

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Revision Application No.58 of 2018

Date

Order with signature of Judge

1. For orders on M.A No.12003/2020.
2. For orders on M.A No.12004/2020.
3. For hearing of Case.

09.03.2021

Mr. Muhammad Taqi, Advocate along with Applicant (on bail).
Mr. Talib Ali Memon, Assistant Prosecutor General, Sindh.
Naseem Masih, attorney of complainant (complainant is out of country), is present.

ORDER

MUHAMMAD SALEEM JESSAR, J:- Through this criminal revision application, applicant/convict has assailed judgment dated 20.02.2018 penned down by Additional Sessions Judge-III, Karachi (South) (Appellate) in Criminal Appeal No.01/2015 (re-Ch. Muhammad Arshad Versus the State) whereby appellate Court dismissed the appeal filed by applicant and maintained the judgment dated 20.04.2015 handed down by 1st Civil Judge/Judicial Magistrate, Karachi, South (trial Court) in Criminal Case No.548/2011 (re-the State Versus Ch. Muhammad Arshad) being outcome of FIR No.586/2010 of P.S Darakshan, under Section 489-F PPC, who after full dress trial, has found applicant to be guilty of the charge under Section 489-F PPC and therefore, has convicted and sentenced him to imprisonment for two years with fine of Rs.30,000/-.

2. The crux of the prosecution case is that complainant Ayooob Ali Shah and accused Ch. Muhammad Arshad are residents of same town in Punjab. The complainant was the owner of shops at Tariq Road, Karachi and settled in England, who used to visit Pakistan from time to time. The complainant sold his shop for Rs.48,00,000/- and transferred the same in the name of accused. The accused had deposited Rs.18,00,000/- in the Bank account of complainant and issued a cheque No.MCB-8471978 amounting to Rs.30,00,000/- drawn on MCB Tariq Road Branch, Karachi. The same cheque was bounced on presentation.

3. At the very outset, learned counsel for applicant/convict submits that compromise effected between the parties is genuine one; besides, the applications jointly signed and filed by the applicant and the complainant in terms of Section 345-(2) and 345-(6) Cr.P.C vide M.A Nos. 12003 and 12004 of 2020 are also maintainable on the ground that complainant who is out of country and resides at Canada, has sent said applications duly signed by him through Embassy, High Commission for Pakistan, Ottawa. The said applications are accompanied by attorney power executed by the complainant in favour of one Naseem Masih bearing CNIC No.42301-0999711-9, which was also signed by the complainant as well as his attorney and by the Counselor, High Commission for Pakistan, Ottawa (Canada) dated 05.10.2020. Learned counsel, therefore, submits that offence is compoundable and the applicant and complainant have entered into compromise very amicably; hence, by granting listed applications, the judgments impugned may be set-aside and the applicant/convict may be acquitted of the charge. In support of his contention, he places reliance upon case of *Abdul Hafeez Versus Usman Farooqui through his daughter Sharmila Farooqui and another* (2008 PSC (Crl) 959).

4. Learned Assistant P.G, Sindh, in view of above submissions, does not oppose the listed applications and also places reliance upon case of *HASSAN DIN Versus THE STATE* (1992 PLD Supreme Court 246).

5. Attorney on behalf of complainant, Naseem Masih present, affirms the contentions of compromise applications and under the instructions he also does not oppose the revision application as well as listed applications.

6. **Heard arguments, record perused.** The preliminary objection with regard to maintainability of listed applications on the ground that same have been filed through attorney of the complainant, is concerned, in view of dicta laid down by the Honourable Supreme Court of Pakistan in case of *Hassan Din* (Supra) is hereby over ruled. The perusal of file reveals that listed applications have been filed by the complainant himself; however, through Embassy and in addition he has also executed a power of attorney in favour of one Naseem Masih which too is signed and executed by the complainant through Embassy. Learned Assistant P.G, Sindh also does not oppose listed applications in view of dicta laid down by the

Honourable Supreme Court of Pakistan in case of Hassan Din (Supra). Since the offence with which applicant/convict stands charged, is compoundable and the complainant, who at same moment is victim of same offence, has entered into compromise through listed applications and has raised no objection for acquittal of the applicant/convict, therefore, compromise arrived at between the parties, which though appears to be genuine and without any inducement on part of applicant is liable to be acceded upon. In case of Hassan Din (Supra), where compromise effected from one side by an agent on the basis of power of attorney was accepted by the honourable Supreme Court of Pakistan and in the light of dictum of the Apex Court in said case, the listed applications in terms of sections 345-(2) and 345-(6) Cr.P.C vide M.A Nos. 12003 and 12004 of 2020 are maintainable.

7. In the circumstances and in view of no objection extended by learned Assistant P.G, Sindh appearing for the State, listed applications bearing M.A Nos. 12003 and 12004 of 2020 are hereby allowed. Consequently, instant revision application is hereby allowed. Resultantly, impugned judgments viz. Judgment dated 20.04.2015 handed down by 1st Civil Judge/Judicial Magistrate, Karachi (South) in Criminal Case No.548/2011 (re-the State Versus Ch. Mohammad Arshad) and judgment dated 20.02.2018 passed by Additional Sessions Judge-III, Karachi (South) in Criminal Appeal No.01/2015 (re-Ch. Muhammad Arshad Versus the State), are hereby set-aside. Applicant/convict Ch. Muhammad Arshad is acquitted of the charge. He is present before the Court on bail; his bail bonds are hereby cancelled and surety is discharged.

JUDGE

Zulfiqar/P.A