

ORDER SHEET  
IN THE HIGH COURT OF SINDH, KARACHI

**Crl. Acq. Appeal No.237 of 2018**

Date	Order with signature of Judge
<u>For hearing of main case.</u>	

***Present: Mr. Justice Nazar Akbar***

Appellant : Ghulam Mujtaba s/o late Abdul Aziz  
M/s. Abdul Samad Khattak & Ghulam Rasool, Advocates.

**Versus**

Respondent No.1 : Syed Hussam S/o Sultan Ahmed  
Through Mr. Samsam Ali Raza and Ms.Touqeer Fatima, advocates.

Respondent No.2 : Judicial Magistrate XIXth Karachi East

Respondent No.3 : The State.  
Ms. Rahat Ehsan, Addl.P.G.

Date of hearing : **07.05.2019**

Date of decision : **30.05.2019**

**JUDGMENT**

**NAZAR AKBAR, J:** This Crl. Acq. Appeal is directed against the judgment dated **26.02.2018** passed by learned 19<sup>th</sup> Civil Judge & Judicial Magistrate (East) Karachi on the complaint filed by the State and registered as SMC0 **No.671/2016**, whereby the trial Court has acquitted Respondent No.1 from the charge under **Section 182** of the PPC by extending him benefit of doubt.

2. Prosecution case in nutshell is that on **04.09.2016** S.H.O, P.S Gulistan-e-Jauhar requested the trial Court for prosecution of respondents under **Section 182** of the PPC on the ground that Respondent No.1 on **02.2.2016** had furnished false information for lodgement of FIR No. 52/2016, under Section 506, 34 PPC r/w Section 25 of Telegraph Act of Police Station Gulistan-e- Johar,

Karachi about the incidents which took place on **30.11.2015** and **09.12.2015** with the complainant.

3. Learned trial Court after hearing the parties, acquitted / Respondent No.1 by judgment dated **26.02.2018**. Therefore, the appellant / complainant has filed the instant Criminal Acquittal Appeal.

4. I have heard the learned Counsel for the appellant/Complainant, learned Counsel for the Respondent No.1 and perused the record with the able assistance of learned Prosecutor.

5. Learned counsel for the appellant has contended that on account of false FIR, the appellant was humiliated by the police. It is alleged by him that the appellant was arrested by the police in FIR No.52/2016 registered on **02.02.2016** wherein the date of incident was **09.12.2015**.

6. Learned counsel for the respondent No.1 contended that no action was taken by the police on his FIR and the police in connivance with the accused without proper investigation has recommended for disposal of the FIR in class "C". The report under **Section 173** of the Cr.P.C was filed on **13.04.2016** in the absence of respondent. The appellant after three months in **July, 2016** filed an application before Magistrate for initiating proceedings under **Section 182** of the PPC on the ground that the Court has converted police report for disposal of case in class "C" into class "B" and accepted the report under **Section 173** of the Cr.P.C. The request of appellant was not accepted by the Court. However, after more than five months of submitting report under **Section 173** of

the Cr.P.C, on **04.09.2016** S.H.O filed complaint before the Judicial Magistrate for proceedings under **Section 182** of the PPC. Learned counsel for the accused has also submitted that the SHO was supposed to inform the complainant/accused herein while submitted report under **Section 173** of the Cr.P.C which was unilaterally converted to class "B" by the Magistrate without even notice to the complainant/accused, therefore, the whole proceedings were otherwise unlawful and without jurisdiction. The learned trial Court has also found that the accused has failed to prove any action taken by the police against him on the basis of the FIR which was recommended to be disposed of in class "C" in the report under Section 173 of the Cr.P.C.

7. The record shows that the incident of police raid at the house and arrest of appellant and his son has not been witnessed by any one. Not a single person has been examined by the appellant to substantiate their claim that they have been arrested by the police after raid at their house. No neighbour/resident or witness of such arrest and detention on the pretext of FIR No.52/2016 was produced. The record shows that the appellant has never even applied for bail before arrest or after arrest if they were at all arrested by police on the basis of the FIR lodged by the accused. The learned trial Court has also discussed the circumstances in which the case under **Section 182** of the PPC was not made out. In this context the learned trial Court has discussed the evidence of the appellant and the investigating officer in the impugned order as follows:-

*".....PW Ghulam Mujtaba stated in his examination in chief that in between 2 to 9 February 2016, in between 07:00 AM to 08:00 AM. Police took him to the Police Station where*

he came to know that a FIR has been lodged against him in which his children are also nominated.

PW Ghulam Mujtaba further stated in his cross that he does not know that whether Police had released him on surety or not. PW Ghulam Mujtaba further stated in his cross that after his release from the Police Station he was not called by the police to appear before the Court.

