

## **IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD**

### **Cr. Acquittal Appeal No.S-124 of 2012.**

Appellant: The State through Ms. Sana Memon, Assistant Prosecutor General.

Respondent: Muhammad Usman Panhwar through Mr. Qurban Ali Khaskheli, Advocate.

Date of Hearing: 27.11.2025.

Date of Decision: 27.11.2025.

## **J U D G M E N T**

**Muhammad Hasan (Akber), J.-** Assailed in this appeal, is the order dated 20.10.2011 passed by learned Special Judge, Anti-Corruption (Provincial), Hyderabad, in Special Case No.82/1998, 'The State v. Muhammad Usman Panhwar' arising out of F.I.R No.09/1996 of PS ACE Sanghar, for the offences under Section 409, 420, 465, 467, 468, 471, 474, 218, 34-PPC r/w Section 5 (2) Prevention of Corruption Act, 1947, whereby Respondent/accused (Muhammad Usman Panhwar) has been acquitted under section 249-A Cr.P.C.

2. Brief allegations in the FIR are that the Chotiari Reservoir project was approved by the Government of Sindh in 1995-96. Piyaro Khan Shaikh was appointed as the full-time Land Acquisition Officer, while Muhammad Salahuddin Qureshi (Commissioner, Mirpurkhas Division) and Shafaat Hussain Unar were appointed Director and Deputy Director, respectively, of the Chotiari Resettlement Agency (C.R.A.). The Land Valuation Committee (LVC), constituted on the recommendation of the Planning & Development Department, prepared guidelines for land acquisition and compensation, which were approved by the Chief Minister of Sindh on 06.07.1995. Piyaro Khan Shaikh, as Land Acquisition Officer, received Rs 9,90,00,000/- from the Commissioner/Director and paid Rs.8,87,24,750/- as compensation for 5,813-36 acres, although the budget allocated for acquiring 10,761-0 acres was Rs.8,66,16,000/-. This resulted loss of Rs.3,58,76,250/- to the Government for the acquisition of 3817-1 acres and for excessive payments. Affected residents of the reservoir complained that they had been ignored in the payments, while some outsiders with dubious land titles received millions of rupees from the Land Acquisition Officer. A preliminary inquiry by a special team highlighted the need for a detailed investigation. After the Chief Minister visited

Sanghar in April 1996 and received similar complaints, Abdul Ghaffar Soomro, Member (R&S) of the Board of Revenue, Sindh, conducted a thorough inquiry and submitted a report on 21 July 1996. Based on that report, an FIR (No. 09/1996) was registered on 31.12.1996 by the Circle Officer of the Anti-Corruption Establishment, Sanghar.

3. During pendency of proceedings before learned Special Judge, Anti-Corruption (Provincial), Hyderabad **“Trial Court”** the Respondent / accused (Muhammad Usman Panhwar) moved an application U/s 249-A Cr.P.C **“Application”** for his acquittal on the ground that charge against him is groundless and there is no probability of his conviction. The learned Trial Court after hearing both parties, allowed the Application and acquitted the Respondent / Accused as under;

“In the above circumstances, I find that there is no probability of the conviction of accused as no specific role of present accused is attributed in the case papers in respect of commission of criminal misconduct, fraud, forgery, cheating and misappropriation. Consequently, the accused Muhammad Usman who is present in court on bail, is hereby acquitted U/S 249-A Cr.P.C. His bail bond is cancelled and surety is discharged.”

4. Ms. Sana Memon, learned Assistant Prosecutor General argued that the impugned order passed by learned Trial Court is against the natural justice as the learned Trial Court ignored the material available on the record against the Respondent / accused and acquitted the respondent under Section 249-A Cr.P.C, despite taking cognizance of the offence. She further contended that the impugned order has seriously prejudiced the prosecution as well as public, as the learned Trial Court did not give an opportunity to the prosecution to examine its material witnesses to prove the charge against the Respondent; that during inquiry sufficient evidence was collected by Investigation Officer against the respondents, but learned Trial Court fully ignored material available on the record against the Respondent. She lastly prayed that the case may be remanded back to the Trial Court for production of documentary evidence and examination of PWs for fair conclusion of the case.

5. Conversely, Mr. Qurban Ali Khaskheli, Advocate for Respondent argued that the name of his client does not transpire in the FIR; that in the FIR as well as in investigation, prosecution has not attributed any role against the Respondent; that the respondent performed his official duty with due diligence and in good faith; that the impugned order is well reasoned and liable to be sustained as respondent has not given any wrongful loss to Government and wrongful gain to the any private person/co-accused. Finally, learned counsel prayed to dismiss the instant Cr.

Acquittal Appeal filed against Respondent.

