

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.

Cr. Rev. A. No.S- 180 of 2018

DATE	ORDER WITH SIGNATURE OF JUDGE
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1. For orders on office objection
2. For hearing of main case

01.11.2019.

Mr. Noor-ul-Haq Qureshi, Advocate for applicant.
Mr. Ghulamullah Chang, advocate for complainant
Ms. Rameshan Oad, A.P.G.

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The facts in brief for disposal of instant criminal Revision Application are that an FIR was lodged with PS Badin with regard to death of Naseer Shah, allegedly at the instigation / abetment / conspiracy of the applicant. On consecutive investigation the applicant was found to be innocent by the police consequently he was let-off and his name was placed in column No.2 of charge sheet. Learned trial Magistrate who took the cognizance of the offence, joined the applicant in trial, which the applicant joined and he then by way of making an application U/s 265-K Cr.P.C sought for his acquittal. It was dismissed by learned IInd Additional Sessions Judge, Badin vide his order dated 23.10.2017, it was set aside by this Court, on 27.08.2017 with a

direction to learned trial Court to pass the same afresh, after providing chance of hearing to both the parties. It was passed afresh by learned trial Court, whereby the application of the applicant for his acquittal U/s 265-K Cr.P.C was dismissed again, on 09.10.2018, such dismissal of his application is impugned by the applicant before this Court by way of instant Criminal Revision Application.

2. It is contended by learned counsel for the applicant that the applicant being innocent has been involved in this case falsely by the complainant party, in order to satisfy their enmity with him, on the basis of allegation of instigation / abetment / conspiracy, otherwise, the applicant has nothing to-do with the alleged incident and he has rightly been found to be innocent by the police on consecutive investigation. By contending so, he sought for acquittal of the applicant as according to him the regular trial of the applicant would raise no probability or possibility of the conviction of the applicant.

3. It is contended by learned A.P.G for the State and learned counsel for the complainant that the applicant has been declared to be innocent by the police, on the basis of defence version, which was against the scheme of criminal justice; the applicant has rightly been joined trial by learned trial Magistrate, which

trial the applicant has joined; the charge against the applicant has been framed and there is every possibility and probability of his conviction. By contending so, they sought for dismissal of the instant criminal Revision Application. In support of their contentions they relied upon case of ***The State through Advocate General, Sindh High Court of Karachi vs Raja Abdul Rehman (2005 SCMR 1544)***.

4. I have considered the above arguments and perused the record.

5. The applicant is named in FIR with the specific allegation that at his instigation / abetment / conspiracy Naseer Shah was done to death by the co-accused. In that situation, it would be premature to say that the applicant being innocent has been involved in this case falsely by the complainant party in order to satisfy their enmity with him. It is true that on investigation the applicant was found to be innocent by the police but there could be made no denial to the fact that such finding was recorded by the police on the basis of defence evidence. It is not within the power of the police to believe the defence evidence and to reject the evidence of complainant party. Needless to say, such power vests with the Courts. If the applicant is having a feeling that he is innocent, then he could prove his innocence by participating

the trial. In absence of evidence of prosecution, which is yet to be recorded by learned trial Court, it would be premature to conclude that there is no probability or possibility of the conviction of the applicant.

6. No wrong / illegality is committed by learned trial Court while passing the impugned order which could be made right by this Court by way of instant criminal Revision Application, it is dismissed accordingly.

JUDGE