IN THE HIGH COURT OF SINDH, KARACHI

Criminal Acquittal Appeal No.179 of 2014

Ghulam Nabi Shah
v/s.
Ghulam Hyder and others

Before: Justice Mrs. Ashraf Jahan.

Appellant	:	Through Mr. Jamil Ahmed Shah, Advocate
Respondents	:	Through Mr. Abdul Ali Sajjan Allana, Advocate .
The State	:	Through Ms. Rahat Ehsan, Additional P.G.
Date of Hearing	:	05.12.2017
Date of Order	:	05.12.2017

JUDGMENT

Mrs. Ashraf Jahan, J.:- This is a criminal acquittal appeal filed under section 417(2-A) Cr.P.C by the Appellant against Order dated 19.05.2014, passed by Ist Civil Judge and Judicial Magistrate, Thatta in Criminal Case No.11/2014 arising out of FIR No.62/2013 of P.S. Makli, under sections 147, 148, 149, 504, 427, 447 and 435 P.P.C.

2. The prosecution story as per F.I.R. is that on 30.05.2013 at about 1830 hours, Complainant Syed Ghulam Nabi Shah appeared at Police Station Makli and lodged F.I.R., stating therein that he is a contractor; he and his friends Muhammad Siddique and Ghulam Fareed were allotted three plots on Malkana basis in the year 1989, but Late Jan Muhammad Hamaiti and his relatives created dispute

over the said plots, which went up to the level of Sessions Court and finally decided in favour of the Complainant. On 20.05.2013 the Complainant came to know that rival party in order to encroach upon the disputed plots were cutting trees over the plots, therefore, he alongwith Hyder Ali Chandio went there, Ghulam Hyder son of Jan Muhammad Himaiti also met him, to whom he explained the whole position. In the meantime, at 1130 hours Ghulam Hussain, Allah Dino, Lal Muhammad, Muhammad Ayoub, Ghulam Rasool and three unknown persons came there and abused the Complainant and also issued threats of dire consequences; they also beaten the Complainant, who was saved by Hyder Ali Chandio and one passerby. The Complainant left the place of incident due to fear and moved application to S.S.P. Thatta. Later on accused persons set on fire the hedge and also cut the trees from his plot and occupied the same. The Complainant then moved application before the Court of Sessions, Thatta and after obtaining the order lodged F.I.R. After registering the F.I.R. Police conducted the investigation and submitted charge sheet against the present Respondents. When the case was pending before the Court of Civil Judge and Judicial Magistrate, Thatta, application under section 249-A Cr.P.C was moved and was allowed vide order dated 19.05.2014, which is impugned before this Court.

3. I have heard the learned counsel for the parties. It is contended by learned counsel for the Appellant that the impugned order is illegal, unjust and resulted in miscarriage of justice. The learned trial Court has framed the charge in the present case on 15.02.2014 against Respondents No.1 to 7, whereas Respondent No.8 was declared as proclaimed offender. The Complainant alongwith P.W Mazhar was appearing before the Court, but the trial

Court instead of recording their evidence allowed the application moved under section 249-A Cr.P.C and acquitted the accused. It is further contended by learned counsel for the Appellant that the trial Court has mainly passed the order on the point that as civil litigation is pending between the parties; therefore, there will be no possibility of conviction in the case; he prayed that as sufficient evidence was available with the prosecution side, therefore, it was incumbent upon the trial Court to record the evidence and to decide the matter on merits. Against this, it is contended by learned counsel for the Respondents that F.I.R. is delayed by ten days. Further, there is no eye witness of the incident; therefore, trial Court has rightly acquitted the accused. Learned Additional P.G. also supported the impugned order and contended that there are general allegations in the F.I.R. and no specific role is assigned to any accused, therefore in such a situation the provisions of Section 249-A Cr.P.C have rightly been applied.

4. I have considered the arguments and have perused the case record. The perusal of F.I.R. and challan reveal that there are general and vague allegations against the present Respondents. Though the complainant side has made various allegations against the Respondents, but no specific role to them has been assigned in the F.I.R., which was admittedly lodged after ten days of the incident. No doubt, Complainant has lodged F.I.R. after obtaining orders from the Sessions Court, therefore, delay, if any, has been reasonably explained, but even then he has not assigned any specific role to the nominated accused, which gives an impression that the whole story is concocted. Moreover, it is an admitted position that multiple litigations are pending between rival parties and eight persons of one family have been roped in this case. As per F.I.R. the

only eye witness was Hyder Ali Chandio, but in challan his name is not mentioned in the list of witnesses.

5. A plain reading of Section 249-A Cr.P.C. connotes the powers which a Magistrate can exercise under this section. It empowers a Magistrate to acquit an accused at any stage of the case, if after hearing the prosecution and accused and for reasons to be recorded he considers that charge against the accused is groundless or there is no possibility of his conviction in the case then the evil should be nipped in the bud at the earliest to avoid abuse of the process of law. This being the position, I am of the view that the trial Court has rightly passed the impugned order, which needs no interference. Consequently, the present acquittal appeal is dismissed.

Judge