6. Heard learned Assistant Prosecutor General and learned counsel for Respondent.

7. The record reveals that the respondent / accused was acquitted of the charges leveled against him by the learned Trial Court vide the impugned order by entertaining an application filed under section 249-A, Cr.P.C. The record further indicates that the acquitted respondent was charged by the Appellant / State in the aforesaid FIR mainly for the allegations that respondent being head of the District Revenue hierarchy having supervisory role in the land records of District Sanghar as per allegation of the prosecution, respondent being Deputy Commissioner deliberately included the State Land in the notification issued by him in collusion with other accused under section 6 & 4 of the Land Acquisition Act with intention to give wrongful gain to the private persons and loss to the Government exchequer. The respondent and co-accused (Salahuddin Qureshi) both officers issued said notification under Land Acquisition Act and gain peculiar advantage by making incorrect statement mentioning the State land and the barrage land which was to be surrender not to be acquired. The allegations of Prosecution are serious in nature as loss of Rs.3,58,76,250/- was caused to the Government exchequer which requires evidence as per guidelines provided by Honorable Supreme Court of Pakistan in **“The State Vs. Raja Abdul Rehman”** (2005 SCMR 1544), in the following terms;

“18. It will not be out of place to mention that in appeal or revisional proceedings, the order of acquittal of the accused under section 249-A or section 265-K of the Cr.P.C. would not have the same sanctity as orders of acquittal on merits. Consequently, the principles which are to be observed and applied in setting aside concurrent findings of acquittal or the principle relating to the presumption of double innocence when an accused is acquitted after a full fledged inquiry and trial to acquittals under section 249-A, Cr.P.C. would not be applicable. The High Court of Sindh while hearing the appeal against the impugned order did not advert to the above very important and material aspect of the case and decided the case in a very cursory and hasty manner. On this ground alone, the order of the Sindh High Court cannot be sustained.”

8. The record reflects that without recording the evidence of material witnesses, the learned trial Court on the basis of its own assumptions and presumptions has acquitted the Respondent / accused through the impugned order, which is not sustainable in the eyes of law. in the present case due process of law has been denied to the Appellant / State as legally the complainant / State should have been provided a reasonable and fair opportunity to prosecute the person(s) who have been

nominated as an accused of offences, but the record of the case speaks otherwise as the State has been deprived of the prescribed process of the law without any fault on the part of complainant / State.

9. In the case of "**Model Custom Collectorate Islamabad Vs. Aamir Mumtaz Qureshi**" (2022 SCMR 1861), it was held by the Honourable Supreme Court of Pakistan that there is no cavil to the proposition that by enacting sections 249-A and 265-K, Cr.P.C., the Legislature provided power to acquit an accused at any stage of the case if, after hearing the prosecutor and the accused and for reasons to be recorded, it considers that the charge is groundless or that there is no probability of the accused being convicted of any offence. But acquittal, under the said sections, could be made only if there was no probability of conviction of the accused. However, each case must be judged on its own special facts and circumstances and the reasons are to be recorded in support of conclusion that charge is groundless or that there is no probability of accused being convicted. If there is remote probability of conviction then of course courts are not empowered to invoke the said provisions i.e. 249-A and 265-K Cr.P.C.

10. The investigation against the Respondent / accused reflects that there were serious allegations regarding causing huge loss of Rs.3,58,76,250/- to the Government exchequer. Ex facie there was documentary, oral and circumstantial evidence to prove the charge. In the face of this material, the Trial Court could not have invoked section 249-A, Cr.P.C. and acquit the Respondent / Accused. In appeal or revision proceedings, the order of acquittal of the accused under Section 249-A or Section 265-K of the Cr.P.C. would not have the same sanctity as orders of acquittal on merits. Consequently, the principles which are to be observed and applied in setting aside concurrent findings of acquittal or the principle relating to the presumption of double innocence when an accused is acquitted after a full-fledged inquiry and trial, would not be applicable to the acquittals under section 249-A, Cr.P.C. or section 265-K, Cr.P.C.

11. In the instant case, not only specific allegations were made against the Respondent but also documentary evidence was on record and specific role had been attributed to the Respondent. In the presence of such evidence, the learned Trial Court completely erred in holding that there was no probability of a conviction to the accused and therefore, wrongly acquitted the Respondent U/s 249-A Cr.P.C. In order to ascertain the genuineness of the allegations, the trial Court ought to have allowed the prosecution to lead evidence. In the circumstances, I am of the view that

the learned trial Court acted in haste in passing the order of acquittal which is, therefore, not sustainable.

12. In view of above circumstances and case laws relied upon, the impugned order dated 20.10.2011 passed by learned Special Judge, Anti-Corruption (Provincial), Hyderabad, in Special Case No.82/1998 is hereby **set-aside** and the matter is remanded back to the Trial Court, which shall proceed from the stage at which the case stood when the application of accused / respondent under Section 249-A of the Cr.P.C. was decided. The learned Trial Court is further directed to join the Respondent as accused in the above mentioned case, record the evidence and decide the case strictly in accordance with law. Needless to mention here that since during trial the accused/respondent was on bail as transpires from the record, therefore, he shall remain on bail in the post remand proceedings till the final decision of the case on merits. This, however, shall not preclude the learned Trial Court from exercising powers U/s 497(5) Cr.P.C in case of violation of the bail order by the accused. These are the reasons for my short Order dated 27.11.2025.

**JUDGE**