IN THE HIGH COURT OF SINDH, CIRCUIT COURT HYDERABAD

Criminal Revision Application No.S-119 of 2020

Applicant:	Sardar Khan and Mithal Khan through Mr. Ahsan Gul Dahri, Advocate.
Respondent:	Muhammad Suleman through Mr. Farhad Ali Abro, Advocate.
The State:	Mr. Fayaz Hussain Sabki, A.P.G.
Date of hearing:	3.9.2021
Date of decision:	3.9.2021

O R D E R

KHADIM HUSSAIN TUNIO, J.- Through captioned criminal revision application, the applicants have impugned the order dated 04.12.2020, passed by learned 1st Additional Sessions Judge, (MCTC) Shaheed Benazir Abad in Sessions Case No. 1022 of 2020 (*Re- State v. Mithal Khan and others)*, whereby the application of the applicants u/S 265-K for their acquittal was dismissed.

2. Precisely, facts giving rise to this revision application are that the complainant appeared at Police Station Doulatpur and lodged an FIR alleging therein that on 18.08.2020, the complainant along with his relatives left after attending an event when they were approached by the accused, duly armed with weapons, who on the show of weapons kept them silent while co-accused Mian Ahmed Dahri shot at Ghulam Muhi-ud-Din on his neck and he died on the spot. During investigation, the complainant filed an application before the learned trial Court seeking directions for recording of further statement of the complainant and his witnesses u/s 161 Cr.P.C which was forwarded to the DIG and subsequently allowed, whereafter their further statements were recorded and they named the present applicants as abettors of the incident as well.

3. Learned counsel for the applicants has argued that the learned Additional Sessions Judge (MCTC) Shaheed Benazir Abad

failed to consider that no evidence whatsoever was available on the record against the applicants; that the applicants have merely been assigned the role of abettors in the case through further statements for which no evidence is available; that the impugned order is not a speaking one, is illegal and is not sustainable under the law. He therefore prayed for the same to be set aside. In support of his contentions, he cited the case law reported as **1992 PCrLJ 58, 1994 SCMR 798, 1999 SCMR 2203, 2010 MLD 864, PLD 2008 Karachi 567, 2004 PCrLJ 1071, 2017 SCMR 486, 2014 YLR 710, 2000 PCrLJ 1734, 2000 SCMR 122** *and* **2009 PCrLJ 1425.**

5. Learned counsel for the complainant, while supporting the impugned order, contended that the same does not suffer from any illegality or irregularity; that the learned Additional Sessions Judge was more than competent to issue such process; that the impugned order has been passed accordingly to the four corners of the law. He therefore prays for the instant revision application being dismissed.

6. Learned APG on the other hand has fully supported the impugned order while arguing in similar footing to the counsel for the complainant while adding that schedule has already been issued by the M.C.T.C for the commencement and expediting of the trial of the case.

7. Having heard the counsel for the parties, record was perused with their able assistance. It is observed that after perusing the evidence in this situation, it would be premature to say that applicants, being innocent, have been involved in this case falsely by the complainant party. The conflict between ocular and medical evidence and contents of FIR may or may not be there, but the same could not be resolved by this Court at this stage in a summary manner only to order acquittal of the applicants which of course is calling for its adjudication on merit, which is only achievable by recording evidence. In these circumstances, it would be improbably to come to the conclusion that the prosecution, if permitted to

examine its witnesses against the applicants, would never raise the possibility of their conviction. Moreover, the counsel for the applicants argued that the applicants are suffering hardship as the case has still not proceeded forward and the process will be a long one. If for the sake of argument, it is believed that trial Court has not been able to dispose of the case against the applicants expeditiously; even then it is not a reason for their acquittal. The Hon'ble Apex Court, in the case reported as ***"The State through Advocate-General, Sindh High Court of Karachi v. Raja Abdul Rehman"*** **(2005 SCMR 1544)** while setting aside an order for acquittal of the accused concerned has been pleased to observe that:-

> "This Court in the cases of ***Bashir Ahmad v. Zafar ul Islam PLD 2004 SC 298 and Muhammad Sharif v. The State and another PLD 1999 SC 1063*** (supra) **did not approve decision of criminal cases on an application under section 249-A, Cr.P.C. or such allied or similar provisions of law, namely, section 265-K, Cr.P.C**. and observed that **usually a criminal case should be allowed to be disposed of on merits** after recording of the prosecution evidence, statement of the accused under section 342, Cr.P.C., recording of statement of accused under section 340(2), Cr.P.C. if so desired by the accused persons and hearing the arguments of the counsel of the parties and that **the provisions of section 249-A, section 265-K and section 561-A of the Cr.P.C should not normally be pressed into action for decision of fate of a criminal case.**
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> 14. In the aforecited cases, the principle laid down by this Court while dealing with the powers of the Courts under section 561-A, Cr.P.C. in quashing criminal proceedings pending before the trial Court is that **when the law provides a detailed inquiry into offences for which an accused has been sent up for trial then ordinarily and normally the procedure prescribed by law for deciding the fate of a criminal case should be followed** unless some extraordinary circumstances are shown to exist to abandon the regular course and follow the exceptional routes."
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> **(emphasis supplied)**

8. Whatever is stated in FIR and further statement of the complainant and witnesses is supported by evidence to a large extent including voice recording regarding the involvement of the present applicants which are mentioned in the contents of their

statements recorded on 26.08.2020 by the I.O of the case. No exceptional case has presented itself before this Court to consider the pre-mature acquittal of the applicants at this stage.

9. Even otherwise, these proceedings have been filed under sections 435 and 439, Cr.P.C. read with section 561-A, Cr.P.C. The jurisdiction of this court under section 561-A, Cr.P.C. is a discretionary one and is to be exercised to meet the ends of justice. It has been held in the case law reported as **Raunaq Ali v. Chief Settlement Commissioner;** ***PLD 1973 (SC) 236*** that:-

> "Its object is to foster justice and right a wrong. Therefore, before a person can be permitted to invoke this discretionary power of a Court, it must be shown that the order sought to be set aside had occasioned some injustice to the parties. If it does not work any injustice to any party rather it cures a manifest illegality, then the extraordinary jurisdiction ought not to be allowed to be invoked."

9. The upshot of the above discussion coupled with the case law relied upon is that the instant application being meritless was dismissed, vide short order and the impugned order was upheld. These are the reasons for the short order dated 03.09.2021.

JUDGE