

**ORDER SHEET**  
**IN THE HIGH COURT OF SINDH KARACHI**

***Cr. Acquittal Appeal No. S-545 of 2021***  
***(Muhammad Shahid Versus Fareed and another)***

DATE	ORDER WITH SIGNATURE OF JUDGES
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For hearing of Main Case

**24.11.2025**

Mr. Naeem Akhtar Khan Tanoli, Advocate for the Appellant  
Mr. Naveed Anjum Advocate for the Respondent No.1  
Mr. Muhammad Mohsin Mangi, Assistant Prosecutor General Sindh,  
alongwith Inspector Qasim of PS New Town

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**ALI HAIDER 'ADA', J.-** Through this Criminal Acquittal Appeal, the appellant calls in question the Order dated 11.09.2021 passed by the learned XXVIIIth Judicial Magistrate, Karachi-East in Criminal Case No.1286 of 2020 titled "*The State versus Fareed*", whereby Respondent No.1/accused was acquitted by exercising powers under Section 249-A, Cr.P.C.

2. Brief facts of the case are that the Appellant, being the Complainant, lodged FIR No.50 of 2018 at Police Station New Town, Karachi-East, for an offence under Section 489-F, PPC. The FIR was recorded on 10.03.2018, whereas the alleged incident is dated 15.09.2017. As per the contents of the FIR, the accused issued a cheque amounting to Rs.20,00,000/- in relation to a plot transaction, which was subsequently dishonoured as per the memorandum issued by the concerned bank. Upon submission of the challan dated 13.03.2018, the learned trial Court took cognizance of the matter; however, without allowing the proceedings to mature further, the case was disposed of under Section 249-A Cr.P.C. upon an application moved by the accused/Respondent No.1.

3. Learned counsel for the Appellant submits that the impugned order suffers from serious legal infirmities. It is argued that the learned trial Court exercised jurisdiction under Section 249-A, Cr.P.C. prematurely, on presumptions and assumptions, without evaluating the material available on record. Counsel maintains that sufficient incriminating material existed against the accused which warranted a full-dress trial, but the learned Magistrate failed to appreciate the same and thus the impugned acquittal is liable to be set aside.

4. Conversely, learned counsel appearing for Respondent No.1 contends that the Appellant has no case on merits, as the transaction in question did not fall within the ambit of Section 489-F PPC. It is argued that the trial Court has already observed that Section 489-F PPC cannot be used as a mechanism for civil recovery, and further, that notice under Section 30 of the Negotiable Instruments Act, 1881 was admittedly not issued. Therefore, according to the defence, the learned Magistrate rightly exercised discretion vested under Section 249-A Cr.P.C.

5. Learned State Counsel supports the findings of the learned trial Court, contending that ample jurisdiction existed under Section 249-A Cr.P.C. and the same was exercised in a lawful manner.

6. I have heard the learned counsel for the parties and perused the record with their able assistance.

7. In the instant case, the prosecution's case is primarily dependent upon documentary evidence, particularly the cheque in question, the dishonour memorandum, and the relevant bank record. These documents constitute the core of the prosecution's case, yet the same were not exhibited or brought on record in accordance with law owing to the premature invocation of Section 249-A Cr.P.C. by the trial Court. The grievance of the prosecution is that before any opportunity to lead evidence could be availed, the learned Magistrate concluded that the charge was groundless and that no probability existed of the accused being convicted. Such an approach, at the very early stage of proceedings, calls for judicial scrutiny. At this juncture, reference may be made to Article 10-A of the Constitution of Islamic Republic of Pakistan, 1973, which guarantees the right to fair trial and due process. Article 10-A reads as under:

***“10A. For the determination of his civil rights and obligations or in any criminal charge against him, a person shall be entitled to a fair trial and due process.”***

8. The mandate of fair trial under Article 10-A is two-fold: it protects not only the rights of the accused but also ensures that the prosecution is afforded a fair and reasonable opportunity to establish its case in accordance with law. A criminal trial is a structured process governed by the Cr.P.C. wherein evidence is to be led, witnesses examined, and the matter adjudicated after due appraisal of the material on record.

9. Whilst, Section 249-A Cr.P.C. does indeed empower a trial Court to acquit an accused at any stage if it finds that the charge is groundless or there is no probability

of conviction. However, such power is exceptional in nature and must be exercised judiciously, cautiously, and only where the record unmistakably demonstrates that continuation of proceedings would be a futile exercise. The facts and circumstances of each case must be carefully evaluated before arriving at such a conclusion.

9. In the present matter, the learned Magistrate invoked Section 249-A Cr.P.C. without permitting the prosecution to present its documentary evidence, which constitutes the central support of the case. The prosecution was effectively denied the opportunity to substantiate its allegations. Such premature limitation of the prosecution's right to lead evidence amounts to a violation of the principle of fair trial, rendering the conclusion that the charge is "groundless" legally unsustainable. Accordingly, the impugned order reflects a non-appreciation of material aspects and constitutes an instance where the discretion under Section 249-A Cr.P.C. has been exercised in a manner inconsistent with settled legal principles.

10. In the case of "Model Custom Collectorate Islamabad v. Aamir Mumtaz Qureshi" reported as **2022 SCMR 1861** it was held by the Apex Court 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. Reliance in this regard may be placed on the case of *The State through Advocate-General, Sindh High Court of Karachi v. Raja Abdul Rehman* (**2005 SCMR 1544**) wherein it was held 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. This Court in the case of *Bashir Ahmad v. Zafar ul Islam* (**PLD 2004 SC 298**) did not approve decision of criminal cases on an application under section 249-A, Cr.P.C. or such allied or similar provisions of law, namely, section 265-K or section 561-A, 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 especially when apparently there is probability of conviction after recording evidence. In the present case, trial court disrupted the normal course of law against the mandate of supra judgment i.e. Bashir Ahmad v. Zafar ul-Islam and others (**PLD 2004 SC 298**). In the case of The State through Collector Customs and Excise, Quetta v. Azam Malik and others (**PLD 2005 SC 686**) this Court held as under:-

*"22. This brings us to the third question i.e. whether the prosecution had sufficient material/evidence to warrant the prosecution of the respondents or there was no probability of accused being convicted of any offence. We have gone through the FIR registered against the respondents and the absconding co-accused as also the evidence led before the Court. There were serious allegations that there was tampering/overwriting/ cutting of the relevant register of bills of entry, the matter was inquired into at the departmental level and the allegations were found to be correct. Ex facie there was documentary, oral and circumstantial evidence to prove the charges. In the face of this material the Trial Court could not have invoked section 265-K, Cr.P.C. and acquit the respondents."*

11. Keeping in view the case law as well as the facts and circumstances of the present case, this Criminal Acquittal Appeal is partly allowed. Consequently, the impugned order is set aside. The learned trial Court is directed to proceed with the matter in accordance with law, to afford the prosecution full opportunity to produce its entire evidence and material during the course of trial, and thereafter to decide the case strictly on its merits without being influenced by any observation contained in this order. The accused shall, however, remain at liberty to move any application permissible under law at any appropriate stage of the proceedings. In the above terms, this Criminal Acquittal Appeal stands disposed of and the impugned order is accordingly set aside.

**JUDGE**

