

**IN THE HIGH COURT OF SINDH AT KARACHI**

Before:  
Ahmed Ali M. Shaikh, CJ  
Yousuf Ali Sayeed, J

CP No.D-6023 of 2021

Muhammad Saleem Ahmed          Versus          Industrial Development Bank  
Limited and another

Priority

1. For hearing of CMA No.25453/2021
2. For hearing of main case.

Petitioner through Mr. Hasan Arif, Advocate  
Respondent No.1 through Mr. Masood Anwar Ausaf, Advocate.  
Mr. Khaleeq Ahmed, DAG.

Date of hearing 13.12.2021

**ORDER**

**AHMED ALI M. SHAIKH, CJ.**- In instant Petition preferred under Article 199 of the Constitution, 1973 read with Section 561-A Cr.P.C., the Petitioner impugned an order dated 01.09.2021 passed by the learned Presiding Officer, Banking Court No.III, Karachi in Criminal Complaint No.26 of 2014.

2. Briefly, facts as pleaded are that M/s Pak Leather Crafts Limited (the "**Company**"), of which petitioner was one of the Directors, obtained Export Refinance Facility (the "**Facility**") from Respondent No.1 and executed letter of pledge. It is averred that the Facility was subsequently renewed/ regularized. However, regarding dispute over repayment schedule, mark-up, etc the Respondent No.1 filed Suit No.43 of 2014 against the Company and its directors/guarantors before Banking Court No.IV, Karachi. Later, the Respondent No.1 also filed a criminal complaint No.26 of 2014 against the petitioner and others, guarantors/directors of the company, alleging commission of offences in terms of Section 20(e) and 20(2) of the Financial Institutions (Recovery of Finances) Ordinance, 2001, allegedly disrupting its attempt to have the pledged stock sold to satisfy the outstanding amount and violating the letter of pledge. During proceedings before the trial Court, the three co-accused and petitioner filed an application in terms of Section 265-K Cr.P.C. The trial Court after hearing arguments acquitted the co-accused persons except the Petitioner, vide order impugned herein.

3. The learned counsel for the petitioner while professing innocence of the Petitioner for want of requisite material/evidence submitted that the complainant Bank with malafide intention transformed the civil dispute into criminal with the sole object to compel the Petitioner to concede to the illegitimate demand/liability cannot be fixed otherwise. He next submitted that by dint of the impugned order, the trial Court acquitted the three co-accused and for the reasons best known to the Presiding Officer, declined to extend the same benefit though the case of the Petitioner and co-accused is on same pedestal. He further emphasized that the impugned order lacks reasoning and violative of Section 24A of the General Clauses Act. He in support of his contentions has cited the cases reported in 1994 SCMR 798, 2000 SCMR 122, 2002 SCMR 1076 and 2008 PLD Karachi 567. He, however, during hearing conceded the matter before the trial Court is fixed for recording statement of accused/ Petitioner under Section 342 Cr.P.C.

4. The learned counsel for the Respondent No.1 argued that there is ample evidence on the record to connect the Petitioner with the commission of alleged offence. He next submitted that even otherwise the trial is at the verge of conclusion and the superior Courts in the given scenario are slow in entertaining petitions seeking quashment of proceedings. He pointed out that against the acquittal of the co-accused the Respondent No.1 has already filed an Acquittal Appeal being No.624 of 2021, which is pending adjudication before this Court. The learned DAG supporting the impugned order, adopts the arguments advanced by the learned counsel for the Respondent No.1.

5. We have heard the learned counsel for the Petitioner, Respondent No.1, DAG and perused the material available on record. During hearing, the learned counsel for the petitioner conceded that evidence of prosecution witnesses has been record and matter is fixed before the trial Court for recording statement of the Petitioner in terms of Section 342 Cr.P.C. He nonetheless insisted even at the fag end of the trial this Court while exercising extra ordinary constitutional jurisdiction can quash the proceedings, inter-alia, for lack of evidence, malafide on the part of the complainant and following the doctrine of consistency. With profound respect the submissions of the learned counsel for the Petitioner are untenable. We are fortified in our view by the celebrated pronouncement of the Honourable Supreme Court in the case of State v. Abdul Rehman reported as 2005 SCMR 1544. The Honourable Apex Court observed that:-

“13. On consideration of arguments of Dr. Qazi Khalid Ali, Additional Advocate-General and Ch. Aitzaz Ahsan, Senior Advocate Supreme Court and the case-law relied upon by both of them in support of their respective contentions, there can be no dispute that an application under section 249-A, Cr.P.C. can be filed, taken up for hearing and decided at any time or stage of the proceedings and the words "at any stage" denote that the application under section 249-A, Cr.P.C. can be filed even before prosecution evidence had been recorded or while the exercise of recording of evidence is going or when the exercise is over. It is, however, to be noted that though there is no bar for an accused person to file application under section 249-A, Cr.P.C. at any stage of the proceedings of the case yet the facts and circumstances of the prosecution case will have to be kept in mind and considered in deciding the viability or feasibility of filing an application at any particular stage. The special or peculiar facts and circumstances of a prosecution case may not warrant filing of an application at a stage when the entire prosecution evidence had been recorded and the case was fixed for recording of statement of the accused under section 342, Cr.P.C. this Court in the cases of Bashir Ahmad v. Zafar ul Islam PLD 2004 SC 298 and Muhammad Sharif v. the State and another PLD 1999 SC 1063 (supra) did not approve decision of criminal cases on an application under section 249-A, Cr.P.C. or such allied or similar provision of law, namely, Section 265-K, Cr.P.C. and observed that usually a criminal case should be allowed to be disposed of on merits after recording of the prosecution evidence, statement of the accused under section 342, Cr.P.C., recording of statement of accused under section 340(2) Cr.P.C., if so desired by the accused persons and hearing the arguments of the counsel of the parties and that the provisions of section 249-A, section 265-K and section 561-A of the Cr.P.C. should not normally be pressed into action for decision of fate of a criminal case.”

6. Moreover, as the case is likely to conclude, it would not be appropriate on our part to make or express adverse remarks and observations relating to credence or reliability of the prosecution's case, contradictions and discrepancies, if any, found therein or the inherent or intrinsic weakness and shortcomings or veracity/truthfulness of the prosecution evidence, as it may prejudice the case of either side. With profound respect, the case law relied upon by the learned counsel for the Petitioner is distinguishable on facts and circumstances of the case in hand.

For the foregoing reasons we by our short order dated 13.12.2021 had dismissed the Petition.

Chief Justice

Judge