

ORDER SHEET
IN THE HIGH COURT OF SINDH BENCH AT SUKKUR
Constitution Petition No. D- 2319 of 2024

DATE OF HEARING	ORDER WITH SIGNATURE OF JUDGE
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Before;

Adnan-ul-Karim Memon, J;
Abdul Hamid Bhurgari, J;

Petitioner Suleman son of Suhrab Khan bycaste Jatoi through Mr. Aijaz Ali advocate.

Province of Through Mr. Afatab Ahmed Shar, Additional Prosecutor
Sindh & others General.

Date of hearing and order: 08-06-2026.

ORDER.

Adnan-ul-Karim Memon J:- The petitioner prayed that this Court pass an Order as under:_

- a) Set aside the order dated 16 December 2024 passed by the court of the District and Session Judge, Khairpur, in Criminal Revision Application No. 73/2024 and acquit the accused because the offence has been compounded by the Petitioner
- b) To direct Respondents No. 2 and 3 to enforce the judgments of the superior courts in letter and in spirit, and not to inject their own interpretations of law where settled case law exists
- c) To initiate an inquiry into the state of the subordinate judiciary in Sindh to ascertain whether the magistrates and district judges are sufficiently equipped with the knowledge of common law to dispense Justice
- d) To grant any other relief which this Hon'ble Court deems fit and proper in the circumstances of the case.

2. The case of the petitioner is that he is the complainant in FIR No.80 of 2018 under Section 489-F, PPC. According to him, after registration of the FIR, the dispute was amicably settled, and he received the entire amount involved in the case. Consequently, he filed an application for compounding the offence and acquittal of the accused, despite the accused having been declared a proclaimed offender. The petitioner maintains that the offence is compoundable and that the Courts below unlawfully refused to

recognize the compromise by ignoring binding judicial precedents and misapplying the provisions of Section 345, Cr.P.C. He, therefore, seeks the setting aside of the impugned orders and acquittal of the accused based on the compromise.

3. Learned counsel for the petitioner contended that the offence under Section 489-F, PPC, is compoundable and that the complainant had already received the entire disputed amount through a compromise effected between the parties. He submitted that an application supported by an affidavit had been filed seeking compounding of the offence and acquittal of the accused, who had been declared a proclaimed offender. It was argued that the trial Court and revisional Court failed to appreciate the settled legal position and ignored binding precedents, including *PLD 2012 Sindh 35* and *1998 MLD 1*, wherein compromise was recognized even in cases involving absconding accused persons. Learned counsel further maintained that the Courts below wrongly distinguished the cited judgments on irrelevant considerations, misapplied the provisions of Section 345, Cr.P.C., and erroneously suggested alternative remedies such as quashment of the FIR or withdrawal under Section 494, Cr.P.C. According to him, once a valid compromise had been effected, the complainant was entitled to compound the offence and seek acquittal of the accused in accordance with the law.

4. On the other hand, the learned Additional Prosecutor General Sindh opposed the application and argued that the accused had remained an absconder since registration of the FIR and had deliberately avoided the process of law. He submitted that the complainant had failed to furnish any satisfactory explanation as to why, despite allegedly receiving the disputed amount in March 2018, he proceeded to lodge the FIR in June 2018 and thereafter remained silent for several years. Learned APG further contended that no documentary material had been produced to substantiate the alleged settlement and that the circumstances of the case raised serious doubts regarding the genuineness and voluntariness of the compromise. He therefore prayed that the application for compounding and acquittal of the absconder be dismissed.

5. We have heard the learned counsel for the parties and perused the record with their assistance and case law cited at the bar.

