

ORDER SHEET

HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Crl. Appeal No.S-67 of 2025

DATE	ORDER WITH SIGNATURE OF JUDGE(S)
	1. For order on M.A No.10420/2025 (u/s 345 (2) Cr.P.C)
	2. For order on M.A No.10421/2025 (u/s 345 (6) Cr.P.C)
	3. For hearing of M.A No.8454/2025 (u/s 426 Cr.P.C)
	4. For hearing of main case

01.12.2025

Mr.Hemandas S. Sanghani, Advocate for the appellants-convicts
Witness Tariq Ahmed, Ahsan and Dildar Hussain are present in Court
Mr.Khalid Hussain Lakho, D.P.G

Appellants-convicts, father and son, namely, Hadi Bux s/o Imam Bux (appellant-convict no.2) and Abdul Malik s/o Hadi Bux (appellant-convict no.1), have filed this instant criminal appeal under Section 410 Cr.P.C. against the judgment dated 22.09.2025 passed by the learned IInd Addl. Sessions Judge Badin in Session Case No.83 of 2025 (The State v. Abdul Malik and Another) in FIR No.84/2024 registered at P.S. Badin w/s 436, 427, 379, 504, 34 PPC. The learned lower court has convicted the appellant/convict son, Abdul Malik u/s 265-H(ii) Cr.P.C. for the offence under Section 436 PPC (house burning) to undergo R.I. for 3 years and to pay fine Rs.20,000 and on failure to pay fine he will undergo simple imprisonment for 1 month, and, whereas convicted both the appellants/convicts, father and son, for offence under Section 379 PPC to undergo R.I. for 3 years and fine of Rs.10,000 each on failure to pay fine they will further undergo simple imprisonment of one month. Both are also convicted for the offence under section 504 PPC and sentenced to undergo R.I. for one year and to pay fine of Rs.5,000 each.

2. On 21.11.2025, the complainant, Asif Iqbal Hussain s/o Hussain Bukhsh and the two appellants/accused and today, on 01.12.2025, the three witnesses to the incident, namely Ahsan s/o Ali Bux Talpur; Dildar

Hussain Talpur s/o Hussain Bux and Tarique Ahmed Talpur s/o Muhammad Sulleman Talpur, filed affidavits (which are taken on record) in support of the application under Sections 345(2) and 345(6) Cr.P.C. to permit them to enter into a compromise. Notice is also waived of the two applications by the parties and learned DPG.

3. Learned Counsel for the appellants-convicts submits that the parties have effected a compromise, and as a result, the complainant and the appellants-convicts have jointly moved the aforesaid applications seeking acquittal of the accused-convicts based on the compromise. Counsel submits that the parties in the matter are related to each other, and in case the appellants-convicts are not acquitted in the instant case based on the compromise, then the compromise, having been reached between the parties during the appeal, would be rendered ineffective. The related parties, in case of failure to compromise, would be driven back to the old feud of hostility and imminent violence. Furthermore, as the appellant-convict no.2 is an aged person, not entering into a compromise will leave a bad taste intergenerationally, and the enmity between the relatives will continue into future generations.

4. Counsel for the Complainant Asif Iqbal Hussain, present in person, submits that the offence of alighting the otaq, which was exclusively in his ownership and was being looked after by him alone, he has forgiven the appellants-convicts, who are also his relations/neighbors. Thus, he pleads that the compromise may be given effect.

5. Learned DPG has submitted that section 436 PPC is not compoundable and thus section 345 Cr.P.C. is inapplicable. He states that Section 436 PPC has been proven against the appellants-convicts and the compromise application is liable to be dismissed. He relies on the case of Ghulam Farid v. The State, PLJ 2006 SC 59.

6. Arguments heard and perused the record.

7. Before discussing whether or not the appellants-convicts can be acquitted of the charge based on the statements made before this Court today by the complainant-victim, viz. compromise, because the offence is non-compoundable, this bench notes that there is no discussion in the impugned judgment concerning whether or not an otaq falls squarely within the definition of a house under fire under section 436 PPC. The complainant present in Court described the otaq as being located at a distance from the main house and as an open space, and Counsel argued that the otaq was not entirely covered by the definition of a “house” under the literal interpretation of a “house” as described in Section 436 PPC. This aspect of the matter has not been considered and/or discussed in the impugned Judgment.

