the case, extended by learned counsel for the petitioner was that the learned trial court, while acquitting the respondents/accused, has wrongly focused the issue of possession because to constitute the offence u/s 440 PPC, point of possession or dispossession is not relevant and that the mischief as defined in section 425 PPC has been committed by the respondents and the learned trial court has wrongly and illegally

acquitted them of the charge u/s 440 PPC; that the learned trial court has acquitted the respondents because of wrong interpretation of law, hence, the impugned judgment is liable to be set aside and the respondents deserve to be convicted and sentenced under section 440 PPC and prayed for grant of special leave to appeal.

6. Even after hearing the vehement arguments of learned counsel for the petitioner, I am not convinced to look with him because of the reasons that in the case in hand, two facts are admitted even by the prosecution, as are available in the evidence:-

(i) The civil litigation regarding ownership of the disputed property is still pending, as stated by the complainant during his cross examination while appearing as PW.1, which is reproduced as under: -

ii The possession of the property is continuously with the respondents/accused party

and it, admittedly, never remained with the petitioner/complainant.

7. It is to be clarified here that during the pendency of title dispute between the respondents/accused and the complainant/petitioner himself, the petitioner cannot be deemed to be the owner of the property in issue unless and until title is finally decided by the competent court as appeal is continuity of suit. In this regard, reliance is placed on the judgment passed by the Hon'ble Supreme Court of Pakistan in case titled **“Tayyaba Younus v. Muhammad Ehsan”** reported as 2010 SCMR 1403 wherein it is held ***“Admittedly the appeal is a continuity of the original proceedings of a suit”***.

So, when, in view of the pendency of civil litigation between the parties, matter of ownership/title is yet to be finalized and the possession, previous or present, construction over the disputed property by the respondents/accused party is admitted, how it can be declared that the respondents have committed the offence of mischief against the petitioner/complainant. Section 425

PPC, defines the offence of mischief and reads as under: -

*Whoever, with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits “mischief”.*

8. The careful observation of the above definition of mischief as provided by law, reveals that the most important ingredients to constitute the offence in question, are: -

- i. Intention to cause wrongful loss or damage to the public or to any person;
- ii. Cause the destruction or change to destroy or diminish its value or utility.

9. It is evident, even from the prosecution's case, that after demolishing the old building, the respondents built a new room, though this occurrence is denied by the defence, the construction of new room rebuts the allegation as it proves that the intention was not to cause wrongful loss or damage to the complainant, nor any property

is destructed or change has been made to destruct or diminish its value or utility. The prosecution has failed to establish that: -

- i) The new construction of building after demolishing the old one, is meant to cause wrongful loss or has caused any loss or damage to the appellant, especially when admittedly title dispute was pending before the appellate forum at the time of occurrence.
- ii) Such change in the property has caused any destruction or has diminished its value or affected it injuriously.

10. It seems that the appellant has wrongly alleged the offence of mischief against the respondents under his wrong impression of his ownership of the property in issue during the pendency of the title dispute before the appellate forum.

11. In view of the above, this Court is of the view that no commission of offence u/s 440 PPC has been proved against the respondents. Similarly, when continuous possession of the respondents is admitted over the place of alleged

occurrence, then no question of commission of offence under section 148, 149 PPC arises. The threat simpliciter, as is alleged by the prosecution, does not constitute the offence of criminal intimidation. Hence, none of the offences charged against the respondents, has been proved by the prosecution.

12. After careful perusal of the impugned judgment, I have noted that valid and convincing reasons have been given by the learned trial court for acquittal of respondent No.1 to 6. It is by now established proposition that a judgment of acquittal only warrants interference with the conclusion arrived at by the trial court when it is likely to cause grave miscarriage of justice.

13. Moreover, when a court of competent jurisdiction acquits an accused of the charge after regular trial, then double presumption of innocence will always be attached with the order of acquittal and strong and exceptional reasons are required to set aside the order of acquittal. Reference is made to the case of **Iftikhar Hussain and others vs. The State and other** (2004 SCMR 1185).

The reasons given by the learned trial court while acquitting respondents No.1 to 6 are neither perverse nor arbitrary or wrongful and the impugned judgment does not call for any interference by this Court, hence leave to appeal is refused and the instant petition stands dismissed *in limine* being devoid of merits.

***(Syed Shahbaz Ali Rizvi)***  
***Judge***

***Approved for reporting.***

***Judge***

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***Rafiqat Ali***