6. The petitioner/complainant had lodged an FIR on 24.06.2018 alleging that the accused, Imran Ali, had dishonestly issued three cheques which were subsequently dishonoured. After investigation, a final charge sheet was submitted on 02.08.2018, showing the accused as an absconder, and he was later declared a proclaimed offender. The case thereafter remained on the dormant file. Subsequently, the petitioner/complainant filed applications under Sections 345(2) and 345(6), Cr.P.C., supported by an affidavit, seeking permission to compound the offence and acquittal of the accused on the ground that the accused had already paid the entire disputed amount of Rs. 1,983,000/- in full and final settlement. The complainant submitted that no amount remained outstanding and relied upon certain precedents to argue that a compromise could be accepted even in the absence of the accused. The learned Judicial Magistrate, after hearing the parties, dismissed the applications. The trial court observed that the accused had remained an absconder since registration of the FIR and had been declared a proclaimed offender. It further noted that the complainant claimed to have received the entire amount on 20.03.2018, whereas the FIR was lodged later on 24.06.2018, creating a serious inconsistency which remained unexplained. The trial court also found that no documentary proof of the alleged settlement had been produced and that, in the absence of the accused, it could not be satisfactorily determined whether the compromise was voluntary and genuine. The authorities relied upon by the complainant were held distinguishable on the facts. Consequently, the applications for compromise and acquittal were dismissed. Aggrieved by the said order, the complainant filed a Criminal Revision Application under Sections 435 and 439-A, Cr. P.C., before the learned Sessions Judge Khairpur, on the premise that the entire cheque amount had been paid and that the compromise ought to have been accepted notwithstanding the absence of the accused. The State opposed the revision, contending that the accused had remained a fugitive from justice throughout and that the alleged compromise lacked sufficient proof and credibility. Upon examining the record, the revisional court observed that a valid compromise must be voluntary, genuine, and

free from coercion, influence, or doubt. The court noted that the accused was a proclaimed offender and had never appeared before the court to confirm the alleged settlement. No evidence was produced to establish that the compromise had been entered into freely and lawfully. The court further observed that if the complainant no longer wished to pursue the prosecution, the proper course could have been to approach the Public Prosecutor for withdrawal of the case under Section 494, Cr.P.C., rather than seeking a compromise in the absence of the accused. Finding no illegality, irregularity, or misreading of the record in the impugned order, the revisional court held that the trial court had rightly dismissed the compromise applications. The revision application was accordingly dismissed, and the order dated 09.12.2024 passed by the trial court was maintained.

7. In Manzoor Ahmed and another v. 2nd Additional Sessions Judge, Ghotki (PLD 2012 Sindh 35), an FIR had been registered for offences under sections 302, 147, 148, and 149 PPC. During the trial, the legal heirs of the deceased entered into a compromise with all accused persons, including four accused who had been declared absconders. The trial Court accepted the compromise only in respect of the accused who was present before the court, and acquitted him under section 345(6), Cr.P.C., but refused to extend the benefit of the compromise to the absconding accused and kept their case on the dormant file. The legal heirs challenged this order through a criminal revision application, contending that the compromise had been effected with all accused persons and there was no legal justification for denying its effect to the absconders. The prosecution opposed the plea, arguing that under section 345(2), Cr.P.C., an offence can be compounded only when a prosecution is pending before the Court, and since the absconders were not before the Court, no prosecution was pending against them. It was further argued that compromise is akin to a contract and could not be validly concluded without the participation of the absconding accused. This Court rejected these objections. This Court held that criminal prosecution commences once the Magistrate takes cognizance of the offence and sends the case to the competent trial Court. Therefore, even if some accused are absconding, and their trial is separated, criminal proceedings against them remain pending in the eyes of the law. The Court emphasized that what is sent for trial is the offence itself and not

merely the person of the offender. Consequently, legal heirs retain the right to compound a compoundable offence even against an accused who is absconding. This Court further observed that the philosophy underlying section 345 Cr.P.C. is the Islamic concept of “Afw” (forgiveness) and “Darguzar” (pardon). There is no principle in Islamic law requiring that an offender must first surrender before he can be forgiven by the victim or the legal heirs. This Court therefore disagreed with the contrary view expressed in Wali Muhammad v. State (2008 MLD 1123). Holding that the compromise application expressly covered both the present and absconding accused, this Court concluded that the trial Court had acted illegally in restricting the compromise only to the accused present before it. The revision was accordingly allowed, the impugned order was set aside, and all accused, including the absconders, were acquitted under section 345(6), Cr.P.C., with the proclamations against the absconding accused also being recalled.

8. It is now well settled that once cognizance of an offence has been taken and the case has been sent for trial, criminal prosecution is deemed pending against all accused persons, including absconders. Therefore, in a compoundable offence, the legal heirs of the deceased may validly compound the offence and extend forgiveness even to an absconding accused, who may consequently be acquitted under section 345(6), Cr.P.C., without first surrendering before the Court.

9. The law on the subject is now substantially settled. The expression “prosecution” under Section 345, Cr.P.C. does not mean the physical presence or surrender of the accused, but rather the subsistence of judicial proceedings after cognizance has been taken by the competent Court. Once the challan is submitted and the case is sent for trial, the proceedings are deemed to be pending in respect of all accused persons, including those who have absconded or been declared proclaimed offenders. The absence of an accused does not extinguish the pendency of proceedings; it merely results in the separation of the trial or placement of the case on a dormant file.

