

IN THE HIGH COURT OF SINDH, CIRCUIT COURT LARKANA

Cr. Acquittal Appeal No.D-18 of 2024.

Appellant	Deedar Ali Shaikh through Mr. Farhat Ali Bugti, Advocate.
State	Through Mr. Ali Anwar Kandho, Additional Prosecutor General, Sindh.
Date of Hearing:	<u>01.01.2025.</u>
Date of Decision:	<u>01.01.2025.</u>

JUDGMENT

Muhammad Saleem Jessar, J.- Impugned in this criminal acquittal appeal is the order dated 24.04.2024, passed in Sessions Case No.314 of 2023 (re: The State v. Munwar Ali & others), arisen out of Crime No.16/2023, registered at Police Station Madeji, District Shikarpur, for offence under Sections 302, 114, 34, PPC, whereby the learned I-Additional Sessions Judge/MCTC, Shikarpur acquitted the respondent No.1 of the charge under Section 265-K, Cr.P.C.

2. The prosecution case, in short, is that on 14.3.2023, at 6.30 p.m. time, in the street near the house of Muhammad Shahban Shaikh situated in Syed Hayat Ali Shah Mohalla of Madeji town, the accused persons named in the FIR, committed murder of Wajid Ali, son of complainant Deedar Ali Shaikh, by making gunshot upon him. Hence, such FIR was lodged by the complainant at PS Madeji on 15.3.2023.

3. It appears from the record that after framing of charge and examination of two PWs, namely, eyewitness/mashir Muhammad Baqir and IO SIP Zakir Hussain on 09.4.2024, the complainant and his Counsel appeared before the trial Court on the next date i.e. 24.04.2024 and sought adjournment; however, the trial Court by declining the same, acquitted the

accused/respondent No.1 Munwar Ali at its own u/s 265-K, Cr.P.C, holding that the charge has become groundless and there exists no probability of conviction of the accused/respondent.

4. Learned Counsel for the appellant contends that the impugned order has been passed by the learned trial Court in hot and haste, without affording sufficient opportunity to the complainant to adduce evidence. He next submits that it is a murder case involving capital punishment and the trial Court while conducting trial in such a case had to be very cautious, particularly, in exercising the powers u/s 265-K, Cr.PC, without any application filed by the accused. He, therefore, submits that the impugned order may be set aside and the trial Court may be directed to proceed with the trial and decide the case on merits.

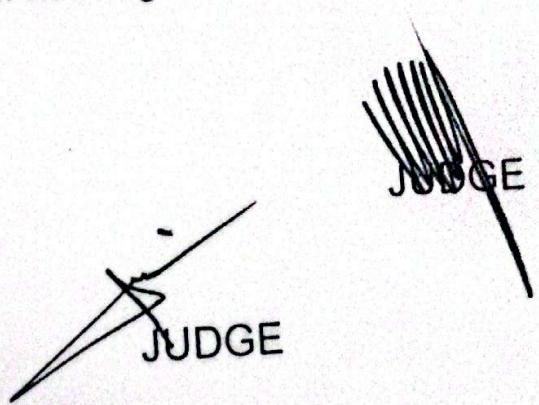
5. Learned Addl. P.G. does not support the impugned order, contending that the exercise of powers u/s 265-K, Cr.P.C by the learned trial Court in such a manner in a case involving capital punishment does not conform with the norms of natural justice.

6. Heard learned Counsel for the parties and perused the record.

7. Undeniably, it is a murder case involving capital punishment under the law. It appears that learned trial Court, after discussing the evidence of only 02 PWs i.e. eye-witness/mashir and the I.O. examined by the prosecution, recorded observations in the concluding paragraph of the impugned order that the charge has become groundless and probability of conviction of the respondent/accused does not exist, therefore, it acquitted the respondent/accused in terms of Section 265-K, Cr.P.C. It may be observed here that such observations of the trial Court at such primary stage of a case entailing capital punishment, particularly, after discussing evidence of only two PWs examined at trial in a cursory manner, appears that the impugned order has been passed in hasty manner, for the reason that such observations may

71
subsequently prejudice the prosecution case, which would tantamount to an injustice with the party actually aggrieved of the alleged incident.

8. In view of above, the impugned order passed by the learned trial Court is based on improper application of mind and law, therefore, it cannot be sustained. Accordingly, instant criminal acquittal appeal is allowed. Consequently, impugned order dated 24.04.2024 is hereby set aside. Resultantly, the matter is remanded to the trial Court, with directions to proceed with the trial and decide the case on merits after recording evidence of the parties, by providing equal opportunity of hearing to either side.



JUDGE

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