8. Perusal of the record further reveals that the complainant-victim, PW-1, marked as Ex.3 (available on pages 14 to 16 of the paper book), as recorded in his cross examination, states:

“It is incorrect to suggest that the otaq is situated in the land of accused Malik and they have constructed the otaq and not constructed by me. Voluntarily said the otaq constructed by my father. It is correct to suggest that accused have moved application for partitioned of the land previously at different forums. It is incorrect to suggest that I have not ready for partitioned of the land and in order to pressurize the accused lodged this false case.”

9. The cross-examination as mentioned above suggests that the ownership of the otaq, itself, being singularly in the ownership of the complainant-victim, is not beyond a reasonable doubt. The cross-examination, which is neither referred to nor discussed in the impugned Judgment, suggests that the appellants-convicts themselves have a dispute over the otaq land and may be contesting claims for ownership in the otaq. The foregoing information raises the question of whether the burning of the otaq on land, the ownership of which is being disputed, constitutes the burning of the complainant's house, as the appellant-convicts are also

claiming an interest in the same land. Thus, the ownership of the land remains subject to proof, and this matter cannot be decided by this Court exercising criminal jurisdiction. In other words, arguably, the appellants-convicts are also, as the complainant admits, claiming an interest in the otaq. If this is so, can the appellant-convicts be accused of setting an otaq on fire on land in which they themselves are alleging co-ownership? Can the accused-convicts be charged under Section 436 PPC given the contested background? To this bench, this may be critical in the determination of the appeal. It may well be that this bench could, on further submissions of the Counsel, not be able to sustain the impugned Judgment on conviction of the appellants-accused on this score. However, this matter remains to be determined, as the full hearing may not take place given the compromise application. Reliance on the tentative consideration of the merits of the case when considering a compromise application is drawn from the observations made by the Court in cases of Hussain Bux v. The State, PLD 2003 Karachi 127, and The State v. Irfanullah Qazi, 2007 MLD 1269.

10. Given the above context, this bench now turns to whether the compromise can be effected in a non-compoundable offence. The compromise is meant to promote harmonious living and maintain cordial relations between the parties. The Supreme Court affirms this view in several judgments, including, inter alia, in the case of Ghulam Shabbir and Two Others, 2003 SCMR 663. Additionally, a Division Bench of the Peshawar High Court in the case of Ijaz and Another v. Mst. Manadia and Another, PLD 2016 Peshawar 26, has also observed that the non-compoundability of a section of law should not be read in isolation, but it should be read in the background of each criminal case, and a beneficial interpretation should be given to it. When the parties in the instant case, who are also claiming ownership in the otaq, are related to each other, are neighbors, too, and have decided to live in peace by forgetting their differences, notwithstanding, as discussed herein above, viz. the merits of the appeal, although not being decided today, the impugned judgment has legitimate grounds for challenge, then such a change in attitude and on

merits of the case in question, calls for a holistic consideration by this bench of the compromise applications despite the non-compoundability of section 436 PPC.

11. In view of the above, following the principles laid down by the Supreme Court and with respect to the observations made by the several Division Benches of the Superior Courts of Pakistan, the conviction and sentence inflicted upon the appellants-convicts in terms of the judgment dated 22.09.2025, are set aside. The appellants-convicts, father and son, namely, Hadi Bux s/o Imam Bux (appellant-convict no.2) and Abdul Malik s/o Hadi Bux (appellant-convict no.1), are ordered to be released forthwith if not required in any other case.

12. For removal of doubt, it is clarified that none of the observations made by me concerning the otaq and/or in connection with the otaq or in relation to or arising out of the otaq and alleged claims and counterclaims between the parties mentioned herein above can be relied upon or considered in any matter outside this lis, and all references to the otaq are for the sole purpose of deciding this compromise application.

JUDGE

AHSAN K. ABRO