PW/I.O Ghulam Shabbir stated in his cross that accused person have not produced any Bail before Arrest Order before him in their favour in this matter. PW/IO Ghulam Shabbir admitted it in his cross that he has no proof as to whether accused were given bail by the police. From the perusal of Qalandara/Report of SHO, it appears that all three accused persons are shown as not arrested. Furthermore, PW/IO Ghulam Shabbir produced two documents at Exh. 7/A and 7/B as PTCL record but he (PW/IO Ghulam Shabbir) admitted in his cross that nothing is specifically mentioned in the contents of charge sheet in respect of documents produced at Exh.7/A and 7/B. **PW/IO Ghulam Shabbir admitted in his cross that he has not produced any proof before the Court in respect of giving notice under Section 160 Cr.P.C by him to the Complainant.** PW/IO Ghulam Shabbir during cross seen the Exh.7/A and 7/B and admitted that no stamp and signature of authority is available at those documents. PW/IO Ghulam Shabbir further admitted in his cross that the contents available at both sides of Exh.7/B are same From the perusal of FIR produced at Exh.3/A, it appears that the date of issuing threats through PTCL Number 021-32313652 is mentioned as **09.12.2015** but PW/IO Ghulam Shabbir admitted in his cross that the PTCL Bill produced by him at Exh.7/B is of the period from **14.12.2015 to 14.01.2016**”.

Besides the above, another aspect of the case is that the appellant being a nominated accused in FIR No.52/2016 cannot be aggrieved by the decision of the Magistrate on the complaint under **Section 182** of the PPC filed by the public servant. The language of **Section 182** of the PPC does not refer to any private person and it relates **“to cause public servant to use his power”** and in case of such information is found false and public servant on such false

information has taken any action or omitted to act, then such public servant can initiate proceeding under **Section 182** of the PPC. The provisions of **Section 182** of the PPC are reproduced below:-

*<sup>20</sup>[182.False information with intent to cause public servant to use his lawful power to the injury of another person. Whoever gives to any public servant any information which he knows or believes to be false, intending thereby to cause, or knowing it to be likely that he will thereby cause, such public servant—*

*(a) to do or omit anything which such public servant ought not to do or omit if the true state of facts respecting which such information is given were known by him, or*

*(b) to use the lawful power of such public servant to the injury or annoyance of any person,*

*shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to [three thousand rupees], or with both.*

It is the public servant who could be aggrieved if on the basis of any false information he has taken certain steps or he has not done something as a consequence of such false information which he was otherwise supposed to do. The appellant is not a public servant nor the so-called false information was given by him.

8. The proceeding under **Section 182** of the PPC is not a remedy of any humiliation or insult suffered by the accused nominated in the false information given by the complainant to the Incharge Police Station. The remedy for the nominated accused is malicious prosecution. In the case in hand the police has submitted report under **Section 173** of the Cr.P.c for disposal of the case in **class 'C'** meaning thereby the I.O has not found the information as maliciously false in disposing of the case after

registration of FIR. However, the learned Magistrate had disposed of the report under **Section 173** of the Cr.P.C in class 'B' and such observation of the Magistrate is neither any direction to the police to initiate proceeding under **Section 182** of the PPC nor police officer is supposed to be aggrieved by such opinion of the learned Magistrate. It must be kept in mind that an order of a Magistrate on the report under **Section 173** of the Cr.P.C is not a judicial order. It is an administrative order and it does not create any right in favour of the nominated accused particularly when the Magistrate has not taken any cognizance against the accused on police report.

9. Irrespective of the above discussion, the right of appeal on the orders passed by Magistrate on the complaint under **Section 182** of the PPC does not lie with the nominated accused for the simple reason that an appeal is continuity of original proceeding and admittedly the proceedings under **Section 182** of the PPC were not initiated by the nominated accused/appellant. If the public servant is not aggrieved by the order of learned Magistrate on his complaint under **Section 182** of the PPC, the matter ends. In this context I rely on the judgment of my brother **Fahim Ahmed Siddiqui, J** in the case of *Khuwaja Muhammad Waseem ..Vs.. Syed Jalees Anjum and others (2018 P.Cr.L.J 1230)* and the relevant observation from said judgment in para-10 is reproduced below:-

*10. The appellant is one of the nominated accused in the FIR lodged by respondent. The appellant has taken part in the proceedings before the trial Court, and he has challenged the judgment of the learned Judicial Magistrate before this Court. It is evident from the language of section 182, PPC that the aggrieved party having right to initiate a proceeding under section 182, PPC, is the officer who faced hardship and inconvenience due to a*

*complaint, which was subsequently proved false. The legislature has not given any authority or power to initiated under Section 182, PPC to a nominated accused of the false and fabricated FIR. There are other remedies available to a nominated accused of such FIR, and he has every right to initiate those proceedings for malicious prosecution, but he has no right to enter into a proceeding initiated by a police officer under section 182, PPC even at the appellate stage as the appeal is continuity of the original proceeding. In this respect, I would take reliance from a case of this Court reported as Muhammad Ibrahim v. Umaid Ali and 4 others (2016 MLD 346).*

9. In view of the above, no case is made for interference in the impugned judgment by this Court, therefore, this Criminal Acquittal Appeal is dismissed with no order as to cost.

JUDGE

Karachi, Dated: 30.05.2019

Ayaz Gul