10. The principle laid down in the Manzoor Ahmed case remains a binding and authoritative exposition of law, wherein it was categorically held that legal heirs or complainants are competent to compound even against an absconding accused, as the essence of

Section 345, Cr.P.C. is based upon the Islamic concepts of *Afw* (forgiveness) and *Darguzar* (pardon), and not upon rigid procedural presence of the offender. This view is consistently supported by earlier precedent, in the Muhammad Nawaz case, where a compromise was accepted even in cases involving an absconding co-accused, provided the compromise was voluntary and genuine.

11. At the same time, the Courts have also consistently emphasized an important caveat that the compromise must be free, voluntary, and free from coercion or doubt, and the Court must be satisfied about its genuineness. This safeguard is particularly important in cases involving proclaimed offenders, where the absence of the accused may raise legitimate concerns regarding voluntariness. The Courts below are therefore duty-bound to scrutinize the surrounding circumstances, but they cannot reject a compromise solely on the ground that the accused has not surrendered. The more recent judicial trend, including consistent reaffirmation by superior Courts, maintains that, on one hand, upholding the sanctity of compromise in compoundable offences as a substantive right of the victim/complainant; that, on the other hand, ensuring that such compromise is not a result of fraud, coercion, or post-FIR manipulation.

12. Applying these principles to the present case, the record reflects that the petitioner/complainant asserts receipt of the entire disputed amount and seeks compounding of the offence under Section 489-F, PPC, which is compoundable with the permission of the Court. However, the Courts below have found serious factual inconsistencies regarding the timing of the alleged payment, the absence of documentary proof, and the non-appearance of the accused, thereby raising doubts about the genuineness of the compromise.

13. The reasoning adopted by the learned Trial Court and the Revisional Court is not sustainable in law as it proceeds on an erroneous interpretation of Section 345, Cr.P.C., and overlooks the binding ratio laid down in **PLD 2012 Sindh 35** (*Manzoor Ahmed case*) and allied precedents. Both Courts wrongly treated the absence of the accused/proclaimed offender as a legal impediment to compounding. This approach is contrary to settled law, which clearly holds that “prosecution” under Section 345, Cr.P.C. means the subsistence of criminal proceedings after cognizance, and not

the physical presence or surrender of the accused. Once proceedings are initiated, compounding remains legally permissible even against absconders. The Courts below placed undue emphasis on the non-appearance of the accused as a factor affecting the validity of the compromise. This is legally misconceived, as the essence of compounding lies in the volition of the complainant/victim, not the participation of the accused. The requirement is judicial satisfaction regarding genuineness, not physical verification through appearance. The reliance on alleged inconsistencies in timing and the absence of documentary proof was treated as decisive, whereas such issues could only warrant further inquiry into genuineness, not outright rejection. The Courts failed to appreciate that a compromise supported by an affidavit carries evidentiary value sufficient to shift the burden onto the objector, particularly when the dispute is purely monetary in nature. The observation that the complainant should have pursued withdrawal under Section 494, Cr.P.C., is misconceived, as it overlooks the statutory right of compounding under Section 345, Cr.P.C., which operates independently and cannot be subordinated to prosecutorial withdrawal mechanisms. Both Courts adopted a restrictive and technical approach contrary to the liberal, restitution-oriented interpretation of Section 345, Cr.P.C., mandated by superior courts, thereby resulting in a miscarriage of lawful compromise rights.

14. In such circumstances, the correct legal approach is not to reject the principle of compounding outright, but to judicially determine the genuineness of the compromise in terms of Section 345, Cr.P.C. If the compromise is found to be voluntary, lawful, and genuine upon proper scrutiny, the mere fact that the accused is a proclaimed offender does not, by itself, bar its acceptance. Thus, in compoundable offences such as Section 489-F, PPC, the complainant may lawfully compound the offence and seek acquittal under Section 345(6), Cr.P.C., even in the absence of the accused, provided the Court is satisfied that the compromise is free from doubt and reflects a genuine settlement between the parties.

15. This petition is allowed, the impugned orders are set aside, the compromise between the parties is deemed to be accepted, and the proceedings are culminated into their logical conclusion in

terms of the compromise application filed by the petitioner/complainant.

16. All pending applications are disposed of in the above terms.

JUDGE

JUDGE

Nasim/P.A